



PROCLAMATION

On September 11, 2001, the peace and security of our nation was shattered by cowardly terrorist attacks that killed nearly 3,000 innocent and brave people at the World Trade Center towers in New York City, at the United States Pentagon, and in the pristine fields of Shanksville, Pennsylvania. Although the terrorists' goal was to strike a powerful blow to the hearts of all Americans and tear at the fabric our nation, arising from the very ashes of that tragedy came a remarkable spirit of unity, compassion and determination that will never be forgotten, just as we will never forget those who were lost and injured on that day, and those who rose in service during the rescue and recovery effort and in defense of our nation both here at home and abroad.

In observance of the 10th anniversary of the September 11, 2001 attacks on America, which killed citizens from 92 different countries, we hereby adopt the following Proclamation in tribute to those lost and injured on 9/11, and the many who gave of themselves in service to their communities and to this country in the aftermath of the attacks:

- WHEREAS,** people of all ages and walks of life, across America, and around the world, collectively witnessed an event of immense tragedy on September 11, 2001; and
- WHEREAS,** the events of that day instantly transformed nearly everyone's lives, some through personal loss, and many others through an unfamiliar sense of individual and national vulnerability; and
- WHEREAS,** an unprecedented, historic bonding of Americans arose from the collective shock, unifying the country in an outpouring of national spirit, pride, selflessness, generosity, courage and service; and
- WHEREAS,** many brave people heroically, tirelessly and courageously participated in an extraordinarily difficult and dangerous rescue and recovery effort, in some cases voluntarily putting their own well-being at risk; and
- WHEREAS,** September 11 will never, and should never be just another day in the hearts and minds of all Americans; and
- WHEREAS,** September 11, 2011 will be the 10th anniversary of the 9/11 attacks on America; and
- WHEREAS,** many citizens may wish to memorialize September 11 by engaging in, or making a plan to engage in personal and individual acts of community service, or other giving activities, as part of a solemn day of remembrance and tribute; and
- WHEREAS,** on March 19, 2009, the United States Congress passed bipartisan legislation authorizing the establishment of September 11 as a federally recognized National Day of Service and Remembrance, which President Barack Obama signed into law on April 21, 2009 and;

WHEREAS, the President of the United States, on September 11, 2009, issued the Patriot Day Proclamation officially and permanently designating September 11 as a National Day of Service and Remembrance, and calling upon all interested Americans to participate in this observance through moments of silence, the flying of the flag of the United States at half-staff, as well as community service and charitable activities in tribute and remembrance; and

NOW, THEREFORE, we, the City Council of the City of Loveland, in tribute to all of the victims of 9/11 and the many who rose in service in response to the 9/11 terrorist attacks, will observe September 11, 2011, the 10th Anniversary of 9/11, as a voluntary Day of Service and Remembrance, and furthermore call upon our citizens and organizations to consider joining in this observance and to engage in activities of tribute, solemn remembrance and charitable service.

Signed this 6th day of September, 2011

Cecil A. Gutierrez, Mayor

City Council Special Meeting
August 9, 2011

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

ROLL CALL

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

1. WATER & POWER

Platte River Power Authority presentation on Dixon Creek to Horseshoe Substation 230 KV Electric Transmission Line Project

Administrative Action: Interim Director of Water & Power Steve Adams introduced this item to Council. The following staff from PRPA were also present: Brian Moek, General Manager; John Collins, System Planning Manager; Mike Dahl; Jason Frisbee, COO and John Bleem, Customer & Environmental Services. Fort Collins Ward 4 Councilor Wade Troxell spoke on behalf of the Fort Collins Council. Platte River Power Authority (PRPA) presented updated information on the above project. Discussion ensued. Councilor Johnson moved to direct Platte River Power Authority to move forward with the Dixon Creek to Horseshoe Substation 230 KV Electric Transmission Line Project (Phase III) as designed. Councilor Klassen seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

ADJOURNMENT

Having no further business to come before Council, the August 9, 2011 Special Meeting was adjourned at 8:35 p.m.

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 8:45 p.m. after the Special Meeting which started at 6:30 p.m. on the above date. Councilors present: Gutierrez, Heckel, Solt, Klassen, McEwen, Rice, Johnson, and Shaffer. Councilor Hugh McKean was absent. City Manager, Bill Cahill was also present.

1. HUMAN RESOURCES

Fiduciary Training

Human Resources Director, Julia Garcia presented this item to Council. Due to Council's decision making authority as the "employer" over the City of Loveland retirement plans (Police, Fire, and General), Council has the responsibility to uphold and maintain the fiduciary responsibilities that coincide with such discretionary authority and ensure that persons entrusted with these duties have the professional knowledge to carry out those functions. Understanding and complying with the fiduciary responsibilities is critical as failure to follow the fiduciary standards of conduct as determined by the Department of Labor may result in liability. Gordon Tewell and Rich Todd of Innovest Portfolio Solutions, LLC presented the training and answered Council questions. Council thanked staff for the presentation.

2. DEVELOPMENT SERVICES

Downtown Developer Recruitment Strategy

City Planner, Mike Scholl presented this item to Council. Following the Downtown Request for Proposals (RFP), which yielded one development proposal (Brinkman Partners), and in an effort to grow the development opportunities in Downtown and attract greater investment, staff is interested in reviewing both the potential sites for future development and the process for identifying interested developers. The process may include a revolving RFP that would establish criteria for engaging in exclusive negotiations with developers regarding development proposals in Downtown. Mr. Scholl reviewed the background of the Downtown Vision Book, the Request for Proposals/ Developer Solicitation and the Exclusive Right to Negotiate. Discussion ensued. Council directed staff to move forward to develop the proposed process and return to a future meeting for more discussion.

Mayor Gutierrez reminded Council of the Special Meeting set at 6:30 p.m. Thursday evening, August 11, 2011.

Councilor Shaffer requested support for a letter to be sent to CDOT regarding the four Rail Plan meetings scheduled in Denver. The location and time of the meetings does not allow for any Northern Colorado cities to reasonably try to attend and give input. City Manager, Bill Cahill will work to draft the letter by next Tuesday.

The study session was adjourned at 10:06 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

City Council Special Meeting
August 11, 2011

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

PLEDGE OF ALLEGIANCE

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

1. AIRPORT

Supplemental Appropriation of Federal Aviation Administration Grant Funds and Contract Approval

Administrative Action: Airport Director Jason Licon introduced this item to Council. This is an administrative action. The Airport has been notified by the FAA that it will award a grant of up to \$7,000,000 to support rehabilitation of the Airport's main runway. This unanticipated and sudden release of the grant by Congress and the FAA creates a window of opportunity to complete the runway rehabilitation necessary to maintain the safe and efficient operation of the Airport during the current construction season. This action includes an emergency ordinance for a supplemental appropriation of the grant funds and a motion authorizing the City Manager to execute a contract with Coulson Excavating Company, Inc. to complete the project. The Mayor opened the public hearing at 6:42 p.m. and hearing no comment closed the hearing at 6:42 p.m.

a. **Emergency Ordinance #5616** Councilor Johnson moved to approve and ordered published in full "AN EMERGENCY ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 FORT Collins-Loveland Municipal Airport budget for a Federal Aviation Administration Discretionary Capital Funding Grant for runway rehabilitation. Councilor Heckel seconded the motion and a roll call was taken with all Councilors present voting in favor thereof.

b. **Motion** Councilor Johnson made a motion authorizing the City Manager to execute a contract for improvements to the Fort Collins-Loveland Airport, AIP Project No. 3-08-0023-29 with Coulson Excavating Company, Inc. Councilor Heckel seconded the motion and a roll call was taken with all Councilors present voting in favor thereof.

ADJOURNMENT Having no further business to come before Council, the August 16, 2011 Special Meeting was adjourned at 6:38 p.m.

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

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

PLEDGE OF ALLEGIANCE

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

PRESENTATION Mayor Gutierrez presented the Distinguished Budget Presentation Award (2011 Budget) to the City of Loveland. Budget Officer John Hartman accepted the award.

PROCEDURAL INFORMATION

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

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

1. MINUTES

- a) Minutes for the July 26, 2011 study session were approved.
- b) Minutes for the August 2, 2011 regular meeting were approved.

2. CITY MANAGER

Board & Commission Appointments

Motion

Administrative Action: A motion recommending the following appointments was approved:

Cultural Services Board: Teresa Mueller was appointed a partial term effective until December 31, 2012.

Transportation Advisory Board: Irene Fortune, Robert Massaro and David Martinez were appointed to three year terms effective until June 30, 2014.

3. PUBLIC WORKS

Supplemental Appropriation – School Crossing Guard

Ordinance #5617

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR A NEW SCHOOL CROSSING GUARD AT 29TH STREET AND MADISON AVENUE" was approved and ordered published on second reading.

4. INFORMATION TECHNOLOGY

Dissolve Communications Technologies Commission

Ordinance #5618

Legislative Action: "AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTION 2.60.070 TO DISSOLVE THE COMMUNICATIONS TECHNOLOGIES COMMISSION" was approved and ordered published on second reading.

5. DEVELOPMENT SERVICES

Municipal Code Amendment Regarding Affordable Housing

Ordinance #5619

Legislative Action: "AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT SECTION 16.08.010, SECTION 16.38.085, AND CHAPTER 16.43 REGARDING AFFORDABLE HOUSING" was approved and ordered published on second reading.

6. CITY CLERK

Election Agreement with Larimer County

Resolution #R-49-2011

Administrative Action: Resolution #R-49-2011 approving and authorizing the execution of an agreement between the City of Loveland and the Larimer County Clerk and Recorder concerning the coordinated mail ballot election to be held on November 1, 2011 was approved.

RESOLUTION #R-49-2011

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE LARIMER COUNTY CLERK AND RECORDER CONCERNING THE COORDINATED MAIL BALLOT ELECTION TO BE HELD ON NOVEMBER 1, 2011

WHEREAS, on July 5, 2011, the Loveland City Council adopted Resolution #R-44-2011 authorizing the Loveland City Clerk ("City Clerk") to notify the Larimer County Clerk and Recorder ("County Clerk") of the City of Loveland's intention to participate in the November 1, 2011, election and to coordinate the City's participation in that election with the County Clerk; and

WHEREAS, on July 19, 2011, the City Council adopted on second reading Ordinance No. 5612 authorizing that the City's November 1, 2011, regular municipal election be governed by the Colorado Uniform Election Code of 1992 to the extent necessary in order to conduct the election as a coordinated election with the County Clerk held on November 1, 2011; and

WHEREAS, C.R.S. §1-7-116(2) of the Uniform Election Code provides that when the County Clerk is conducting a coordinated election with a municipality, the County Clerk is required to enter into an agreement with that municipality concerning the conduct of that election; and

WHEREAS, the County Clerk has presented to the City an "Intergovernmental Agreement For Coordinated Election," dated July 21, 2011, a copy of which is attached hereto as Exhibit "A" and incorporated by reference ("the Election Agreement"); and

WHEREAS, in order for the City to participate in the coordinated election with the County Clerk, it is therefore necessary for the City to enter into the Election Agreement.

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

Section 1. The Election Agreement is hereby approved and the Mayor is authorized to enter into it on behalf of the City.

Section 2. The City Clerk shall comply with the provisions of the Election Agreement and shall act as the City's designated local election official in all matters related to the November 1, 2011, regular municipal election. The City Clerk shall also comply with the applicable provisions of the City Charter, of the Municipal Election Code of 1965 and, to the extent required by Ordinance No. 5612, with the applicable provisions of the Uniform Election Code of 1992 in conducting the November 1, 2011, regular municipal election as a coordinated mail ballot election with the County Clerk.

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

SIGNED this 16th day of August, 2011.

Cecil A. Gutierrez, Mayor

City Council Regular Meeting
August 16, 2011
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Attest: Teresa G. Andrews, City Clerk
Exhibit A is available in the City Clerk's Office

7. DEVELOPMENT SERVICES

Supplemental Appropriation – Donations to Historic Preservation Commission

1st Rdg Ord & P.H. Staff requested this item be removed from the agenda. This item was not considered

8. DEVELOPMENT SERVICES

Easement Vacation – West Industrial Addition (Cardinal Glass)

1st Rdg Ord & P.H. Legislative Action: A public hearing was held and "AN ORDINANCE VACATING A PORTION OF CERTAIN WATER MAIN OR PIPELINE EASEMENTS LOCATED ON LOT 1, BLOCK 1, OF THE REPLAT OF LOTS 1, 4, 5, 6, AND 7, BLOCK 1 OF THE WEST INDUSTRIAL ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on first reading.

9. FINANCE

Contract Amendment – Asplundh Tree Experts

Motion Administrative Action: A motion to approve a contract change in the amount of \$250,000 to the Asplundh Tree Experts Company contract for 2011, bringing the total not to exceed \$600,000 and authorizing the City Manager to execute the contract change was approved.

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports

b) Business from Council

Shaffer Councilor Shaffer mentioned the State Rail Plan will be discussed at the September North Colorado Metropolitan Planning Organization.

Johnson Councilor Johnson asked about the purchase agreement with United Properties. Discussion regarding financial statements and the signed contractual letter as well as environmental aspects of the purchase were signed off and no problems were reported. Staff is prepared to move on the creation of a Urban Renewal Authority and are having a valuation of the property conducted this fall.

Klassen Councilor Klassen commended the volunteers and various boards and committees involved with the Loveland Sculpture Show for a job well done. He also stated all communications since to Council must include contact information from the sender or they will be discarded and not considered.

Gutierrez Mayor Gutierrez reminded Council of the Business Appreciation breakfast on Wednesday, August 17 at 7:00 am. He also commented favorably on the car show held over the weekend at The Ranch.

c) City Manager Report

City Manager Cahill announced, effective August 17, 2011, the formation of the Economic Development Department with Betsey Hale as Director. The department is comprised of the following positions: senior planner, business development specialist, economic development research specialist and administrative support. Members of the Economic Development Department will staff the City Council Economic Development Subcommittee, Community Marketing Commission, Creative Sector Development Advisory Board and the Loveland Downtown Team.

d) City Attorney Report None

PROCEDURAL INFORMATION

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

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

10. FIRE & RESCUE

Agreement to Create Loveland Fire Rescue Authority

Resolution #R-50-2010

Administrative Action: Fire Chief Randy Mirowski introduced this item to Council. The fire authority will be established with an intergovernmental agreement (IGA), creating a partnership between the City of Loveland and the Loveland Rural Fire Protection District, to provide all fire and rescue services to the citizens living within the boundary lines of both the City and the Rural District. The IGA is the legal document that will be used for implementation of the fire authority. The Mayor allowed public comment beginning at 7:20 p.m. Paul Bennett, 3326 SCR 29, spoke about the Rural Fire Protection District and issues with fire/homeowner insurance in his area. Fire Chief Mirowski will investigate the issue. The Mayor closed the public comment at 7:35 p.m. Councilor Johnson made a motion to adopt Resolution #R-50-2011 approving an Intergovernmental Agreement between the City of Loveland and the Loveland Rural Fire Protection District creating the Loveland Fire Rescue Authority. Councilor Heckel seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION # R-50-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE LOVELAND RURAL FIRE PROTECTION DISTRICT CREATING THE LOVELAND FIRE RESCUE AUTHORITY

WHEREAS, the City of Loveland, a Colorado home rule municipality, (the "City") and the Loveland Rural Fire Protection District, a special district, (the "District") are duly organized and existing in accordance with Colorado law as governmental entities; and

WHEREAS, since 1950, the District and the City (jointly, the "Parties), through the City's Fire and Rescue Department, have provided fire and emergency services to the District through a series of agreements between the Parties, the last being the Parties' Intergovernmental Agreement dated December 6, 2006 (the "2006 IGA"); and

WHEREAS, under the 2006 IGA and previous agreements between the Parties, the District has provided fire apparatus, equipment and supplies to the City for use by the City's Fire and Rescue Department to provide fire and emergency services both within the boundaries of the District and the City; and

WHEREAS, in furtherance of the Parties' efforts to improve fire and emergency services, the Parties have engaged in a two and one half year review of such services and concluded that a fire authority has great potential to enhance fire and emergency services for the community by improving administrative, strategic and operational planning for fire and rescue operations; and

WHEREAS, the City Council finds that is in the best interests of the City and of Loveland's citizens to enter into the "Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity between the City and the District", attached hereto as Exhibit A and incorporated by reference (the

"Agreement"), to form a separate governmental entity to be known as the Loveland Fire Rescue Authority to provide fire and emergency services within the Parties' respective jurisdictional limits beginning on January 1, 2012; and

WHEREAS, the City and the District each have the legal authority to enter into this Agreement pursuant to C.R.S. § 29-1-203(1) since each is lawfully authorized to provide fire and emergency services within their respective jurisdictions and, therefore, the Parties have the legal authority under C.R.S. § 29-1-203(4) to enter into the Agreement and establish the Loveland Fire Rescue Authority as a separate governmental entity; and

WHEREAS, on August 3, 2011, the Loveland Rural Fire Protection District Board approved the Agreement.

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

Section 1. That the Agreement is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to enter into the Agreement on behalf of the City, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

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

ADOPTED this 16th day of August, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

11. FINANCE

Ballot Measure for November 1, 2011 Election

Ordinance #5620

Administrative Action: Budget Officer John Hartman introduced this item to Council. This is an administrative action to refer a ballot measure to allow the City to retain revenue in excess of the TABOR (State Constitutional Amendment) revenue limits beginning January 2013. The Mayor allowed public comment beginning at 7:39 p.m. Neil Spooner, 633 Harrison Ave, spoke in support of the ordinance if a ten year sunset provision was added. Debra Elliot, 2343 Albany Ave, spoke in support of the ordinance if a ten year sunset provision was added. Jennifer Travis, Ward 4, questioned the support of the ordinance unless it included a sunset provision. She stated, as a member of the Citizens' Finance Advisory Commission, that CFAC supported adding a sunset provision. Councilor Johnson made a motion to approve and ordered published on second reading the ordinance as submitted this evening by City Attorney John Duval, "AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF LOVELAND AT THE CITY'S REGULAR ELECTION TO BE HELD ON NOVEMBER 1, 2011, THE BALLOT ISSUE OF WHETHER, WITHOUT CREATING ANY NEW TAX OR INCREASING THE RATE OF ANY EXISTING TAX, THE CITY OF LOVELAND SHALL BE PERMITTED, BEGINNING IN 2013 AND EACH YEAR THEREAFTER, TO COLLECT, RETAIN AND SPEND ALL CITY REVENUES IN EXCESS OF THE SPENDING, REVENUE AND OTHER LIMITATIONS IN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION TO BE USED FOR POLICE AND FIRE, STREET CONSTRUCTION AND MAINTENANCE, AND PARKS CONSTRUCTION AND MAINTENANCE" with the following amendments: 1) where the ordinance refers to a ten-year period; a twelve-year period should be substituted 2) where the ordinance refers to December 31, 2022; December 31, 2024 should be substituted. Councilor Heckel seconded the motion and a roll call vote was taken with five Councilors present voting in favor and Councilors Gutierrez, Shaffer, Solt and Johnson voting against. The motion passed.

12. POLICE

Agreement for Shared Cost of Northern Regional Lab Group Facility

Resolution #R-51-2011

Administrative Action: Police Chief Luke Hecker introduced this item. This is an administrative action to consider adoption of an intergovernmental agreement by City Council to share equally with other members of the Northern Regional Lab Group (NRLG) in the payment of the operation and maintenance costs of the planned facility (to be constructed or purchased) that will house various forensic services provided by NRLG members and the Colorado Bureau of Investigation. The annual costs for operation and maintenance of the facility are estimated to be approximately fifty-five to seventy thousand (\$55,000.00 - \$70,000.00) per NRLG member. Councilor Johnson made a motion to adopt Resolution #R-51-2011 approving an intergovernmental agreement for the shared use of a Weld County stand-alone facility that will act as a host facility for the Northern Regional Lab Group with direction to the City Attorney, that if given the opportunity a clarification to Section VI.B be provided that addresses the disposition of funds "paid during the time of its absence from the Agreement". Councilor Heckel seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION # R-51-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR THE SHARED USE OF A WELD COUNTY STAND-ALONE FACILITY THAT WILL ACT AS A HOST FACILITY FOR THE NORTHERN REGIONAL LAB GROUP

WHEREAS, the City of Loveland, a home rule municipality (the "City"), the City of Greeley, a home rule municipality, the City of Fort Collins, a home rule municipality, the Board of County Commissioners of Larimer County, on behalf of the Larimer County Sheriff's Office and the 8th Judicial District Attorney's Office, and the Board of County Commissioners of Weld County on behalf of the Weld County Sheriff's Office and the 19th Judicial District Attorney's Office (collectively referred to herein as the "Parties" or the "Northern Regional Lab Group") are political subdivisions of the State of Colorado duly organized and existing in accordance with Colorado law; and

WHEREAS, in approximately November of 2008 the Parties entered in to an intergovernmental agreement, entitled "Intergovernmental Agreement Regarding Shared Facilities and Forensic Operating Guidelines of the Northern Regional Lab Group" to work cooperatively to promote improved identification, collection, timeliness, quality, accuracy, consistency, court delivery and cost effectiveness of forensic services to the northern region of Colorado by pooling resources, information, expertise, equipment and money among the Parties; and

WHEREAS, since that time the Board of County Commissioners of Weld County ("Weld County) in cooperation with the other members of the Northern Regional Lab Group (the "NRLG") has sought to purchase or build a stand-alone facility that would act as a host facility for the NRLG and allow the NRLG to bring together in one location the various forensic disciplines among the Parties that currently are spread throughout various northern Colorado law enforcement agencies; and

WHEREAS, on August 17, 2010, in anticipation of a potential purchase by Weld County of a building or of land and the construction of a building for a regional forensics lab, the City Council adopted Resolution #R-41-2010, that expressed the City's intent to share equally with other NRLG members in the payment of annual costs for the operation and maintenance of a host facility for the NRLG; and

WHEREAS, the City Council finds the City's participation in the NRLG and sharing of operation and maintenance costs of a stand-alone facility for the NRLG's forensic services is a worthy endeavor and in the best interests of the City and its citizens; and

WHEREAS, the City Council further finds that it is in the best interests of the City and its citizens to enter into the "Intergovernmental Agreement Regarding a Stand-Alone Facility for Forensic Disciplines for the Northern Regional Lab Group," attached hereto as Exhibit A and incorporated by reference (the "Agreement") in anticipation of Weld County moving forward with its commitment to purchase or construct a facility to host the NRLG's forensic services; and

WHEREAS, pursuant to C.R.S. § 29-1-203(1), the Parties are authorized to cooperate with one another to provide any function or service lawfully authorized to each and are therefore each authorized under C.R.S. § 29-1-203(1) to enter into the Agreement.

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

Section 1. That the Agreement is hereby approved.

Section 2. That the City Manager is hereby authorized and directed to enter into the Agreement on behalf of the City, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

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

ADOPTED this 11th day of August, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

13. DEVELOPMENT SERVICES

Purchase and Remediation of Leslie-The-Cleaner Property

1st Rdg Ord & P.H.

Administrative Action: City Planner Mike Scholl introduced this item to Council. Also present was City staff member Tracy Turner-Naranjo. This was a public hearing to consider an administrative action to adopt an ordinance on first reading enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for the purchase and remediation of the Leslie-the-Cleaner property located at 301 N. Lincoln Avenue. The Mayor opened the public hearing at 9:09 p.m. and hearing no comments closed the hearing at 9:09 p.m. Councilor Johnson move to approve and ordered published on first reading "AN ORDINANCE ON FIRST READING ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE PURCHASE AND REMEDIATION OF THE LESLIE-THE-CLEANER PROPERTY LOCATED AT 301 N. LINCOLN AVENUE". Councilor Heckel seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

14. DEVELOPMENT SERVICES

Amendments to Project Areas of Downtown and Lincoln Place Urban Renewal Authorities

Motion

Administrative Action: City Planner Mike Scholl introduced this item to Council. Kevin Brinkman was also present. This is an administrative action. To facilitate the North Catalyst Project public/private partnership with the Brinkman Partners, staff is will be requesting some amendments to the Downtown Urban Renewal Authority (URA) project area and the Finley's Block (Lincoln Place URA) project area. Specifically, staff is requesting that three parcels be added to the Lincoln Place URA including the North Catalyst project site, the existing museum and the proposed museum expansion site. The major modification of adding the parcels to the Lincoln Place URA will require a blight study. No blight study is required for the minor modification of removing the three parcels from the Downtown Urban Renewal Authority. The following options for the project were discussed: 1) make the proposed changes in the URAs and leverage the gains to repay the CEFs and for additional improvements; 2) Use Council Reserve or other funds 3) Do not do the project. Councilor Shaffer noted offices located adjacent to the property are rentals, including her office, but there is no conflict. Staff will communicate Council action to affected taxing entities such as the School District and Larimer County. Councilor Johnson move to direct staff to take the necessary actions to amend the Urban Renewal Authority to facilitate the North Catalyst Project including securing a blight study and developing the necessary financing for the public improvements and to repay the Museum CEFs. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

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ADJOURNMENT

Having no further business to come before Council, the August 16, 2011 Regular Meeting was adjourned at 9:57 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

City Council Special Meeting
August 23, 2011

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

PLEDGE OF ALLEGIANCE

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

Mayor Gutierrez Mayor Gutierrez rearranged the agenda and moved Item 1 on the Special Meeting Agenda first and directed City Manager Cahill to reschedule Item 1 of the Study Session (Community Sustainability Plan Discussion). Item 2 of the Study Session (Mid-year Review of City Council Goals for 2011) will be heard after the Special Meeting if time permits.

1. **CITY MANAGER**

ACE Manufacturing and Innovation Park

This is a discussion item. City Manager Cahill introduced this item. Also present was Business Development Director Betsey Hale. Representatives from the Colorado Association for Manufacturing and Technology (CAMT) included Elaine Thorndike, CEO, Jo Ann Miabella Galvan, CFO, and Flo Raitano, chairwoman of the agency's board. The City Manager provided Council with an update on the ACE Manufacturing and Innovation Park project. City Manager Cahill discussed a different set of guidelines to use in the search for a new developer for the project. The key points discussed were: the city playing a stronger role in the selection process, enforceable deadlines guiding the process and changes to pricing and other provisions in the original proposal. CAMT representatives agreed to the City and CAMT having mutual consent on the selection of a new developer.

NEW BUSINESS

Gutierrez Mayor Gutierrez received, on behalf of the City, a plaque from the Loveland Sculpture Invitational Show and Sale. The plaque is in appreciation of the City's support over the past 20 years.

Cahill City Manager Cahill deferred Item 2 (Mid-year Review of City Council Goals for 2011) of the study session agenda to a later date.

ADJOURNMENT

Having no further business to come before Council, the August 23, 2011 Special Meeting was adjourned at 8:58 p.m.

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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AGENDA ITEM: 2
MEETING DATE: 9/6/2011
TO: City Council
FROM: City Manager
PRESENTER: Bill Cahill

TITLE:

Appointment of Members to Affordable Housing Commission and Housing Authority

DESCRIPTION:

An administrative item appointing members to the Affordable Housing Commission and the Housing Authority

BUDGET IMPACT:

Yes No

SUMMARY:

The **Affordable Housing Commission** ("AHC") recruited for three term vacancies during the Spring recruiting. Two incumbents applied for reappointment, one did not. Interviews were conducted and Christopher Jessen and Wayne Thompson are recommended for reappointment to AHC for three year terms effective until June 30, 2014. Due to another member's resignation, and the remaining full term vacancy, recruiting is ongoing.

During the Spring recruiting, the **Housing Authority** (HA") sought applicants for one term vacancy. One incumbent applied for reappointment. No other applications were received. Sandra McFeron is recommended for reappointment to the Housing Authority for a five year term effective until June 30, 2016.

LIST OF ATTACHMENTS:

None

RECOMMENDED CITY COUNCIL ACTION:

Motion to reappoint Christopher Jessen and Wayne Thompson to the Affordable Housing Commission, both for terms effective until June 30, 2014.

Motion to reappoint Sandra McFeron to the Housing Authority for a five year term effective until June 30, 2016.

REVIEWED BY CITY MANAGER:



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AGENDA ITEM: 3
MEETING DATE: 9/6/2011
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Brian Burson, Current Planning Division

TITLE:

An ordinance vacating a portion of certain water main or pipeline easements located on Lot 1, Block 1, Replat of Lots 1, 4, 5, 6, and 7, Block 1, West Industrial Addition, City of Loveland, Larimer County, Colorado.

DESCRIPTION:

A legislative action to consider an ordinance, on second reading, vacating a portion of a water main or pipeline easement on Lot 1, Block 1, of the Replat of Lots 1, 4, 5, 6, and 7, Block 1 of the West Industrial Addition.

BUDGET IMPACT:

Yes No

SUMMARY:

The site is located along the west side of North Van Buren Avenue, near the intersection of North Van Buren Avenue and West 8th Street. The property has recently been acquired by Cardinal Glass. The application proposes to vacate a portion of the easement that affects the property. This historic easement was dedicated in 1902, far in advance of annexation or subdivision of this property in the City, and was for the purpose of installation, maintenance and access for an old water main and pipeline easement. No such water main is installed on the applicant's property, and City staff has determined that the easement is no longer needed on this property.

City Council held a public hearing regarding the vacation on August 16, 2011. The matter was acted on by the City Council as part of the Consent Agenda, and the ordinance was adopted on first reading. No changes have been made to the ordinance since first reading.

LIST OF ATTACHMENTS:

Vacation ordinance

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 August 16, 2011, and approve, ‘AN ORDINANCE VACATING A PORTION OF CERTAIN WATER MAIN OR PIPELINE EASEMENTS LOCATED ON LOT 1, BLOCK 1, REPLAT OF LOTS 1, 4, 5, 6, AND 7, BLOCK 1, WEST INDUSTRIAL ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO. ”

REVIEWED BY CITY MANAGER:

FIRST READING: August 16, 2011

SECOND READING: September 6, 2011

ORDINANCE NO. ____

AN ORDINANCE VACATING A PORTION OF CERTAIN WATER MAIN OR PIPELINE EASEMENTS LOCATED ON LOT 1, BLOCK 1, OF THE REPLAT OF LOTS 1, 4, 5, 6, AND 7, BLOCK 1 OF THE WEST INDUSTRIAL ADDITION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation of that portion of certain water main or pipeline easements described below, located within the boundaries of the Lot 1, Block 1, of The Replat of Lots 1, 4, 5, 6, And 7, Block 1 of the West Industrial Addition, City of Loveland, Larimer County, Colorado; and

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 portion of the water main or pipeline easements 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 portion of the water main or pipeline easements 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 those water main or pipeline easements be and the same is hereby vacated:

That portion of those easements for a water main or pipeline dedicated to the City of Loveland by those deeds recorded February 27, 1902 at Book 151, page 210, Reception # 71635; and Book 151, Page 211, Reception # 71636; which lies on, over, and under Lot 1, Block 1, of the Replat of Lots 1, 4, 5, 6, and 7, Block 1 of the West Industrial Addition to the City of Loveland, County of Larimer, State of Colorado.

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.

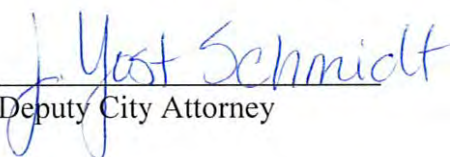
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
 DEVELOPMENT SERVICES DEPARTMENT
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AGENDA ITEM: 4
MEETING DATE: 9/6/2011
TO: Mayor and City Councilors
FROM: Rod Wensing, Assistant City Manager
PRESENTER: Mike Scholl, Senior Planner – Business Development

TITLE:

An ordinance enacting a Supplemental Budget and Appropriation to the 2011 City of Loveland budget for the purchase and remediation of the Leslie-the-Cleaner property located at 301 N. Lincoln Avenue

DESCRIPTION:

Consideration of an administrative action to adopt an ordinance on second reading enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for the purchase and remediation of the Leslie-the-Cleaner property located at 301 N. Lincoln Avenue. On August 16, 2011, City Council unanimously adopted the ordinance on first reading.

BUDGET IMPACT:

Yes No

Total funding for the purchase, clean-up and demolition of said property is \$555,800. \$242,800 would be from the Council Capital Reserve and \$313,000 is from a State CDPHE grant.

SUMMARY:

In 2008, based on recommendations from the Downtown Parking Study, the Loveland City Council approved a plan to acquire property around 3rd Street between Lincoln and Cleveland Avenue, for the purposes of constructing a parking deck. Staff engaged a broker and began negotiations with property owners.

In 2009, the City obtained purchase contracts on four parcels including the Leslie-the-Cleaner Site (see the attached map). Initially, the City had negotiated a purchase price of \$205,000. As part of the standard due diligence and “all appropriate inquiry” process, the City also conducted Phase I environmental analysis on the four parcels.

The Phase I on the Leslie-the-Cleaner determined that further investigation and sampling would be required. This led to additional testing and the discovery of ongoing environmental contamination from the dry cleaning operation. As a result, the City chose not to close on the property.

Over the course of the next eighteen months, the City conducted ongoing negotiations with the property owner, while continuing to review the environmental conditions and develop estimates of the cleanup cost. During this time, City staff, with the consent of the owner, was in discussion with the Colorado Department of Public Health and the Environment (CDPHE) regarding the availability of state and federal grants to support cleanup of the property.

In July 2011, the proposed Voluntary Clean-up Plan was approved by CDPHE and the City was awarded a \$313,000 grant conditioned upon the City taking ownership of the property. Total property remediation costs are estimated to be approximately \$500,000.

The acquisition, cleanup and demolition will assist in the ongoing discussions with developers on a south catalyst project for downtown.

LIST OF ATTACHMENTS:

An ordinance enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for the purchase and remediation of property located at 301 N. Lincoln Avenue.

RECOMMENDED CITY COUNCIL ACTION:

Approval of the attached ordinance on second reading

REVIEWED BY CITY MANAGER:

FIRST READING August 16, 2011

SECOND READING September 6, 2011

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE PURCHASE AND REMEDIATION OF THE LESLIE-THE-CLEANER PROPERTY LOCATED AT 301 N. LINCOLN AVENUE

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 \$242,800 from the Council Capital Reserve in the General Fund 01 and \$313,000 from a State grant in the Capital Projects Fund 02 are available for appropriation. Revenues in the total amount of \$555,800 are hereby appropriated for the purchase and remediation of property on 3rd Street and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund - 3rd Street Property Purchase and Remediation**

Revenues	
Fund Balance	
Total Revenue	242,800
Appropriations	
001-5502-473-07-02-LESLIE Transfer to Capital Projects Fund	242,800
Total Appropriations	242,800

Supplemental Budget
Capital Projects Fund - 3rd Street Property Purchase and Remediation

Revenues	
002-0000-334-02-00-LESLIE State Grant	313,000
002-0000-373-01-00-LESLIE Transfer From General Fund	242,800
Fund Balance	
Total Revenue	555,800
Appropriations	
002-2321-409-09-10-LESLIE Land	55,800
002-2321-409-09-60-LESLIE Construction	500,000
Total Appropriations	555,800

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).

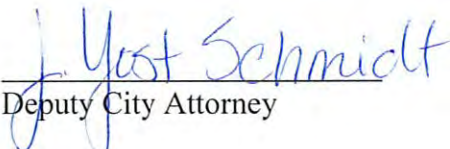
ADOPTED this 6th day of September, 2011.

 Cecil A. Gutierrez, Mayor

ATTEST:

 City Clerk

APPROVED AS TO FORM:


Deputy City Attorney



CITY OF LOVELAND
 DEVELOPMENT SERVICES DEPARTMENT
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AGENDA ITEM: 5
MEETING DATE: 9/6/2011
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Bethany Clark, Community & Strategic Planning

TITLE:

AN ORDINANCE OF THE CITY COUNCIL DESIGNATING AS A HISTORIC LANDMARK THE LARIMER COUNTY BANK BUILDING LOCATED AT 247 EAST FOURTH STREET IN LOVELAND, COLORADO

DESCRIPTION:

A public hearing to consider a legislative action to adopt an ordinance on first reading designating as a Historic Landmark the “Larimer County Bank Building” at 247 East 4th Street, per Section 15.56 of the Municipal Code dealing with Historic Preservation. The application is owner-initiated and staff has met with the owner to review the benefits and obligations of historic designation.

BUDGET IMPACT:

Yes No

SUMMARY:

On August 15, 2011, the Historic Preservation Commission found the Larimer County Bank Building to be eligible for designation as detailed in the attached staff report. The Commission is recommending that Council adopt the ordinance.

The Larimer County Bank Building is historically significant for its association with the development of the City’s downtown commercial district, beginning with its construction in 1891. It is also architecturally significant as a locally notable example of a two-part (two-story) commercial block. The parapet walls, along with the use of blond and red brick in belt courses and in recessed panels on the south and east elevations, form notable architectural elements, which define the building’s distinct style.

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social cultural, or geographic/environmental significance as identified in Section 15.56.100 of the Loveland Municipal Code. The Larimer County Bank Building meets the age

requirement and additional criteria required for designation. Specific criteria for nomination are contained in the staff report.

Property owners who designate a structure as a historic landmark receive a wide variety of benefits. In addition to the pride in ownership and the protections provided by historic designation, owners of Loveland Historic Register properties may take advantage of tax incentives and compete for grant programs to maintain their historic properties. Additionally, properties that have been designated on the Loveland Historic Register go through a design review process when proposing exterior alterations, to ensure that all changes are compatible with the historic character of the building. Exterior modifications involving properties designated on the Loveland Historic Register require a Landmark Alteration Certificate reviewed by the Historic Preservation Commission based on a set of design criteria.

LIST OF ATTACHMENTS:

- Ordinance designating 247 East 4th Street to the Loveland Historic Register
- Staff report

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for Council action:

Move to adopt on first reading AN ORDINANCE OF THE CITY COUNCIL DESIGNATING AS A HISTORIC LANDMARK THE LARIMER COUNTY BANK BUILDING LOCATED AT 247 EAST FOURTH STREET IN LOVELAND, COLORADO

REVIEWED BY CITY MANAGER:

FIRST READING: September 6, 2011

SECOND READING: _____

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL DESIGNATING AS A HISTORIC LANDMARK THE LARIMER COUNTY BANK BUILDING LOCATED AT 247 EAST FOURTH STREET IN LOVELAND, COLORADO

WHEREAS, Chapter 15.56 of the Loveland Municipal Code provides that the City Council may designate as a historic landmark an individual structure, site, or other feature or an integrated group of structures and features on a single lot or site having a special historical or architectural value; and

WHEREAS, Section 15.56.100 of the Loveland Municipal Code further provides that landmarks must be at least fifty (50) years old and meet one (1) or more of the criteria for architectural, social/cultural, or geographic/environmental significance; and

WHEREAS, the City of Loveland has, through the Historic Preservation Commission, worked to evaluate the nomination for designation as a landmark of certain property located at 247 East 4th Street in Loveland, Colorado, known historically as the Larimer County Bank; and

WHEREAS, on August 15, 2011, the Historic Preservation Commission recommended that the City Council designate the Larimer County Bank Building as a landmark; and

WHEREAS, the owner of the Larimer County Bank Building filed the application for the proposed landmark designation; and

WHEREAS, a duly noticed public hearing has been held on the proposed landmark designation.

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

Section 1. The City Council finds that the Larimer County Bank Building, more particularly described on **Exhibit A**, attached hereto and incorporated herein, satisfies the age requirement and meets the following significant criteria for designation as a landmark to the Loveland Historic Register:

- a.) Architectural
 - 1. Represents a built environment of a group of people in an era of history.
- b.) Social/Cultural
 - 1. Exemplifies the cultural, political, economic or social heritage of the community.
- c.) Geographic/Environmental

- 1. Enhances sense of identity of community.
- 2. Is an established and familiar natural setting or visual feature of the community.

d.) Physical Integrity

- 1. Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation.
- 2. Retains original design features, materials, and/or character.
- 3. Retains its original location.

Section 2. The Larimer County Bank Building, described on **Exhibit A**, is hereby designated as a landmark to the Loveland Historic Register.

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

Section 4. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.


Signed this ____ day of _____, 2011

Cecil A. Gutierrez, Mayor

Attest:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

Exhibit A

E 4 INCHES OF LOT 23, ALL OF 24, BLK 13, LOV, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO



COMMUNITY & STRATEGIC PLANNING
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www.cityofloveland.org

**Loveland Historic Preservation Commission
Staff Report**

From: Community and Strategic Planning
Meeting Date: August 15, 2011
Re: Application for Historic Landmark Property Designation, 247 E 4th Street

SITE DATA

Address: 247 E 4th Street
Loveland, CO 80537

Request: Application for Historic Landmark Property Designation

Historic Name: Larimer County Bank

Architectural Style: Two-Part Commercial Block

Current Building Sq. Ft.: 7,280 square feet
(Source: Larimer Co. Assessor Property Information)

Construction Date: 1891

Legal Description: E 4 INCHES OF LOT 23, ALL OF 24, BLK 13, LOV
City of Loveland, County of Larimer, State of Colorado

Owner(s): White Point Properties, LLC

Applicant(s): Dan Stroh – White Point Properties, LLC

Application Summary:

On May 26, 2011 staff and Commissioner Chair Ericson met with the property owner and discussed the process for designation and outlined the obligations and benefits of designating a property on the Loveland Historic Register. On July 15, 2011 staff verified a completed nomination application for the landmark designation of the property at 247 E 4th Street. Staff mailed a notification letter announcing the date of the public hearing to the property owner of 247 E 4th Street as required by ordinance. The Community and Strategic Planning Division also published notice of the public hearing for designation of the landmark property in the *Loveland Reporter-Herald*.

Larimer County Assessor records identify the property by the following address: 247 E 4th Street, Loveland, Colorado.

History:

Source: Colorado Cultural Resource Survey Architectural Inventory Form prepared by Carl McWilliams of Cultural Resource Historians. 2009.

This large two-story commercial building was constructed in 1891 by the house the Larimer County Bank and Trust Company. The original building had a corner entrance, with a rounded arch doorway. The entrance was faced with pressed brick, and was extensively outlined with red sandstone, quarried at the Stout Quarry, where Horsetooth Reservoir is now located. An ornate cornice extended from the corner along the building's south and east elevations. A 25' by 60' addition extended the building to the alley, in 1902. From the time it opened, until the early 1930s, the building was home to the Larimer County Bank and Trust Company. The bank closed its doors in 1931, a victim of the 1929 stock market crash and the deepening economic depression. Another bank, the Loveland State Bank, operated here for a time in the mid-1930s. In the late 1930s and during the 1940s, a number of stores and offices were located here. These include Hard (insurance) Agency, William C. Moore's real estate agency, Dunning Shoe Store, and Mock's Shoe Store. The Homestate Bank opened for business in the building in the early 1950s, and lasted until the mid-1960s. In the late 1960s or early 1970s, the building was acquired by Roy D. and Daniel G. Stroh. In business as auctioneers and realtors, the Stroh family has owned the building from that time to the present. The building's High Victorian appearance was replaced in a massive renovation in 1927. The stone and brick exterior walls were replaced by a new brick veneer, and the corner entrance was filled in, with the bank's entrance moving to the East Fourth Street side. The building has seen only modest façade alterations following the 1927 renovation.

Architectural Description:

Source: Colorado Cultural Resource Survey Architectural Inventory Form prepared by Carl McWilliams of Cultural Resource Historians, 2009.

Among Loveland's most prominent commercial buildings, the Larimer County Bank/Stroh Building is located at the northwest corner of East Fourth Street and North Lincoln Avenue, in the heart of downtown Loveland. The building's façade, located on the south elevation, fronts onto a wide concrete sidewalk, which parallels East Fourth Street. The east elevation also fronts onto a concrete sidewalk, paralleling North Lincoln Avenue, and the north elevation fronts onto a paved alley. The building's west elevation is abutted by the building at 241-243 East Fourth Street. The two story structure is of masonry construction and features a rectangular plan, measuring 140' north-south, by 26' east-west. Dating to a 1927 renovation, the building's exterior walls are comprised of dark red brick, laid in common bond, with projecting header courses at irregular intervals. The foundation is concrete, and the roof is flat, with built-up gravel/tar composition roofing material. Distinctive parapet walls, with recessed blond brick panels, are located at the tops of the south and east elevations. These parapet walls, along with the use of blond and red brick in belt courses and in panels, on the south and east elevations, form notable architectural elements, which define the building's distinct style, and give it a horizontal emphasis. A stained natural brown wood-paneled door, with transom and sidelights, is located within a recessed entryway, near the west end of the façade. Two single-light, fixed-pane storefront windows penetrate the façade on the first

story, and there are three single-hung sash second story windows on the façade.

The building's east elevation is penetrated by five doors, leading into businesses along North Lincoln Avenue. First story windows on the east elevation include ten single-light fixed-pane storefront display windows, with a continuous brick sill, broken by the doorways. On the second story, on the east elevation, there are thirteen single-hung sash windows, with flanking sidelights, and with a continuous brick sill. On the building's north elevation, there are two painted beige color steel service doors, each with a transom light. Two single-hung sash windows, with flanking sidelights, penetrate the second story wall on the north elevation.

Significance:

The Larimer County Bank/Stroh Building is located at the northwest corner of East Fourth Street and North Lincoln Avenue, in downtown Loveland. Throughout its history, the building has been associated with the development of the city's downtown commercial district, beginning with its construction in 1891. As such, the building is significant under Loveland's "commerce and industry" context as it relates to the downtown area's commercial development, during the late 1800s, and during the first half of the twentieth century. The building is also architecturally significant as a locally notable example of a two-part (two-story) commercial block. Dating from its 1927 renovation, the building displays a high degree of historical integrity. This building is individually eligible for inclusion in the National Register of Historic Places under Criteria A and C.

Photographs:



Figure 1: South and East Elevations



Figure 2: South Elevation



Figure 3: East Elevation



Figure 4: North Elevation

Determination of Significance and Integrity

Significance should be used as the starting point in determining eligibility for placement on a historic register. Significance has two distinct attributes – the “area of significance” which answers the question of context, or **what** is significant about a resource in terms of its association to agriculture, architecture, commerce and industry, education, politics and government, and transportation. The Larimer County Bank is significant for representing the built environment of a group of people during that era in history. In addition, the Larimer County Bank is an established familiar visual feature of the community, enhancing the sense of identity of the community, and exemplifying the cultural and social heritage of the community.

The second attribute of the *significance* of a structure is its “period of significance” which places the resource on a historic timeline and answers the question of **when** a resource was significant. As noted, the Larimer County Bank was built in 1891, making it greater than 50 years old.

Integrity refers to the ability of a structure to convey its original design or some later period of significance through the intactness of its historic form, original or historic use of materials, setting and site. Integrity has seven (7) particular aspects: location, setting, feeling, design, materials, workmanship, and association with some attribute of historic significance.

A historic building, for example, that retains its original or historically significant setting with little or no visible modifications that diminish the ability to relate its historic association demonstrates greater integrity than a building that has lost many of physical historical elements. A building with high physical integrity retains the following original or historically significant elements: massing; architectural detail; surface treatment; and windows and doors.

According to the list of features described in the owner’s application and the Cultural Resource Survey prepared by Carl McWilliams, and which is verified by current photographs, the Larimer County Bank has maintained a good amount of its integrity. The distinctive parapet walls, the recessed blond brick panels, and the use of blond and red brick in belt courses form notable architectural elements that have retained their integrity. Although the massive renovation in 1927 altered the building’s High Victorian appearance, only modest alterations have been performed since then and the renovation itself represents a period of significance and architecturally notable elements.

Staff Recommendation

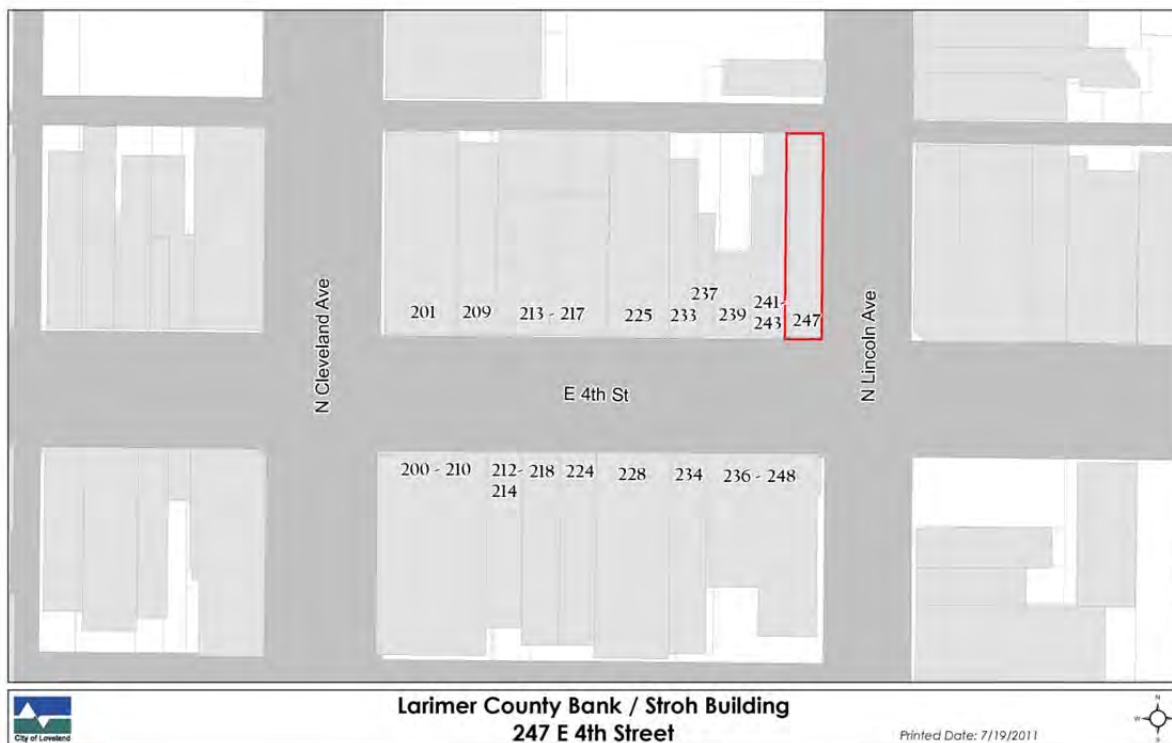
To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the criteria for architectural, social cultural, or geographic/environmental significance as identified in Loveland Municipal Code 15.56.090. The Larimer County Bank satisfies the age requirement and meets the following criteria for designation as a Loveland Historic Register landmark of property:

- a.) Architectural
 - 1. Represents a built environment of a group of people in an era of history.
- b.) Social/Cultural
 - 1. Exemplifies the cultural, political, economic or social heritage of the community.
- c.) Geographic/Environmental
 - 1. Enhances sense of identity of the community.
 - 2. Is an established and familiar natural setting or visual feature of the community.
- d.) Physical Integrity
 - 1. Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state or nation.
 - 2. Retains original design features, materials, and/or character.
 - 3. Retains its original location.

Given available information for the property at 247 E 4th Street, staff has determined that the Larimer County Bank exhibits both adequate *integrity* and *significance* to support its eligibility for designation as a Loveland historic landmark. This determination is based on the Colorado Historical Society's recommended framework for determining landmark eligibility. Staff recommends the Historic Preservation Commission recommend approval of this request for designation of the Larimer County Bank, located at 247 E 4th Street, as a Loveland Historic Register landmark property.

Attachments:

A. Location Map



B. Nomination Application submitted by applicant



FORM A

Application for Designation of a Historic Landmark

Please Type or Print Legibly

*One property only per Application Form.
If more than one Applicant, please attach additional sheet.*

APPLICANT(S) INFORMATION	
Owner of Proposed Landmark Property:	White Point Properties, LLC. Dan Stroh 247 E. 4th Street Loveland, CO 80537
Applicant:	<input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> City Council (attach meeting minutes initiating action) <input type="checkbox"/> Commission Designees (pursuant to 15.56.169) <input type="checkbox"/> Historic Preservation Commission (attach meeting minutes initiating action) <i>Please check one.</i>
Address:	247 E. 4th Street., Loveland, CO 80537
Telephone:	970-667-2837

PROPOSED LANDMARK INFORMATION	
Property Name:	Stroh & Co Realty & Auction
Address:	247 E. 4th Street., Loveland, CO 80537
Historic Use:	Bank, Office Building; Retail
Current and Proposed Use	Real Estate Office Building; Offices
Legal Description	See Attached Historic Building Inventory
Brief Description of Historical Qualities relating to Property	<i>Please attach additional sheets if necessary.</i> See Attached Historic Building Inventory



FORM A

Application for Designation of a Historic Landmark

DETAILED PROPERTY INFORMATION	
Historic Property Name:	Larimer County Bank
Current Property Name:	Stroh & CO Realty & Auction
Address:	247 E. 4th Street., Loveland, CO 80537
Legal Description	<i>Please attach copy of officially recorded document containing a legal description.</i> See Attached Historic Building Inventory
Owner Name & Address:	White Point Properties, LLC. Dan Stroh 247 E. 4th Street., Loveland, CO 80537
Style:	Two Story
Building Materials:	Brick walls, recessed brick wall pane, canvas awnings
Additions to main structure(s), and year(s) built.	N/A
Is the structure(s) on its original site?	Yes <input checked="" type="checkbox"/> _____ No _____ If No, Date Moved _____
What is the historic use of the property?	Larimer County Bank, shoe store, & retail
What is the present use of the property?	Real Estate Office, offices, salon, Sugar Mill Productions
What is the date of construction?	Estimated: _____ Actual: _____ Original: 1891 Source: Historic Building Inventory



FORM A

Application for Designation of a Historic Landmark

DETAILED PROPERTY INFORMATION continued	
Describe the condition of the property.	Excellent
Who was the original architect?	Source: Unknown
Who was the original Builder/Contractor?	Source: Unknown
Who was the original Owner(s)?	Source: Larimer County Bank & Trust Company
Are there structures associated with the subject property not under the ownership of this applicant? Please describe.	NO
Detailed description of the architectural characteristics of the property.	<i>Please attach additional sheets if necessary.</i> See Attached Historic Building Inventory



FORM A

Application for Designation of a Historic Landmark

The Historic Preservation Commission and City Council will consider the following criteria when reviewing nominations of properties for designation.

Landmarks must be at least fifty (50) years old and meet one (1) or more of the following criteria for architectural, social/cultural, or geographic/environmental significance. A landmark may be less than fifty (50) years old if it is found to be exceptionally important in other criteria.

Age of Site is: 120

1. Proposed Historic Landmarks. Please check all that apply:

For prehistoric or historic archaeological sites, please go to Form A Section 2, pg. 5.

A) Architectural:

- 1) Exemplifies specific elements of an architectural style or period.
- 2) Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, or locally.
- 3) Demonstrates superior craftsmanship, or high artistic value.
- 4) Represents innovation in construction, materials, or design.
- 5) Represents a built environment of a group of people in an era of history.
- 6) Exhibits a pattern or grouping of elements representing at least one of the above criteria.
- 7) Is a significant historic remodel.

B) Social/Cultural

- 1) Is a site of an historic event that had an effect upon society.
- 2) Exemplifies the cultural, political, economic, or social heritage of the community.
- 3) Is associated with a notable person(s) or the work of notable person(s).

C) Geographical/Environmental

- 1) Enhances sense of identity of the community.
- 2) Is an established and familiar natural setting or visual feature of the community.



FORM A

Application for Designation of a Historic Landmark

2. Prehistoric and historic archaeological sites shall meet one (1) or more of the following. Complete this section only if the subject property is a prehistoric or historic archaeological site. Please check all that apply.

A) Architectural

- 1) Exhibits distinctive characteristics of a type, period, or manner of construction.
- 2) Is a unique example of a structure.

B) Social/Cultural

- 1) Has the potential to make an important contribution to the knowledge of the area's history or prehistory.
- 2) Is associated with an important event in the area's development.
- 3) Is associated with a notable person(s) or the work of notable person(s).
- 4) Is a typical example/association with a particular ethnic or other community group.
- 5) Is a unique example of an event in local history.

C) Geographical/Environmental

- 1) Is geographically or regionally important.

3. Each property or site will also be evaluated based on physical integrity using the following criteria (*a property need not meet all the following criteria*):

- a) Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation;
- b) Retains original location or same historic context if it has been removed; or
- c) Has been accurately reconstructed or restored based on documentation.



FORM A

Application for Designation of a Historic Landmark

<p>Statement of Significance</p> <p>Please provide a brief statement summarizing the applicable criteria checked on previous pages.</p>	<p><i>Please attach additional sheets if necessary.</i> Historic Building Inventory provided information on the Stroh Building</p>
<p>Photographs of property as it appears today</p>	<p><i>Include photos from all angles: front, rear, and side elevations.</i> See Attached</p>
<p>Please identify all references used during the research of the property. Include titles, author, publisher, publication date, ISBN# (when applicable), and location of source such as public library, etc.</p>	<p><i>Please attach additional sheets if necessary.</i> Historic Building Inventory</p>



City of Loveland

Page 7 - Signature Sheet

FORM A

Application for Designation of a Historic Landmark

Please type or print legibly.

FORM A completed by:

Carrie Wakefield Stroh Realty Employee

Signature of Preparer:

Carrie Wakefield

Date:

7/11/11

Phone No.

970-667-2837

Address:

247 E 4th Street Loveland, Co 80537.

Signature of Property/Site Owner(s) if different than Preparer:

[Signature] White Point Properties LLC

Date:

7-11-11

COLORADO HISTORICAL SOCIETY
Office of Archeology and Historic Preservation
1300 Broadway Denver, CO 80203

HISTORIC BUILDING INVENTORY

COUNTY: Larimer CITY: Loveland

HISTORIC BUILDING NAME: Larimer County Bank Building

CURRENT BUILDING NAME: Stroh Building

ADDRESS: 247 East Fourth Street
Loveland, CO 80537

OWNER(S) NAME AND ADDRESS: Daniel G. Stroh
0255 Weld County Road 46
Berthoud, CO 80513

CITE NO. 0411000

Eligible for National Register yes no
date _____ initials _____

Contributes to a potential National Register District
 yes no

District Name: Loveland Downtown Historic District

Criteria A B C D

Eligible for State Register yes no
date _____ initials _____

Criteria A B C D E

Areas of Significance

Period of Significance

Needs Data date _____ initials _____

LOCAL LANDMARK DESIGNATION: No

P.M.: 6th Township: 5N Range: 69W
SW $\frac{1}{4}$ of SW $\frac{1}{4}$ section 13

UTM REFERENCE: ZONE: 13

EASTING: 493820

NORTHING: 4471460

USGS QUAD NAME: Loveland, Colo.

Year: 1962 (Photorevised 1984) 7.5'

Block: 13

Lots: 23, 24

Addition: Loveland



original location

moved

Date(s) of move(s): N/A

HISTORIC USE: Bank; Office
building; Retail store

PRESENT USE: Office
building; Retail stores

DATE OF CONSTRUCTION

estimate:

actual: 1891

SOURCE OF INFORMATION

Loveland City Directories
Sanborn maps

ARCHITECTURAL DESCRIPTION

Among Loveland's most prominent commercial buildings, the Larimer County Bank / Stroh Building is located at the northwest corner of East Fourth Street and North Lincoln Avenue, in the heart of downtown Loveland. The building's facade, located on the south elevation, fronts onto a wide concrete sidewalk which parallels East Fourth Street. The east elevation also fronts onto a concrete sidewalk, paralleling North Lincoln Avenue, and the north elevation fronts onto a paved alley. The building's west elevation is abutted by the Rydquist Jewelry building at 241-243 East Fourth Street. The two story structure is of masonry construction and features a rectangular plan, measuring 140' north-south, by 26' east-west. Dating to a 1927 renovation, the building's exterior walls are comprised of dark red brick, laid in common bond, with projecting header courses at irregular intervals. The foundation is concrete, and the roof is flat, with built-up gravel/tar composition roofing material. Distinctive parapet walls, with recessed blond brick panels, are located at the tops of the south and east elevations. These parapet walls, along with the use of blond and red brick in belt courses and in panels, on the south and east elevations, form notable architectural elements, which define the building's distinct style, and give it a horizontal emphasis. A stained natural brown wood-paneled door, with transom and sidelights, is located within a recessed entryway, near the west end of the facade. Above the entrance, a burgundy color canvas awning, emblazoned with the **Stroh & Co.** logo, extends out over the sidewalk along East Fourth Street. A sign with neon lights projects over the sidewalks at the building's southeast corner, and advertises: **STROH & CO. REALTY & AUCTIONS SINCE 1954**. Two single-light, fixed-pane storefront windows penetrate the facade on the first story, and there are three single-hung sash second story windows on the facade, all with burgundy color canvas awnings.

The building's east elevation is penetrated by five doors, leading into businesses along North Lincoln Avenue. From south to north, these include: a wood-paneled door, providing access to Stroh and Company; a set of paired glass-in-wood-frame doors, leading to Empire Sales Co. upstairs at 407 N. Lincoln Ave.; a glass-in-steel-frame door, providing access to Colorado Interior Concepts at 411 N. Lincoln Ave.; a glass-in-steel-frame door, leading into Bob' Barber Shop at 415 N. Lincoln Ave.; and a glass-in-wood-frame door to 417 N. Lincoln Ave., currently vacant. First story windows on the east elevation include ten single-light fixed-pane storefront display windows, with a continuous brick sill, broken by the doorways, and with burgundy color metal awnings. On the second story, on the east elevation, there are thirteen single-hung sash windows, with flanking sidelights, and with a continuous brick sill. Each of these windows is covered by a beige color metal awning. On the building's north elevation, there are two painted beige color steel service doors, each with a transom light. Two single-hung sash windows, with flanking sidelights, penetrate the second story wall on the north elevation. Another signband here advertises **Stroh & Co. REALTY & AUCTIONS SINCE 1954**.

PHOTOGRAPHS (include photographs showing each side of building and any associated buildings)

Film Roll No: **CM-4** Photographer **Carl McWilliams**

Negative No(s): **17-21**

Location of Negatives: **City of Loveland, Cultural Services Department**

CONSTRUCTION HISTORY (include description and dates of major additions, alterations, or demolitions)

This building was constructed in 1891 to house the Larimer County Bank. As originally built, the two-story structure had a corner entrance, faced with pressed brick trimmed in red sandstone. An ornate cornice extended along the building's south and east elevations, paralleling what became East Fourth Street and North Cleveland Avenue. A 25' by 60' addition extended the building to the alley, in 1902. The building's High Victorian appearance was replaced in a massive renovation in 1927. The stone and brick exterior walls were replaced by a new brick veneer, and the corner entrance was filled in, with the bank's entrance moving to the East Fourth Street side. The building has seen only modest facade alterations following the 1927 renovation.

ARCHITECT: **unknown**

SOURCE OF INFORMATION: **n/a**

BUILDER / CONTRACTOR:
unknown

SOURCE OF INFORMATION:
n/a

ORIGINAL OWNER:
Larimer County Bank and Trust Company

SOURCE OF INFORMATION:
"Before and After: Larimer County Bank Near Centennial." Loveland Daily Reporter-Herald September 1-2, 1979, p. 1.

ARCHITECTURAL STYLE:
Two-Part Commercial Block

BUILDING TYPE:
Building

MATERIALS:
**Brick walls; Recessed brick wall pane;
Canvas awnings; Neon sign**

STORIES: **Two**

SQUARE FOOTAGE: **~7280**

PLAN / SHAPE: **Rectangular**

ASSOCIATED BUILDINGS: **No**

TYPE: **n/a**

HISTORICAL BACKGROUND

This large two-story commercial building was constructed in 1891 by the Larimer County Bank and Trust Company. The original building had a corner entrance, with a rounded arch doorway. The entrance was faced with pressed brick, and was extensively outlined with red sandstone, quarried at the Stout Quarry, where Horsetooth Reservoir is now located. An ornate cornice extended line extended from the corner, along the top of the building's south and east elevations. From the time it opened, until the early 1930s, the building was home to the Larimer County Bank and Trust Company. The bank closed its doors in 1931, a victim of the 1929 stock market crash and the deepening economic depression. Another bank, the Loveland State Bank, operated here for a time in the mid-1930s. In the late 1930s and during the 1940s, a number of stores and offices were located here. These include Hards (insurance) Agency, William C. Moore's real estate agency, Dunning Shoe Store, and Mock's Shoe Store. The Homestate Bank opened for business in the building in the early 1950s, and lasted until the mid-1960s. In the late 1960s or early 1970s, the building was acquired by Roy D. and Daniel G. Stroh. In business as auctioneers and realtors, the Stroh family has owned the building from that time to the present. In addition to Stroh and Company the building's current (1999) occupants are Empire Sales Company, Fine Line General Contractors Inc., Colorado Interior Concepts, and Bob's Barber Shop.

INFORMATION SOURCES (be specific):

"A Guide to Historic Loveland," on file at the City of Loveland Museum Gallery.

"A Walking Tour of Historical Commercial Buildings in Loveland," on file at the City of Loveland Museum Gallery

"Before and After: Larimer County Bank Nears Centennial." *Loveland Daily Reporter-Herald*, September 1-2, 1991.

Loveland "Commercial Property Appraisal Record" card, on file at the City of Loveland Museum Gallery.

Loveland City Directories, generally published annually 1908-1998, (various publishers).

Sanborn Fire Insurance Maps, dated June 1886, December 1890, September 1893, November 1900, March 1905, May 1911, April 1918, August 1927, and August 1937.

SIGNIFICANCE (check appropriate categories)

Architectural Significance:

- represents the work of a master
- possesses high artistic value
- represents a type, period or method of construction

Historical Significance:

- associated with significant person(s)
- associated with significant event
- associated with a pattern of events
- contributes to a historic district

National Register Eligibility:

- Individual yes no
 Criteria: A B C D

Contributes to a potential district:

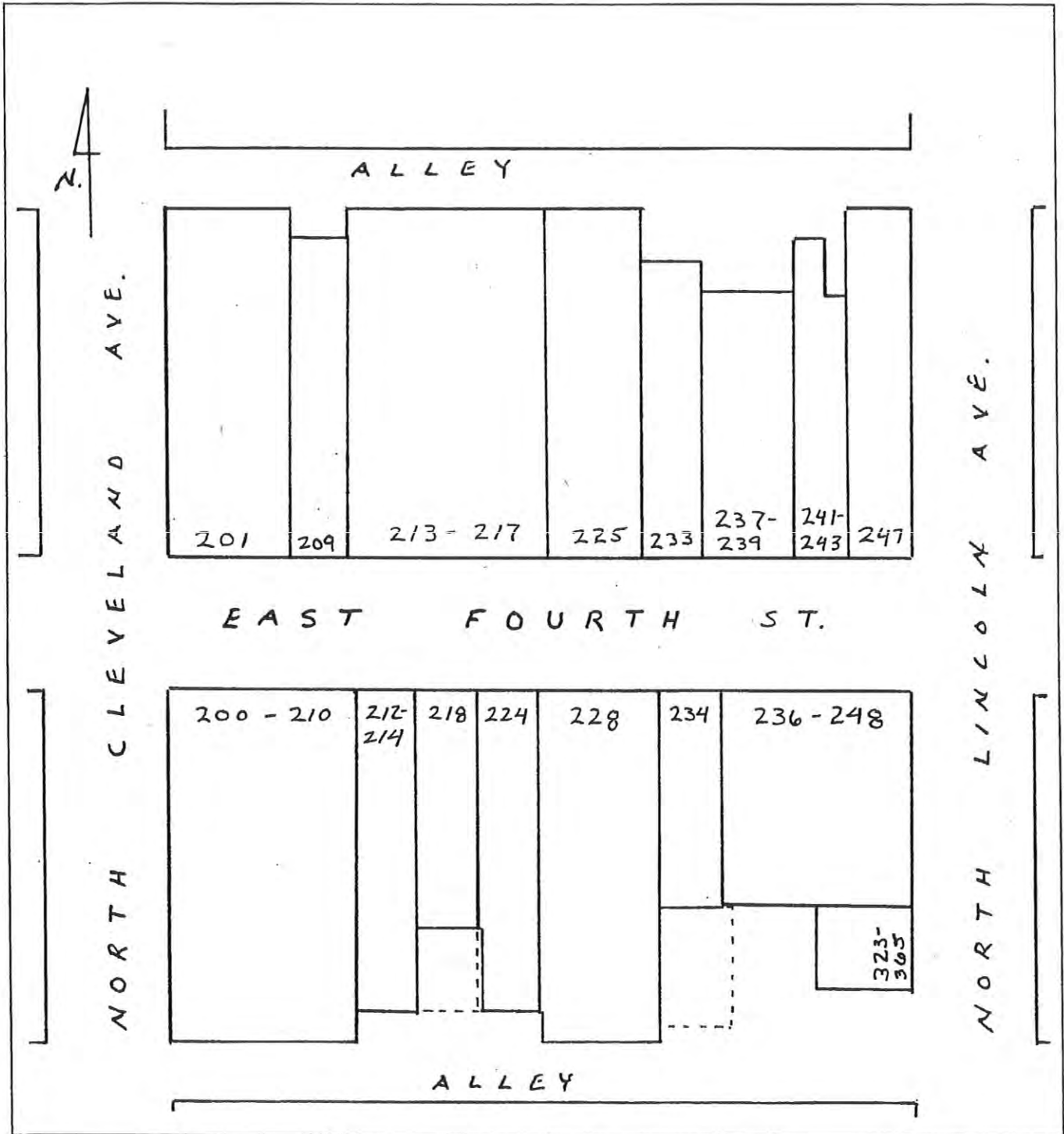
- yes no
 District Name: **Loveland Downtown Historic District**

Area(s) of Significance: **Commerce; Architecture**
 Period of Significance: **1891-1950**

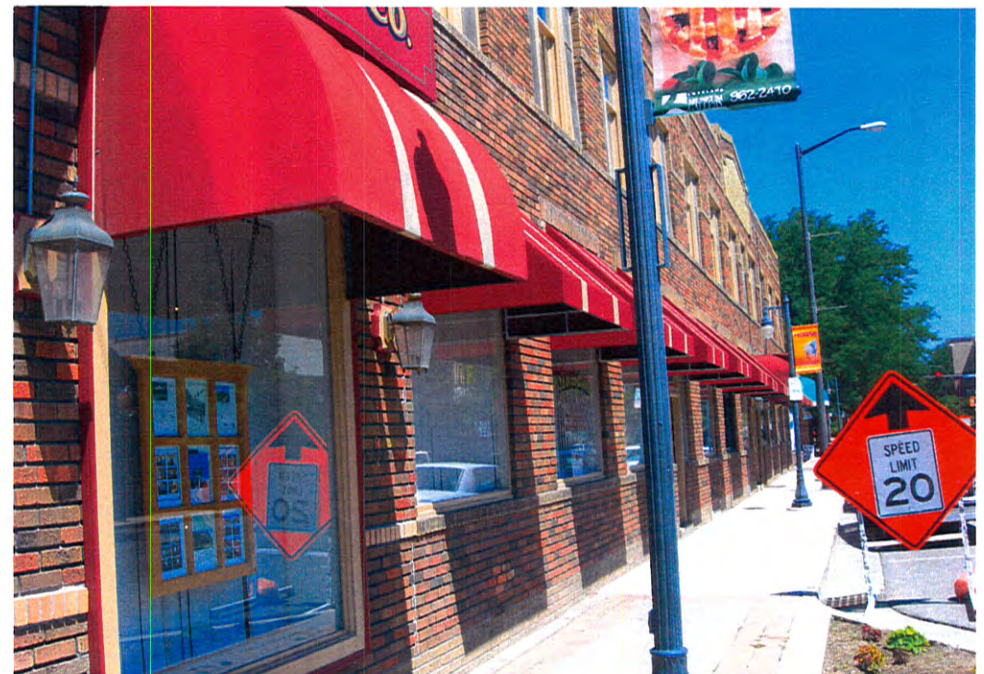
STATEMENT OF SIGNIFICANCE (briefly justify the significance checked above)

The Larimer County Bank Building / Stroh Building is located at the northwest corner of East Fourth Street and North Lincoln Avenue, in downtown Loveland. Throughout its history, the building has been associated with the development of the city's downtown commercial district, beginning with its construction in 1891. As such, the building is significant under Loveland's "commerce and industry" context as it relates to the downtown area's commercial development, during the late 1800s, and during the first half of the twentieth century. The building is also architecturally significant as a locally notable example of a two-part (two-story) commercial block. Dating from its 1927 renovation, the building displays a high degree of historical integrity. This building is individually eligible for inclusion in the National Register of Historic Places under Criteria A and C, and it is also eligible as a contributing resource within the potential Loveland Downtown Historic District.

INVENTORY COMPLETED BY: Carl McWilliams and Jason Marmor	DATE: 24 October 1999
AFFILIATION: Retrospect Cultural Resource Historians	PHONE: 970/482-3115; 970/493-52
ADDRESS: 1512 Briarcliff Road Fort Collins, CO 80524	1607 Dogwood Court Fort Collins, CO 80525
	PROJECT NAME: Loveland Historic Preservation Survey



SITE PLAN . . . Approximate Scale 1/4" = 15'



7-19-11





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

AGENDA ITEM: 6
MEETING DATE: 9/6/2011
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Bethany Clark, Community & Strategic Planning

TITLE:

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR HISTORIC PRESERVATION OUTREACH AND PUBLIC EDUCATION

DESCRIPTION:

A public hearing and administrative action of an ordinance, on first reading, to appropriate funding from donations received in 2010 for historic preservation outreach and public education.

BUDGET IMPACT:

Yes No

The total funding is from donations received by the Historic Preservation Commission from the Loveland Historical Society in September of 2010.

SUMMARY:

In 2010, the Historic Preservation Commission received a donation of \$2,770 from the Loveland Historical Society (LHS). The LHS donated the funds to the Commission for the purpose of providing educational outreach to the community and creating public awareness about historic preservation. The funds would be placed in the Development Services Department budget under a special project number (SP1103) to keep the funds separate from departmental funds. Expenditure of the funds by the Commission for the intended purpose would be administered by the department director.

LIST OF ATTACHMENTS:

1. An ordinance enacting a supplemental budget and appropriation to the 2011 City of Loveland budget for historic preservation outreach and public education.

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

Move to adopt on first reading AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR HISTORIC PRESERVATION OUTREACH AND PUBLIC EDUCATION

REVIEWED BY CITY MANAGER:

FIRST READING September 6, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR HISTORIC PRESERVATION OUTREACH AND PUBLIC EDUCATION

WHEREAS, the City 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 in the amount of \$2,700 from donations received in the prior year in the General Fund 001 are available for appropriation. Revenues in the total amount of \$2,700 are hereby appropriated for historic preservation outreach and public education and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund - Historic Preservation Donation**

Revenues	
Fund Balance	2,770
Total Revenue	2,770
 Appropriations	
001-1914-409-03-50-SP1103 Professional Services	2,770
Total Appropriations	2,770

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).

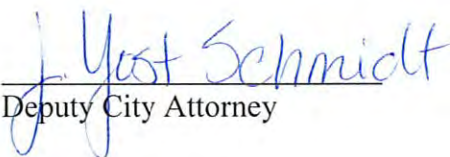
ADOPTED this ____ day of September, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



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

AGENDA ITEM: 7

MEETING DATE: September 6, 2011

TO: City Council

FROM: Greg George, Development Services Director

PRESENTER: Kerri Burchett, Current Planning

TITLE:

An ordinance vacating the exclusive Utility Easement located on portions of Lot 2, Block 1, and Lot 1, Block 1, Civic Center Second Subdivision, City of Loveland, Larimer County, Colorado

DESCRIPTION:

A legislative action to consider an ordinance on first reading vacating portions of a utility easement within the Civic Center Campus on Lots 1 and 2, Block 1 Civic Center Second Subdivision. The applicant is the City of Loveland Parks and Recreation Department.

BUDGET IMPACT:

Yes No

SUMMARY:

The application proposes to vacate two portions of a utility easement occupied by the new building additions for the Library and Chilson Recreation Center. The easement to be vacated is located around the new footprint of each building and is not necessary to serve either facility.

LIST OF ATTACHMENTS:

- A. Easement vacation ordinance
- B. Staff memorandum

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 September 6, 2011 and, based on those findings, adopt on first reading, “AN ORDINANCE VACATING THE EXCLUSIVE UTILITY EASEMENT LOCATED ON PORTIONS OF LOT 2, BLOCK 1, AND LOT 1, BLOCK 1, CIVIC CENTER SECOND SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO”

REVIEWED BY CITY MANAGER:

FIRST READING: September 6, 2011

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE VACATING THE EXCLUSIVE UTILITY EASEMENT LOCATED ON PORTIONS OF LOT 2, BLOCK 1, AND LOT 1, BLOCK 1, CIVIC CENTER SECOND SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation of portions of the exclusive utility easement described below, located on Lot 2, Block 1, and Lot 1, Block 1, Civic Center Second 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 portions of the exclusive utility easement to be vacated are 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 portions of 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 portions of the exclusive utility easement dedicated on the plat of Civic Center Second Subdivision, Loveland, Colorado recorded September 28, 1999 at Reception #1999-0085420 be and the same is hereby vacated:

- (a) that portion of Lot 2, Block 1, Civic Center Second Subdivision, Loveland, Colorado described on Exhibit A and depicted on Exhibit C attached hereto and incorporated herein by this reference; and
- (b) that portion of Lot 1, Block 1, Civic Center Second Subdivision, Loveland, Colorado described on Exhibit B and depicted on Exhibit C attached hereto and incorporated herein by this reference.

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

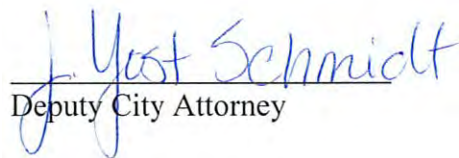
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A

A portion of Lot 2, Block 1, Civic Center Second Subdivision, located in the Southeast 1/4 of Section 13, Township 5 North, Range 69 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of Lot 1, Block 1, Civic Center Second Subdivision as bearing N00°08'11"W with all bearings contained herein relative thereto.

COMMENCE at the Northwest corner of Lot 2, Block 1, Civic Center Second Subdivision;
 thence S55°33'17"E a distance of 132.64 feet to the POINT OF BEGINNING;
 thence S32°53'26"E a distance of 51.70 feet;
 thence N57°06'34"E a distance of 57.60 feet;
 thence N32°53'26"W a distance of 19.60 feet;
 thence N57°06'34"E a distance of 88.40 feet;
 thence S32°53'26"E a distance of 11.40 feet;
 thence N57°06'34"E a distance of 12.00 feet;
 thence S32°53'26"E a distance of 37.50 feet;
 thence N57°06'34"E a distance of 18.50 feet;
 thence S32°53'26"E a distance of 125.00 feet;
 thence S57°06'34"W a distance of 20.60 feet;
 thence S32°53'26"E a distance of 14.00 feet;
 thence S57°06'34"W a distance of 64.00 feet;
 thence S32°53'26"E a distance of 7.22 feet;
 thence S11°40'16"W a distance of 14.93 feet;
 thence S57°06'34"W a distance of 7.34 feet;
 thence S32°53'26"E a distance of 76.50 feet;
 thence N57°06'34"E a distance of 42.00 feet;
 thence S32°53'26"E a distance of 85.30 feet;
 thence S57°06'34"W a distance of 22.80 feet;
 thence S32°53'26"E a distance of 5.00 feet;
 thence S13°23'10"W a distance of 14.68 feet;
 thence S57°06'34"W a distance of 4.95 feet;
 thence S32°53'26"E a distance of 22.70 feet;
 thence S57°06'34"W a distance of 50.00 feet;
 thence N32°53'26"W a distance of 28.00 feet;
 thence S57°06'34"W a distance of 33.30 feet;
 thence N32°53'26"W a distance of 60.00 feet;
 thence S57°06'34"W a distance of 12.00 feet;
 thence N32°53'26"W a distance of 83.83 feet;
 thence N12°06'34"E a distance of 19.98 feet;
 thence N77°53'26"W a distance of 35.57 feet;
 thence S57°06'34"W a distance of 36.90 feet;
 thence N32°53'26"W a distance of 45.70 feet;
 thence S57°06'34"W a distance of 48.00 feet;
 thence N32°53'26"W a distance of 57.30 feet;

thence S57°06'34"W a distance of 24.00 feet;
thence N32°53'26"W a distance of 91.30 feet;
thence N57°06'34"E a distance of 43.30 feet;
thence N32°53'26"W a distance of 32.10 feet;
thence N57°06'34"E a distance of 94.20 feet to the Point of Beginning.

Containing 1.78 acres (77,643 sq. ft.), more or less, and being subject to all easements and rights of way of record.

EXHIBIT B

A portion of Lot 1, Block 1, Civic Center Second Subdivision, located in the Southeast 1/4 of Section 13, Township 5 North, Range 69 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of Lot 1, Block 1, Civic Center Second Subdivision as bearing N00°08'11"W with all bearings contained herein relative thereto.

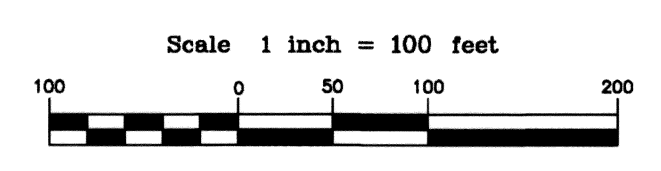
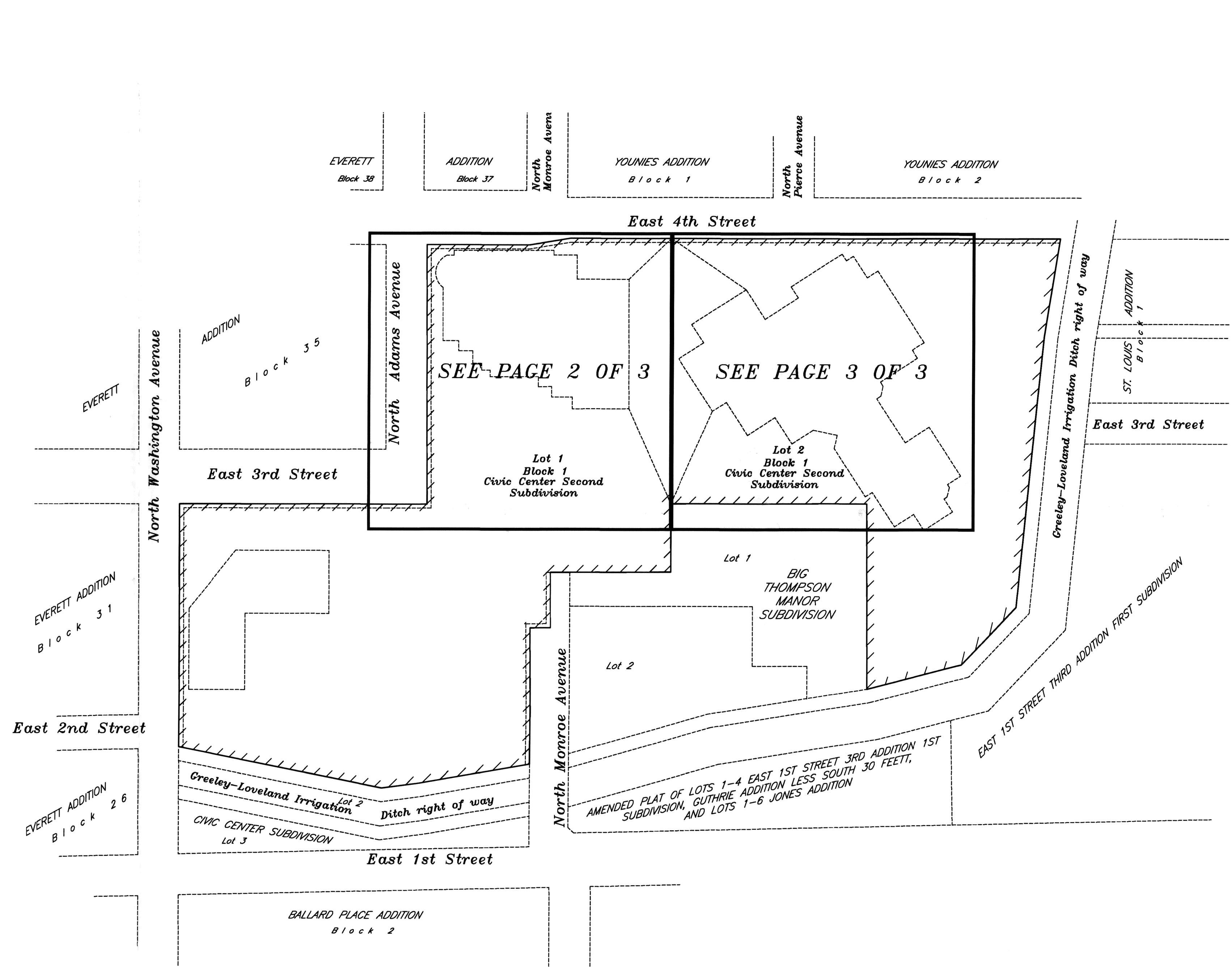
COMMENCE at the Northeast corner of Lot 1, Block 1, Civic Center Second Subdivision; thence S45°54'34"W a distance of 86.18 feet to the POINT OF BEGINNING; thence S00°14'01"E a distance of 189.90 feet; thence S89°45'59"W a distance of 82.60 feet; thence N00°14'01"W a distance of 17.30 feet; thence S89°45'59"W a distance of 30.00 feet; thence N00°14'01"W a distance of 15.40 feet; thence S89°45'59"W a distance of 19.70 feet; thence N00°14'01"W a distance of 14.70 feet; thence S89°45'59"W a distance of 70.30 feet; thence N00°14'01"W a distance of 9.60 feet; thence S89°45'59"W a distance of 12.10 feet; thence N00°14'01"W a distance of 10.00 feet; thence S89°45'59"W a distance of 13.30 feet; thence N00°14'01"W a distance of 18.30 feet; thence S89°45'59"W a distance of 20.69 feet; thence N00°14'01"W a distance of 15.00 feet; thence S89°45'59"W a distance of 23.00 feet; thence N00°14'01"W a distance of 77.78 feet to a non-tangent curve to the right; thence on the arc of said curve a distance of 57.38 feet, having a radius of 27.60 feet, a delta of 119°07'24" and a chord of 47.59 feet bearing N 06°59'53"E to a point of non-tangency; thence N89°46'09"E a distance of 10.54 feet; thence N00°14'01"W a distance of 7.00 feet; thence N89°45'59"E a distance of 145.80 feet; thence S00°14'01"E a distance of 7.00 feet; thence N89°45'59"E a distance of 33.70 feet; thence S00°14'00"E a distance of 35.40 feet; thence N89°45'59"E a distance of 75.65 feet to the Point of Beginning.

Containing 1.14 acres (49,723 sq. ft.), more or less, and being subject to all easements and rights of way of record.

EXHIBIT C

Site Plan

Lot 1 & Lot 2, Block 1, CIVIC CENTER SECOND SUBDIVISION,
City of Loveland, Larimer County, Colorado



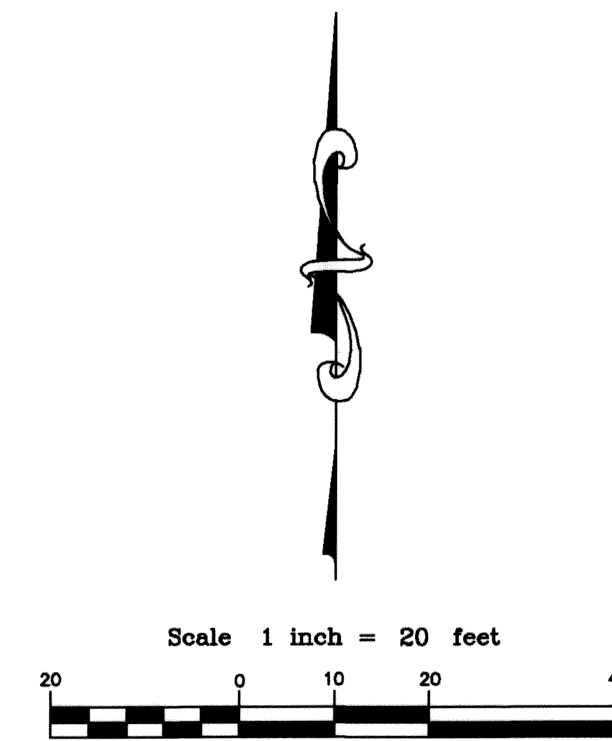
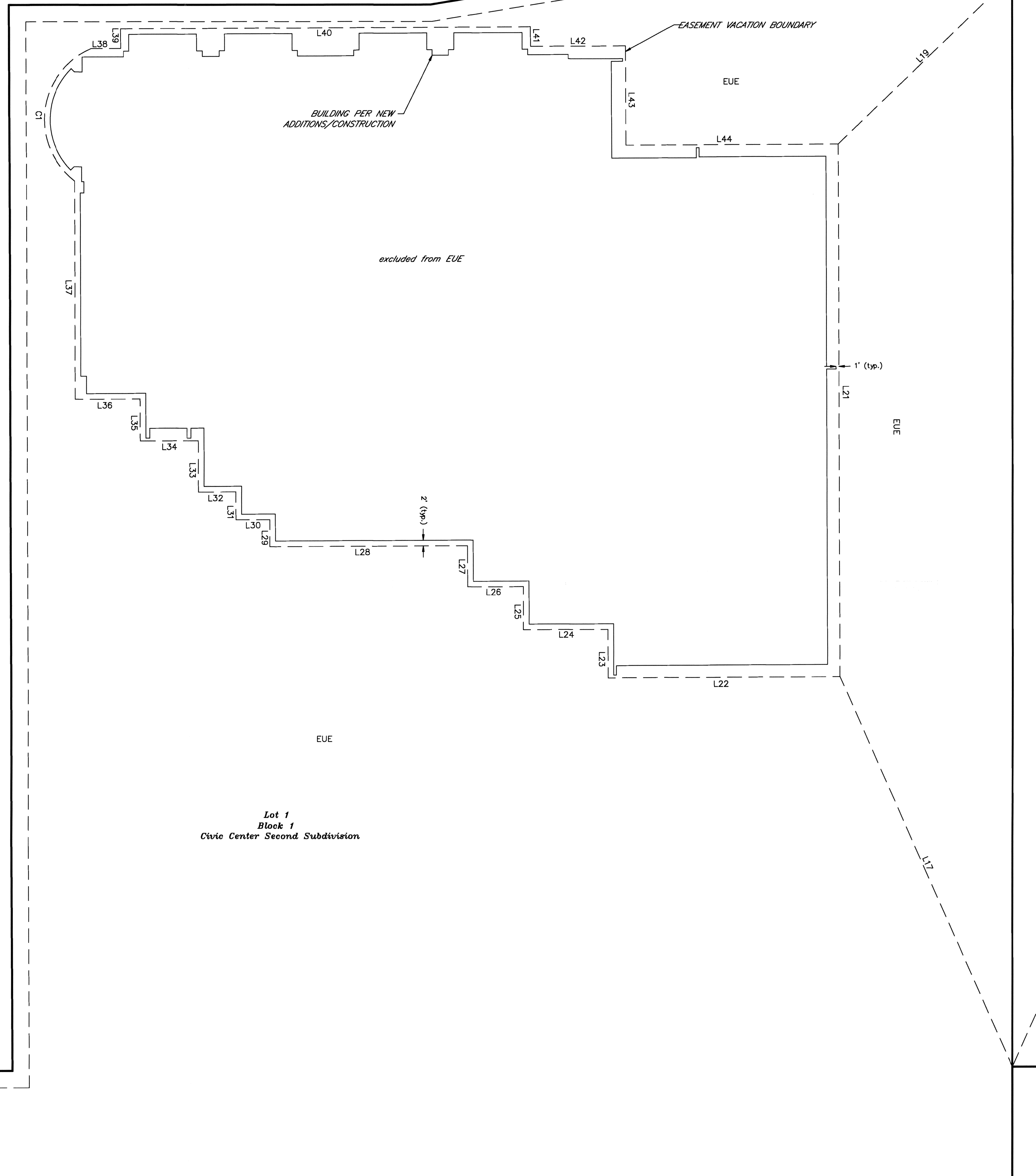
REVISIONS Date _____ By _____ Description _____ Date _____ By _____ Description _____ Date _____ By _____ Description _____			Date <u>6/1/2011</u> Drawn <u>JRM</u> Part Chief <u>DCB</u> Checked <u>MBS</u> Scale <u>1"=100'</u> Approved <u>MBS</u>			CLIENT City of Loveland			PLS Group LLC 109 Coronado Court - Bldg No. 7 Fort Collins, Colorado 80525 Phone: (970) 282-3446 FAX: (970) 377-6767			TITLE KEY MAP LOT 1 AND LOT 2, BLOCK 1, CIVIC CENTER SECOND SUBDIVISION Section 13, Twp 5 N, Rng 69 W, 6 PM, City of Loveland, CO			PROJECT NO. 11075.001a			SHEET NO. 1		NO. OF SHEETS 3	
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East 4th Street

Site Plan

Lot 1 & Lot 2, Block 1, CIVIC CENTER SECOND SUBDIVISION,
City of Loveland, Larimer County, Colorado

North Adams Avenue



Curve Table					
Curve#	Delta	Radius	Length	Chord	Chord Bearing
C1	112°07'24"	27.60'	57.39'	47.69'	S06°59'53"W

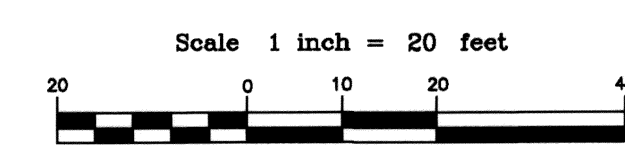
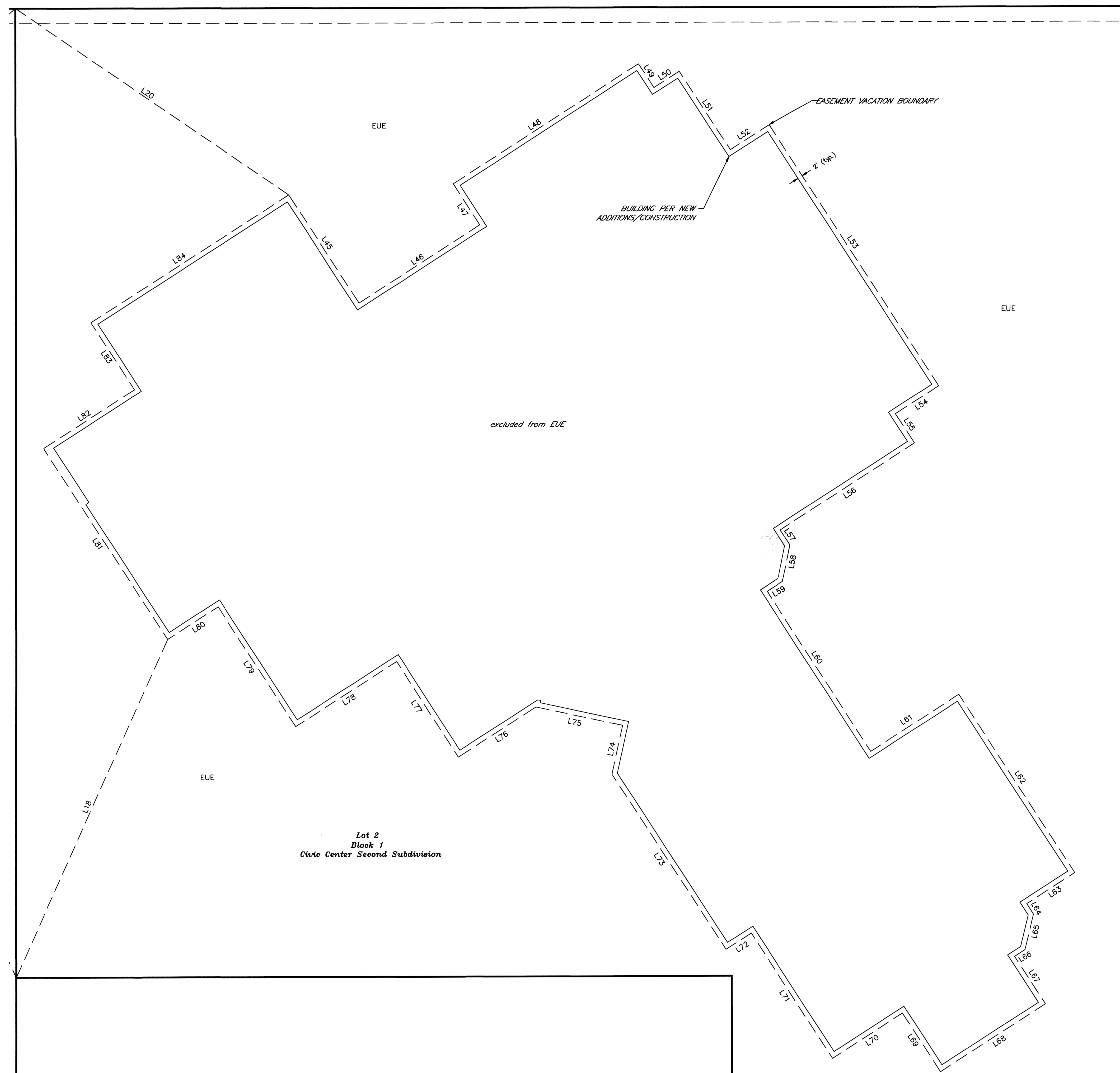
LINE TABLE		LINE TABLE			
LINE NO.	BEARING	LENGTH	LINE NO.	BEARING	LENGTH
L45	S32°53'26"E	51.70'	L17	N23°52'13"W	152.13'
L46	N57°08'34"E	57.60'	L18	N24°02'05"E	148.55'
L47	N32°53'26"W	19.60'	L19	S45°54'34"W	86.18'
L48	N57°08'34"E	88.40'	L20	S55°33'17"E	132.84'
L49	S32°53'26"E	11.40'	L21	S00°14'01"E	189.90'
L50	N57°08'34"E	12.00'	L22	S88°45'59"W	82.60'
L51	S32°53'26"E	37.50'	L23	N00°14'01"W	17.30'
L52	N57°08'34"E	18.50'	L24	S88°45'59"W	30.00'
L53	S32°53'26"E	125.00'	L25	N00°14'01"W	15.40'
L54	S57°08'34"W	20.60'	L26	S88°45'59"W	19.70'
L55	S32°53'26"E	14.00'	L27	N00°14'01"W	14.70'
L56	S57°08'34"W	64.00'	L28	S88°45'59"W	70.30'
L57	S32°53'26"E	7.22'	L29	N00°14'01"W	8.60'
L58	S11°40'16"W	14.93'	L30	S88°45'59"W	12.10'
L59	S57°08'34"W	7.34'	L31	N00°14'01"W	10.00'
L60	S32°53'26"E	76.50'	L32	S88°45'59"W	13.30'
L61	N57°08'34"E	42.00'	L33	N00°14'01"W	18.30'
L62	S32°53'26"E	85.30'	L34	S88°45'59"W	20.69'
L63	S57°08'34"W	22.80'	L35	N00°14'01"W	15.00'
L64	S32°53'26"E	5.00'	L36	S88°45'59"W	23.00'
L65	S132°31'0"W	14.68'	L37	N00°14'01"W	77.78'
L66	S57°08'34"W	4.95'	L38	N88°46'09"E	10.54'
L67	S32°53'26"E	22.70'	L39	N00°14'01"W	7.00'
L68	S57°08'34"W	50.00'	L40	N88°45'59"E	145.80'
L69	N32°53'26"W	28.00'	L41	S00°14'01"E	7.00'
L70	S57°08'34"W	33.30'	L42	N88°45'59"E	33.70'
L71	N32°53'26"W	60.00'	L43	S00°14'01"E	35.40'
L72	S57°08'34"W	12.00'	L44	N88°45'59"E	75.65'
L73	N32°53'26"W	83.83'			
L74	N12°08'34"E	19.98'			
L75	N75°53'26"W	36.57'			
L76	S57°08'34"W	36.80'			
L77	N32°53'26"W	45.70'			
L78	S57°08'34"W	48.00'			
L79	N32°53'26"W	57.30'			
L80	S57°08'34"W	24.00'			
L81	N32°53'26"W	91.30'			
L82	N57°08'34"E	43.30'			
L83	N32°53'26"W	32.10'			
L84	N57°08'34"E	94.20'			

Lot 1
Block 1
Civic Center Second Subdivision

East 4th Street

Site Plan

Lot 1 & Lot 2, Block 1, CIVIC CENTER SECOND SUBDIVISION,
City of Loveland, Larimer County, Colorado



Curve Table					
Curve#	Delta	Radius	Length	Chord	Chord Bearing
C1	119°07'24"	27.60'	57.39'	47.59'	S06°59'53"W

LINE TABLE			LINE TABLE		
LINE NO.	BEARING	LENGTH	LINE NO.	BEARING	LENGTH
L45	S32°53'26"E	51.70'			
L46	N57°06'34"E	57.80'			
L47	N32°53'26"W	19.80'			
L48	N57°06'34"E	88.40'			
L49	S32°53'26"E	11.40'			
L50	N57°06'34"E	12.00'			
L51	S32°53'26"E	37.50'			
L52	N57°06'34"E	18.50'			
L53	S32°53'26"E	125.00'			
L54	S57°06'34"W	20.80'			
L55	S32°53'26"E	14.00'			
L56	S57°06'34"W	64.00'			
L57	S32°53'26"E	7.22'			
L58	S11°40'16"W	14.93'			
L59	S57°06'34"W	7.34'			
L60	S32°53'26"E	76.50'			
L61	N57°06'34"E	42.00'			
L62	S32°53'26"E	85.30'			
L63	S57°06'34"W	22.80'			
L64	S32°53'26"E	5.00'			
L65	S13°23'10"W	14.68'			
L66	S57°06'34"W	4.95'			
L67	S32°53'26"E	22.70'			
L68	S57°06'34"W	50.00'			
L69	N32°53'26"W	28.00'			
L70	S57°06'34"W	33.30'			
L71	N32°53'26"W	80.00'			
L72	S57°06'34"W	12.00'			
L73	N32°53'26"W	83.83'			
L74	N12°06'34"E	19.98'			
L75	N77°53'26"W	35.57'			
L76	S57°06'34"W	36.90'			
L77	N32°53'26"W	45.70'			
L78	S57°06'34"W	48.00'			
L79	N32°53'26"W	57.30'			
L80	S57°06'34"W	24.00'			
L81	N32°53'26"W	91.30'			
L82	N57°06'34"E	43.30'			
L83	N32°53'26"W	32.10'			
L84	N57°06'34"E	94.20'			
L17	N23°52'13"W	152.13'			
L18	N24°02'05"E	148.55'			
L19	S45°54'34"W	86.18'			
L20	S55°33'17"E	132.64'			
L21	S00°14'01"E	189.90'			
L22	S89°45'59"W	82.60'			
L23	N00°14'01"W	17.30'			
L24	S89°45'59"W	30.00'			
L25	N00°14'01"W	15.40'			
L26	S89°45'59"W	19.70'			
L27	N00°14'01"W	14.70'			
L28	S89°45'59"W	70.30'			
L29	N00°14'01"W	9.80'			
L30	S89°45'59"W	12.10'			
L31	N00°14'01"W	10.00'			
L32	S89°45'59"W	13.30'			
L33	N00°14'01"W	18.30'			
L34	S89°45'59"W	20.69'			
L35	N00°14'01"W	15.00'			
L36	S89°45'59"W	23.00'			
L37	N00°14'01"W	77.78'			
L38	N89°46'09"E	10.54'			
L39	N00°14'01"W	7.00'			
L40	N89°45'59"E	145.80'			
L41	S00°14'01"E	7.00'			
L42	N89°45'59"E	33.70'			
L43	S00°14'01"E	35.40'			
L44	N89°45'59"E	75.65'			

Lot 2
Block 1
Civic Center Second Subdivision



**Development Services
Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

MEMORANDUM

TO: City Council

FROM: Kerri Burchett, Current Planning Division

DATE: September 6, 2011

SUBJECT: Vacation of portions of a utility easement on Lots 1 and 2, Block 1, Civic Center Second Subdivision

I. ATTACHMENTS

1. Vacation Exhibit
2. Site Plan

II. KEY ISSUES

Staff believes that there are no outstanding issues regarding this requested easement vacation.

III. PROJECT DESCRIPTION

The application proposes to vacate two portions of a utility easement occupied by the new building additions for the Library and Chilson Recreation Center within the Civic Center Campus. The platted utility easement covers both Lots 1 and 2, Block 1 of the Civic Center Second Subdivision, exempting only the existing building footprints. With the expansions of both facilities, a vacation of the portion of the easement that surrounds the new building footprints is necessary. The easement to be vacated does not contain utilities and is not necessary to serve either facility.

IV. VICINITY MAP



V. FINDINGS and ANALYSIS

The following two findings must be met in order for the City Council to vacate the utility easement. These findings are included in section 16.36.010.B of the Loveland City Code.

1. *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.*

Current Planning: Staff believes that this finding can be met. The easement proposed for vacation is located internal to the Civic Center Campus, adjacent to the building footprints of the Library and Chilson Recreations Center, and does not involve the vacation of any existing public or private street rights-of-way.

2. *That the easement to be vacated is no longer necessary for the public use and convenience.*

Water/Wastewater: Staff believes that this finding can be met. The property is within the City’s current service area for both water and wastewater. The Department finds that:

- The existing easement to be vacated does not impact the existing water and wastewater utility configuration within and adjacent to this development.
- The existing easement to be vacated is no longer necessary for public use and convenience.

Power: Staff believes that this finding can be met due to the following:

- Underground three-phase power is located along the north/south property line between the Library and the Chilson Center. A three-phase transformer is also located between the two buildings.
- The vacating of the blanket easement for the properties will not affect the electric service to the buildings and is not needed to serve the buildings.

Stormwater: Staff believes that this finding can be met due to the following:

- The proposed easement vacation is found to be acceptable because it does not affect any public or private stormwater/drainage infrastructure.

VI. RECOMMENDATION

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council approve the vacation ordinance on first reading.

VII. CONDITIONS

There are no recommended conditions for this application.

PLS Group, LLC

Land Surveying • Mapping

109 Coronado Court • Building 7 • Fort Collins, Colorado 80525
970.669.2100 Main • 970.282.3446 Office • 970.377.6767 fax

Description: (Vacation of a portion of Exclusive Utility Easement for the Civic Center)

A portion of Lot 2, Block 1, Civic Center Second Subdivision, located in the Southeast 1/4 of Section 13, Township 5 North, Range 69 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of Lot 1, Block 1, Civic Center Second Subdivision as bearing N00°08'11"W with all bearings contained herein relative thereto.

COMMENCE at the Northwest corner of Lot 2, Block 1, Civic Center Second Subdivision;
thence S55°33'17"E a distance of 132.64 feet to the POINT OF BEGINNING;
thence S32°53'26"E a distance of 51.70 feet;
thence N57°06'34"E a distance of 57.60 feet;
thence N32°53'26"W a distance of 19.60 feet;
thence N57°06'34"E a distance of 88.40 feet;
thence S32°53'26"E a distance of 11.40 feet;
thence N57°06'34"E a distance of 12.00 feet;
thence S32°53'26"E a distance of 37.50 feet;
thence N57°06'34"E a distance of 18.50 feet;
thence S32°53'26"E a distance of 125.00 feet;
thence S57°06'34"W a distance of 20.60 feet;
thence S32°53'26"E a distance of 14.00 feet;
thence S57°06'34"W a distance of 64.00 feet;
thence S32°53'26"E a distance of 7.22 feet;
thence S11°40'16"W a distance of 14.93 feet;
thence S57°06'34"W a distance of 7.34 feet;
thence S32°53'26"E a distance of 76.50 feet;
thence N57°06'34"E a distance of 42.00 feet;
thence S32°53'26"E a distance of 85.30 feet;
thence S57°06'34"W a distance of 22.80 feet;
thence S32°53'26"E a distance of 5.00 feet;
thence S13°23'10"W a distance of 14.68 feet;
thence S57°06'34"W a distance of 4.95 feet;
thence S32°53'26"E a distance of 22.70 feet;
thence S57°06'34"W a distance of 50.00 feet;
thence N32°53'26"W a distance of 28.00 feet;
thence S57°06'34"W a distance of 33.30 feet;
thence N32°53'26"W a distance of 60.00 feet;

(continued on page 2)

(continued from page 1)

thence S57°06'34"W a distance of 12.00 feet;
thence N32°53'26"W a distance of 83.83 feet;
thence N12°06'34"E a distance of 19.98 feet;
thence N77°53'26"W a distance of 35.57 feet;
thence S57°06'34"W a distance of 36.90 feet;
thence N32°53'26"W a distance of 45.70 feet;
thence S57°06'34"W a distance of 48.00 feet;
thence N32°53'26"W a distance of 57.30 feet;
thence S57°06'34"W a distance of 24.00 feet;
thence N32°53'26"W a distance of 91.30 feet;
thence N57°06'34"E a distance of 43.30 feet;
thence N32°53'26"W a distance of 32.10 feet;
thence N57°06'34"E a distance of 94.20 feet to the Point of Beginning.

Containing 1.78 acres (77,643 sq. ft.), more or less, and being subject to all easements and rights of way of record.



Description: (Vacation of a portion of Exclusive Utility Easement for the Library)

A portion of Lot 1, Block 1, Civic Center Second Subdivision, located in the Southeast 1/4 of Section 13, Township 5 North, Range 69 West of the 6th Principal Meridian, City of Loveland, County of Larimer, State of Colorado being more particularly described as follows:

Considering the West line of Lot 1, Block 1, Civic Center Second Subdivision as bearing N00°08'11"W with all bearings contained herein relative thereto.

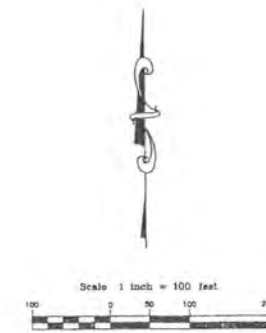
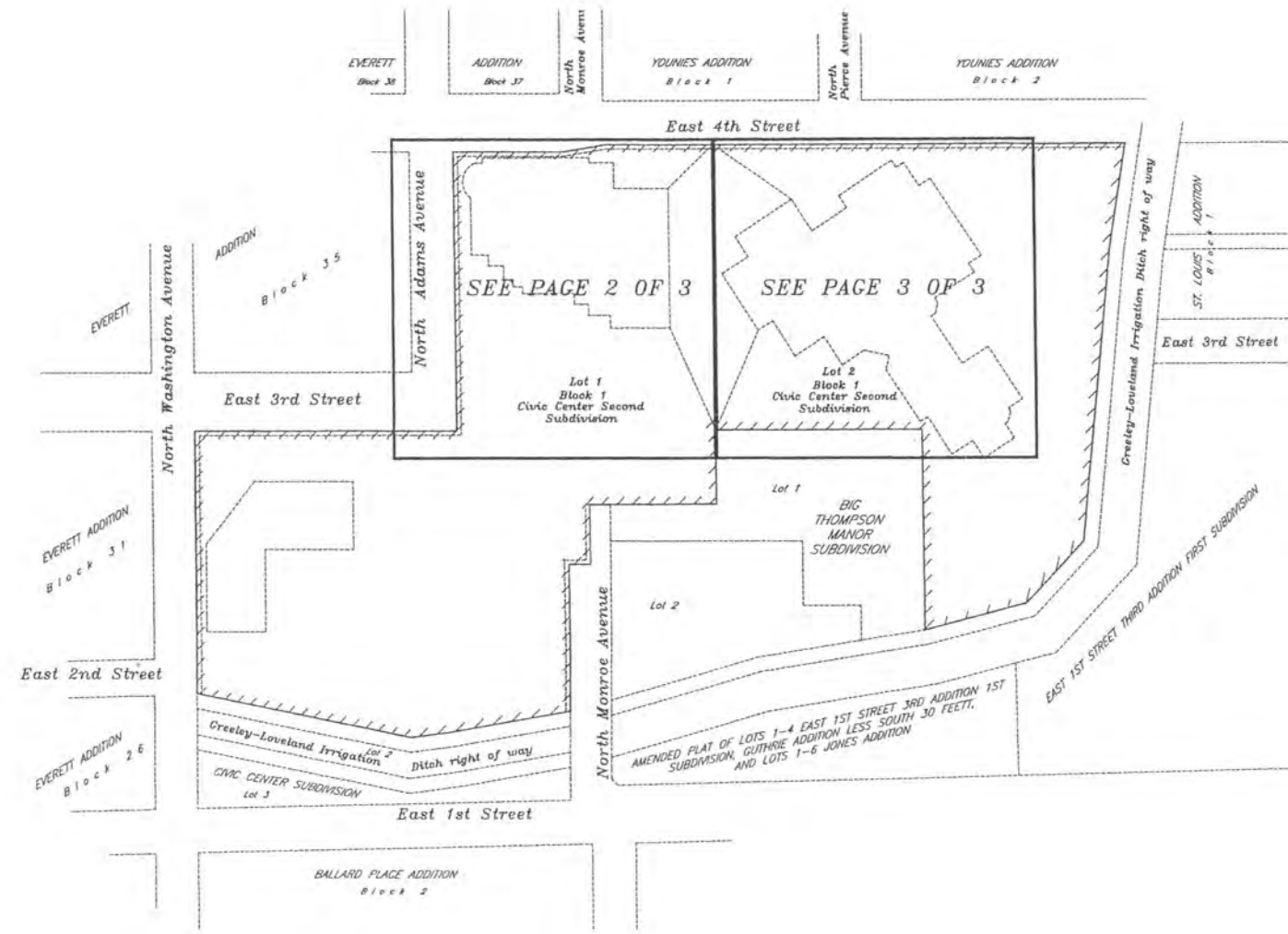
COMMENCE at the Northeast corner of Lot 1, Block 1, Civic Center Second Subdivision;
 thence S45°54'34"W a distance of 86.18 feet to the POINT OF BEGINNING;
 thence S00°14'01"E a distance of 189.90 feet;
 thence S89°45'59"W a distance of 82.60 feet;
 thence N00°14'01"W a distance of 17.30 feet;
 thence S89°45'59"W a distance of 30.00 feet;
 thence N00°14'01"W a distance of 15.40 feet;
 thence S89°45'59"W a distance of 19.70 feet;
 thence N00°14'01"W a distance of 14.70 feet;
 thence S89°45'59"W a distance of 70.30 feet;
 thence N00°14'01"W a distance of 9.60 feet;
 thence S89°45'59"W a distance of 12.10 feet;
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 thence S89°45'59"W a distance of 20.69 feet;
 thence N00°14'01"W a distance of 15.00 feet;
 thence S89°45'59"W a distance of 23.00 feet;
 thence N00°14'01"W a distance of 77.78 feet to a non-tangent curve to the right;
 thence on the arc of said curve a distance of 57.38 feet, having a radius of 27.60 feet,
 a delta of 119°07'24" and a chord of 47.59 feet bearing N 06°59'53"E to a point of non-tangency;
 thence N89°46'09"E a distance of 10.54 feet;
 thence N00°14'01"W a distance of 7.00 feet;
 thence N89°45'59"E a distance of 145.80 feet;
 thence S00°14'01"E a distance of 7.00 feet;
 thence N89°45'59"E a distance of 33.70 feet;
 thence S00°14'00"E a distance of 35.40 feet;
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Containing 1.14 acres (49,723 sq. ft.), more or less, and being subject to all easements and rights of way of record.

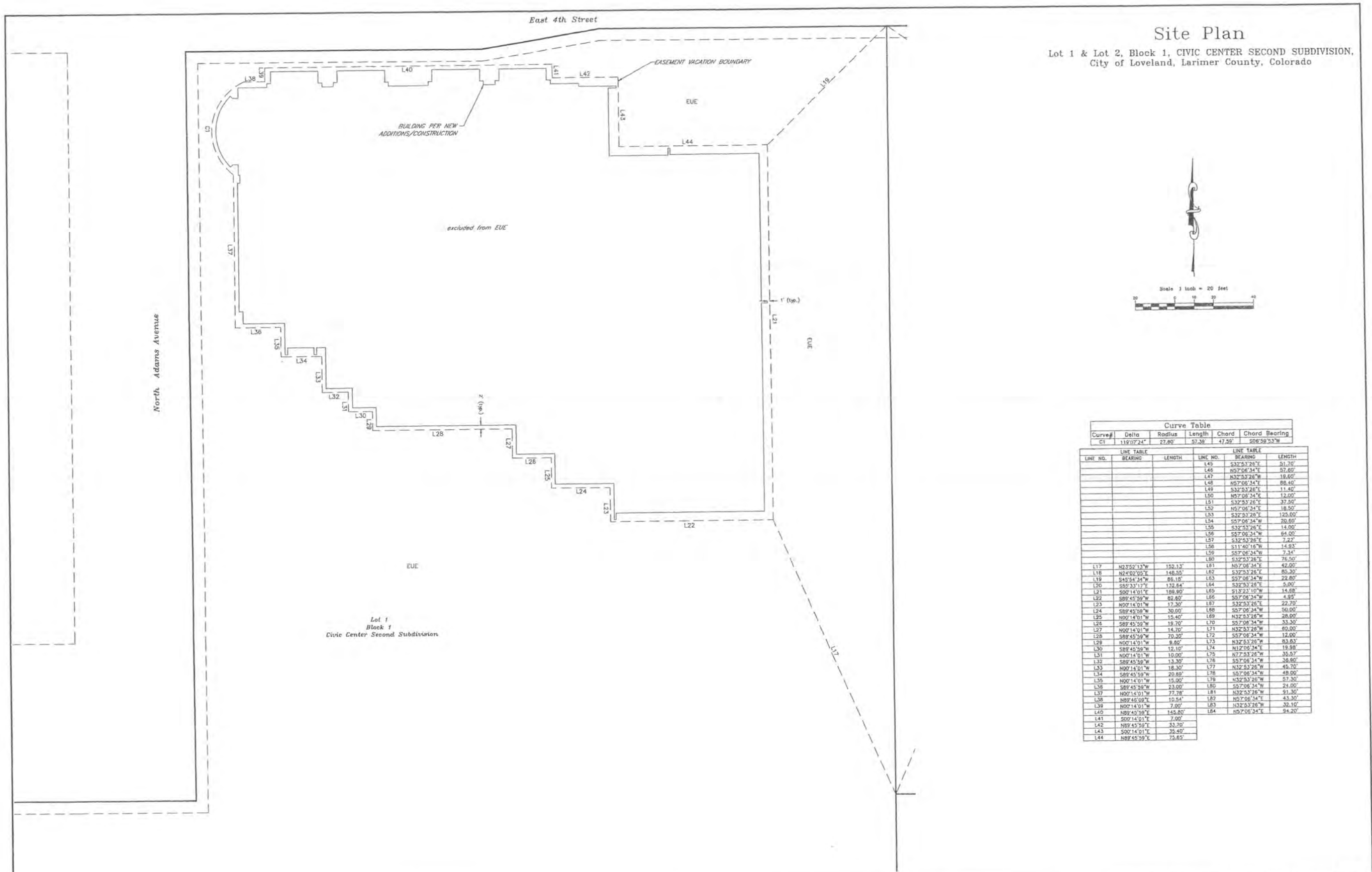


Site Plan

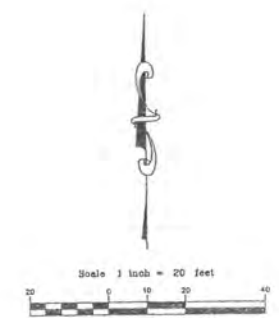
Lot 1 & Lot 2, Block 1, CIVIC CENTER SECOND SUBDIVISION,
City of Loveland, Larimer County, Colorado



REVISIONS Date _____ By _____ Description _____ Date _____ By _____ Description _____ Date _____ By _____ Description _____		Date <u>8/1/2011</u> Drawn <u>JRM</u> Part Chief <u>DCB</u> Checked <u>MBS</u> Scale <u>1"=100'</u> Approved <u>MBS</u>	CLIENT City of Loveland	PLS Group LLC 109 Coronado Court - Bldg No. 7 Fort Collins, Colorado 80525 Phone: (970) 282-3446 FAX: (970) 377-6767	TITLE KEY MAP LOT 1 AND LOT 2, BLOCK 1, CIVIC CENTER SECOND SUBDIVISION Section 13, Twp 5 N, Rng 69 W, 6 PM, City of Loveland, CO
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Site Plan
 Lot 1 & Lot 2, Block 1, CIVIC CENTER SECOND SUBDIVISION,
 City of Loveland, Larimer County, Colorado

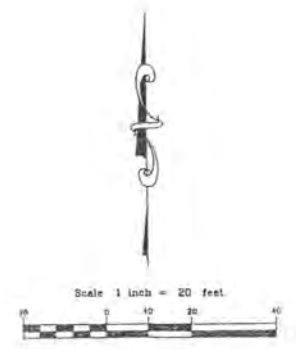
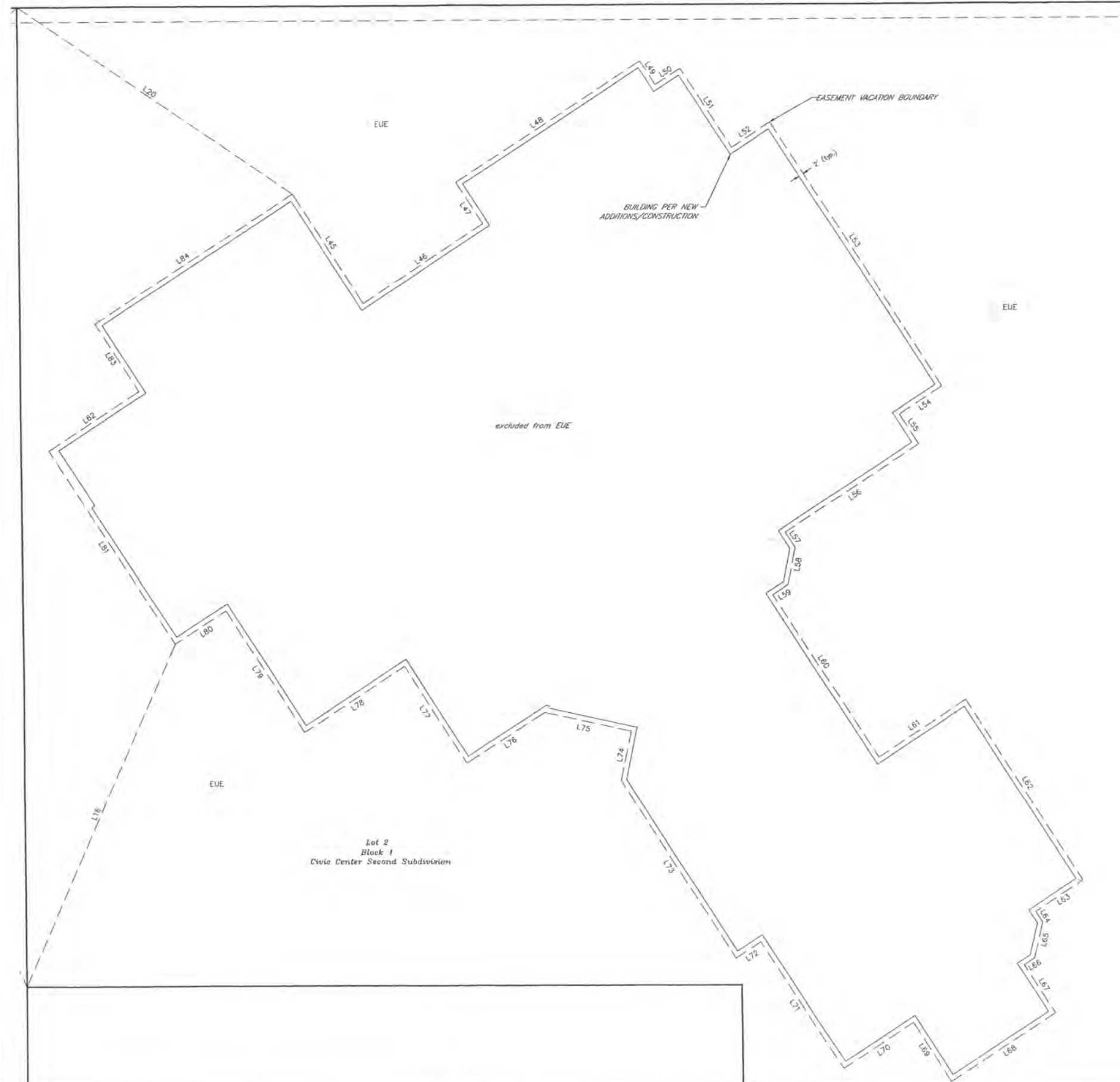


Curve Table					
Curve#	Delta	Radius	Length	Chord	Chord Bearing
C1	119°07'24"	27.80'	57.38'	47.25'	S86°59'53"W

LINE TABLE		LINE TABLE	
LINE NO.	BEARING	LENGTH	BEARING
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L46	N57°06'34"E	57.60'	
L47	N32°53'26"W	19.60'	
L48	N57°06'34"E	88.40'	
L49	S32°53'26"E	11.40'	
L50	N57°06'34"E	12.00'	
L51	S32°53'26"E	37.00'	
L52	N57°06'34"E	18.50'	
L53	S32°53'26"E	125.00'	
L54	S57°06'34"W	26.60'	
L55	S32°53'26"E	14.00'	
L56	S57°06'34"W	64.00'	
L57	S32°53'26"E	7.22'	
L58	S11°40'16"W	14.93'	
L59	S57°06'34"W	7.34'	
L60	S32°53'26"E	78.50'	
L61	N57°06'34"E	42.00'	
L62	S32°53'26"E	85.30'	
L63	S57°06'34"W	22.80'	
L64	S32°53'26"E	5.00'	
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L66	S57°06'34"W	4.92'	
L67	S32°53'26"E	22.70'	
L68	S57°06'34"W	56.00'	
L69	N32°53'26"E	28.00'	
L70	S57°06'34"W	33.30'	
L71	N32°53'26"E	60.00'	
L72	S57°06'34"W	12.00'	
L73	N32°53'26"E	83.83'	
L74	N12°06'34"E	19.98'	
L75	N72°03'28"W	36.57'	
L76	S57°06'34"W	38.80'	
L77	N32°53'26"E	49.70'	
L78	S57°06'34"W	48.00'	
L79	N32°53'26"E	57.30'	
L80	S57°06'34"W	23.00'	
L81	N32°53'26"E	91.30'	
L82	N57°06'34"E	43.30'	
L83	N32°53'26"W	32.10'	
L84	N57°06'34"E	94.20'	
L41	S00°14'01"E	7.00'	
L42	N88°45'59"E	33.70'	
L43	S00°14'01"E	35.40'	
L44	N88°45'59"E	75.65'	

Site Plan

Lot 1 & Lot 2, Block 1, CIVIC CENTER SECOND SUBDIVISION,
City of Loveland, Larimer County, Colorado



Curve Table					
Curve#	Delta	Radius	Length	Chord	Chord Bearing
C1	119°07'24"	27.60'	57.39'	47.99'	S06°58'53"W

LINE TABLE		LINE TABLE	
LINE NO.	BEARING	LINE NO.	LENGTH
L45	S32°53'26"E	L51	33.23
L46	N57°06'34"W	L52	18.50
L47	N32°53'26"W	L53	125.00
L48	N57°06'34"E	L54	39.00
L49	S32°53'26"E	L55	14.00
L50	N57°06'34"E	L56	64.00
L51	S32°53'26"E	L57	7.22
L52	N57°06'34"E	L58	14.93
L53	S32°53'26"E	L59	7.34
L54	S57°06'34"W	L60	76.50
L55	S32°53'26"E	L61	42.00
L56	S57°06'34"E	L62	85.30
L57	S32°53'26"E	L63	22.80
L58	S57°06'34"W	L64	5.00
L59	S32°53'26"E	L65	14.08
L60	S57°06'34"W	L66	4.95
L61	S32°53'26"E	L67	22.70
L62	S57°06'34"W	L68	50.00
L63	S32°53'26"E	L69	28.00
L64	S57°06'34"W	L70	33.30
L65	S32°53'26"E	L71	60.00
L66	S57°06'34"W	L72	12.00
L67	S32°53'26"E	L73	83.83
L68	S57°06'34"W	L74	19.88
L69	S32°53'26"E	L75	35.57
L70	S57°06'34"W	L76	36.90
L71	S32°53'26"E	L77	45.70
L72	S57°06'34"W	L78	48.00
L73	S32°53'26"E	L79	57.30
L74	S57°06'34"W	L80	24.00
L75	S32°53'26"E	L81	91.30
L76	S57°06'34"W	L82	43.30
L77	S32°53'26"E	L83	32.10
L78	S57°06'34"W	L84	94.20
L79	S32°53'26"E		
L80	S57°06'34"W		
L81	S32°53'26"E		
L82	S57°06'34"W		
L83	S32°53'26"E		
L84	S57°06'34"W		

REVISIONS Date _____ By _____ Description _____ Date _____ By _____ Description _____ Date _____ By _____ Description _____		Date 6/1/2011 Drawn JRM Part Chief DDB Checked MBS Scale 1"=20' Approved MBE	CLIENT City of Loveland	PLS Group LLC 109 Coronado Court - Bldg No. 7 Fort Collins, Colorado 80525 Phone: (970) 282-3446 FAX: (970) 377-6767	TITLE Site Plan LOT 1 AND LOT 2, BLOCK 1, CIVIC CENTER SECOND SUBDIVISION Section 13, Twp 5 N, Rng 89 W, 6 PM, City of Loveland, CO	PROJECT NO. 11075.001a	SHEET NO. 3	NO. OF SHEETS 3
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CITY OF LOVELAND
 COMMUNITY PARTNERSHIP OFFICE
 Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
 (970) 962-2517 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 8
MEETING DATE: September 6, 2011
TO: City Council
FROM: Community Partnership Office
PRESENTER: Alison Hade

TITLE:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING THE GRANT FUNDING RECOMMENDATION OF THE LOVELAND AFFORDABLE HOUSING COMMISSION FOR THE REALLOCATION OF CERTAIN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

DESCRIPTION:

Consideration of an administrative action to consider adopting a resolution reallocating 2010-2011 Community Development Block Grant (CDBG) funding in an amount of \$25,000.

BUDGET IMPACT:

Yes No

Funds have been allocated by the U.S. Department of Housing and Urban Development and appropriated in the 2011 City Budget.

SUMMARY:

In 2010, the Loveland Housing Authority applied for and received \$25,000 in CDBG funds for the purpose of rehabilitating foreclosed homes to be purchased by low to moderate income families. This funding was unspent by August, 2011 due to a lack of participants in the program. The City's policy for use of unspent grant funds is to ask the appropriate commission to make a recommendation regarding the use of the grant funds.

The Affordable Housing Commission recommends that the \$25,000 be reallocated as follows:

- \$3,500 to the Volunteers of America Handyman (VOA) program to provide minor rehabilitation in homes of seniors with low to moderate incomes.

- \$10,000 to the Housing Authority of the City of Loveland, Larimer Home Improvement Program (LHIP) to provide low interest loans for rehabilitation of owner/occupied homes for low to moderate income homeowners.
- \$11,500 to the Housing Authority of the City of Loveland, Larimer Home Ownership Program (LHOP) to provide down payment assistance to households with low to moderate income.

These three programs, VOA, LHIP, and LHOP, were all grant recipients during the 2010-2011 grant year, will spend the additional allocation in a manner consistent with their original proposal, and will be able to complete the spending process prior to September 30, 2011, the end of the grant year.

LIST OF ATTACHMENTS:

Resolution to approve the grant funding recommendation of the Loveland Affordable Housing Commission

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt A RESOLUTION APPROVING THE GRANT FUNDING RECOMMENDATIONS OF THE LOVELAND HUMAN SERVICES COMMISSION AND THE LOVELAND AFFORDABLE HOUSING COMMISSION

REVIEWED BY CITY MANAGER:

RESOLUTION #R-52-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING THE GRANT FUNDING RECOMMENDATION OF THE LOVELAND AFFORDABLE HOUSING COMMISSION FOR THE REALLOCATION OF CERTAIN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

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

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

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

WHEREAS, on August 3, 2010, the City Council adopted Resolution #R-35-2010 allocating \$25,000 in CDBG funds to the Housing Authority of the City of Loveland (“Housing Authority”) for the Home Match program (the “Project”); and

WHEREAS, the Housing Authority was unable to complete the Project, therefore the \$25,000 was returned to the City for reallocation under the City’s CDBG fund distribution process; and

WHEREAS, the \$25,000 was not included in the 2011 CDBG fund allocation, which was approved on June 21, 2011 by Resolution #R-43-2011; and

WHEREAS, the Affordable Housing Commission has since reviewed the grant applications made to the City for 2010 CDBG funds, and has made a recommendation to the City Council regarding reallocation of the remaining \$25,000 in CDBG funds; and

WHEREAS, the City Council desires to approve the grant funding recommendation of the Affordable Housing Commission.

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

Section 1. That the recommendation of the Affordable Housing Commission for the reallocation of the remaining \$25,000 in 2010 Community Development Block Grant funds is hereby approved as follows, subject to Agency or Project Owner execution of a subrecipient contract with the City of Loveland on or before September 21, 2011:

Agency or Project Owner	Total Grant Amount
Housing Authority of the City of Loveland	\$21,500
Volunteers of America	\$3,500
Total Amount of CDBG funds	\$25,000

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

ADOPTED this 6th day of September, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shawn L. Eltes
Assistant City Attorney



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

AGENDA ITEM: -

MEETING DATE: 9/6/2011

TO: City Council

FROM: Greg George, Development Services

PRESENTER: Troy Bliss

TITLE:

An ordinance amending Title 18 of the Loveland Municipal Code by amending Chapter 18.50 regarding temporary signs, exempt signs, project marketing signs and enforcement

DESCRIPTION:

A public hearing to consider a legislative action to adopt an ordinance on first reading amending Title 18 relating to various sign provisions.

BUDGET IMPACT:

Yes No

SUMMARY:

The proposed code amendments to the sign code provide:

- additional definitions for new sign types being introduced;
- expanded exempt forms of signs including flags and real estate marketing signs;
- greater allowances to businesses and clear regulation for the use of temporary signs;
and
- new developments under construction a longer period for keeping project marketing signs.

The Planning Commission conducted hearings on June 27, 2011 and August 8, 2011 unanimously recommending approval of the amendments to City Council.

LIST OF ATTACHMENTS:

- A. Ordinance amending Title 18
- B. City Council staff memorandum, September 6, 2011

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

Move to adopt on first reading: AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND MUNICIPAL CODE BY AMENDING CHAPTER 18.50 REGARDING TEMPORARY SIGNS, EXEMPT SIGNS, PROJECT MARKETING SIGNS AND ENFORCEMENT

REVIEWED BY CITY MANAGER:

FIRST READING: September 6, 2011

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 18 OF THE LOVELAND MUNICIPAL CODE BY AMENDING CHAPTER 18.50 REGARDING TEMPORARY SIGNS, EXEMPT SIGNS, PROJECT MARKETING SIGNS AND ENFORCEMENT

WHEREAS, City Council finds that updates to Title 18 of the Loveland Municipal Code are necessary and required in the interest of the health, safety and welfare of the people; and

WHEREAS, the City Council has received a recommendation of the Planning Commission recommending adoption of revisions to Title 18 of the Loveland Municipal Code, including changes to Chapter 18.50 regarding Temporary signs, Exempt signs, Project marketing signs and enforcement; and

WHEREAS, the City Council desires to adopt the recommendations of the Planning Commission and revise Chapter 18.50 of the Loveland Municipal Code regarding Signs.

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

Section 1. Chapter 18.50 of the Loveland Municipal Code is amended by the revision of Section 18.50.020 to revise the definition of “Temporary sign” to read as follows:

Chapter 18.50.020 Definitions

“Temporary sign” means a sign which, due to the materials used; the method, manner or location of display; or the method of operation for display; is suited only for occasional, seasonal, or special event display, including, but not limited to, those signs regulated under section 18.50.070.

Section 2. Chapter 18.50 of the Loveland Municipal Code is amended by the revision of Section 18.50.020 to add the following definitions for “Balloon”; “Flying banner”; “Pennant”; “Temporary construction fence sign”; “Temporary event sign”; and “Valance” to read as follows:

“Balloon” means an airtight bag or membrane which is inflated with air or a lighter than air gas typically intended to rise or float above the ground.

“Flying banner” means a type of temporary sign consisting of cloth, bunting, canvas or similar fabric, attached to a single vertical staff support structure with distinctive colors, patterns or symbolic logos for display.

“Pennant” means a type of temporary sign consisting of fabric, plastic, or metal strand drapery with distinctive colors, patterns, symbolic logos, or a series of narrow tapering flags for display.

"Temporary construction fence sign" means a temporary sign affixed to or incorporated into a construction fence for displaying advertisements, messages, logos, illustrations, and graphics related only to the associated property under construction.

“Temporary event sign” means a temporary sign advertising a community event sponsored by a governmental entity or not-for-profit entity that is limited only to one type of temporary sign that may include either a banner, balloon, flying banner, pennant, or valance.

“Valance” shall be have the same definitions as a pennant.

Section 3. Chapter 18.50 of the Loveland Municipal Code regarding Signs not subject to permit-Exempt signs, is amended by the revision of Sections 18.50.050.E; 18.50.050.M; and 18.50.050.N to read in full as follows:

18.50.050 Signs not subject to permit-Exempt signs.

. . .

E. Flags:

- 1. Flags of the United States;
- 2. Flags and insignias of the state of Colorado, the city of Loveland, Larimer County, governmental agencies, and nonprofit organizations exempt from federal tax, when displayed on premise, and where no single side exceeds forty-eight (48) square feet in area;
- 3. Except as provided in Section 18.50.050.E.4, no more than three (3) flags shall be exempt for each premise. Any additional flag shall be subject to a sign permit and the square footage shall be included in the sign area measurement for a freestanding sign.
- 4. Upon written request, the current planning manager may authorize additional flags on a premise provided that the flags are not used as a sign, as defined in this chapter, and are compatible within the context of the premise and the surrounding neighborhood. Any final decision of the current planning manager may be appealed to the planning commission in accordance with Chapter 18.80 of this code.

. . .

M. Real estate model home signs. One (1) real estate model home sign and a maximum of two (2) flying banners are permitted per street frontage of the premise on which a model home or a temporary real estate sales office is located. Real estate model home signs shall not exceed thirty-two (32) square feet of sign area per face; free-standing real estate model home signs are limited to six (6) feet in height and wall mounted real estate model home signs shall not extend above the top of the wall or parapet wall of the building to which the wall sign is attached. Flying banners shall not exceed a dimension of four (4) feet in width, thirteen (13) feet in height and twenty-five (25) square feet in total size. All surfaces incorporated into a real estate model home

sign and sign structure including, but not limited to, pole covers, monument style sign bases, and background surfaces shall be counted in the allowable sign area.

. . .

N. Real estate open house signs. A maximum of six (6) real estate open house signs are allowed for an open house event and such signs shall be displayed only on the day of the open house and the day prior to the open house. On-premise or off-premises display of real estate open house signs is permitted, but display in the public right-of-way is prohibited. Real estate open house signs shall not exceed six (6) square feet of sign area per face and four (4) feet in height. Pennants and balloons may be affixed to real estate open house signs provided that such attachments do not encroach upon street or sidewalk right-of-way or create a street or sidewalk safety hazard; balloons that are affixed to real estate open house signs shall not have a vertical or horizontal dimension greater than two (2) feet.

Section 4. Section 18.50.070 of the Loveland Municipal Code regarding Temporary signs is repealed in its entirety and reenacted to read in full as follows:

Chapter 18.50.070 Temporary signs.

A. Purpose.

Temporary sign regulations are established to provide businesses and non-residential uses with the opportunity to advertise occasional, seasonal, or special events. These regulations are intended to control the visual impacts to the community of such advertisements, and to provide consistency with the spirit and intent of this title and the vision statements of the Comprehensive Plan. Temporary signs shall under no circumstance be substituted for permanent signage or be situated to screen permanent signage on an adjacent lot or premise. These temporary sign provisions shall only apply to businesses and non-residential uses. These provisions shall not be applicable to signs listed under Section 18.50.050.

B. Temporary signs subject to a permit.

1. For all businesses and non-residential uses, the following sign types are permissible:
 - a. Banners
 - b. Balloons
 - c. Pennants
 - d. Valances
 - e. Flying banners
 - f. Any sign device which operates from an external power source including but not limited to searchlights, balloons, and animated signs
2. Permit and duration.
 - a. All permissible temporary signs as specified in Section 18.50.070.B.1 shall require the approval of a temporary sign permit application by the building division.

b. Temporary sign permit applications shall be made in increments of fifteen (15) consecutive days. A maximum of four (4) temporary sign permits may be issued to an individual business or non-residential use per calendar year and may be approved in succession. The maximum cumulative display for all permitted temporary signs shall not exceed sixty (60) days per calendar year unless a variation is approved under Section 18.50.070.E.

3. Number.

No more than two (2) of the sign types specified in Section 18.50.070.B of this chapter shall be permitted on a lot or premise for an individual business or non-residential use.

4. Sign Area and Location.

a. Banners: A banner or banners must not cumulatively exceed one-hundred (100) square feet in total sign area and shall be attached to an exterior building wall. All portions of such banner(s) shall be in contact with the building wall, and shall not flap, extend beyond the wall nor be fastened to support structures.

b. Balloons: Except as allowed in Section 18.50.070.D.1.a., Balloons shall not exceed a total maximum dimension of ten (10) feet, inclusive of a base. Attaching Balloons to tethers is permitted providing the tether is no greater than fifteen (15) feet in length. Balloons must be secured to a building, structure, stable object, or the ground and shall not extend beyond the boundaries of the lot or premise. Balloons shall not be attached to trees or shrubs planted within the lot or premise.

c. Pennants and valances: A single pennant or valance strand shall not exceed fifty (50) feet in length. Each pennant or valance strand must be secured to a building, structure, stable object, or the ground at both ends. Pennant and valance strands shall not be attached to trees or shrubs planted within the lot or premise.

d. Flying banners: Except as allowed in Section 18.50.070.D.1.b., each flying banner shall not exceed twenty-five (25) feet in height inclusive of the staff or support structure and seventy-five (75) square feet in size. Flying banners are to be attached to a single vertical staff support structure only. The support structure may be mounted securely to a building, structure, stable object, or the ground. Flying banners shall not extend beyond the boundaries of the lot or premise. Flying banners shall not be attached to trees or shrubs planted within the lot or premise.

e. Sign devices operated from an external power source: Sign devices operated from an external power source shall comply at all times with the city's noise ordinance. These types of temporary signs shall be secured to the ground and limited to twenty-five (25) feet in height providing they do not extend beyond the boundaries of the lot or premise. The lighting component for searchlights must be projected upward so as not to diminish public safety and welfare.

5. Lighting.

Temporary signs may only be illuminated indirectly by means of a separate light source (excluding Searchlights). It shall be demonstrated that no off-site impacts associated to glare will occur by indirectly illuminating a temporary sign. The light source shall also comply with applicable provisions of the *City of Loveland Site Development Performance Standards and Guidelines*.

C. Maintenance.

All temporary signs shall be kept neatly finished and repaired, including all parts and supports. The Building Official and/or an authorized representative shall inspect and shall have authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

D. Temporary Signs not subject to permit.

1. The following temporary signs shall not require a permit and shall not be limited in number or duration upon a lot or premise associated to a business or non-residential use, unless specified otherwise. Internal or external illumination for these specific signs shall be strictly prohibited.
 - a. Balloons which do not have maximum horizontal or vertical dimension greater than two (2) feet;
 - b. Flying banners placed within a lot or premise, providing no more than four (4) are installed and each individual flying banner does not exceed a maximum of ten (13) feet in height and twenty-five (25) square feet in total size;
 - c. Temporary construction fence sign as defined in Section 18.50.020, provided the sign does not extend above the fence;
 - d. Temporary event sign as defined in Chapter 18.50.020 subject to Section 18.50.070.B.4. and limited to a duration of no more than five (5) days;
 - e. Portable signs as defined in this chapter limited to A-frame or T-frame signs which do not exceed six (6) square feet and have a maximum height of four (4) feet. These portable signs shall be located within ten (10) feet of the business entrance and allow for a minimum unobstructed access width of five (5) feet along all sidewalks. For the purpose of this section, portable A-frame or T-frame signs shall not be placed in a public right-of-way; and
 - f. Any signage device similar to those described in items a. through e. above if so determined and approved in writing by the Current Planning Manager.
2. Internal or external illumination for the signs listed in subsection D.1 above, shall be strictly prohibited.

E. Administrative Allowances.

1. Variations from these temporary sign provisions relating to the duration and location may be provided by the Current Planning Manager. Such variations may only be provided to businesses operating at a new location for less than six (6) months or for businesses which have poor visibility from the street. To obtain a variation, the applicant must make a written request and demonstrate the following:

- a. A substantial hardship exists in carrying out the provisions of this chapter; and
 - b. The spirit and intent of this chapter will be secured in granting a variation.
2. Variations will be considered on a case-by-case basis. The Current Planning Manager may impose conditions to ensure that the intent of this chapter is maintained. Appeal of the Current Planning Manager’s decision shall follow the procedures outlined in Chapter 18.80 of the Loveland Municipal Code.
- F. Enforcement.
Any unauthorized deviation from this chapter shall be subject to the enforcement, legal procedures and penalties as described in Chapter 18.50.170.

Section 5. Section 18.50.085 of the Loveland Municipal Code regarding Project marketing signs is repealed in its entirety and reenacted to read in full as follows:

18.50.085 Project marketing signs.

A. Sign Area. The maximum sign area for a project marketing sign in residential zones and residential PUDs shall be fifty square feet. The maximum sign area for a project marketing sign in non-residential zones and non-residential PUDs shall be seventy-five square feet. The sign area shall include only the extreme limits of lettering and depictions, except when the surface area of any structure to which the sign is affixed exceeds fifty percent of the area of the sign face, in which case all additional surface area will be included in the sign area measurement. Monument style sign bases and pole covers shall be included in calculating all such additional surfaces which are subject to the fifty percent limitation.

B. Number. There shall be no more than one sign per project entry from any adjacent street and no more than two signs per project or phase of a project.

C. Height. Project marketing signs shall be no more than 12 feet in height.

D. Lighting. Any lighting shall be indirect. All lighting shall be aimed and/or shielded to insure that no direct light is seen upon the driving surface of any streets or upon any nearby residential properties.

E. Duration. Signs shall be allowed to remain for no more than 2 years following commencement of construction of the public improvements within the project, unless a written request to extend this time period is approved by the current planning manager.

F. Location. Signs shall be located within the boundaries of a project or premise which is part of the original marketing of the lots, tracts, structures or units. For projects within a mixed use planned unit development, the premise shall constitute the boundaries of the entire planned unit development.

G. Maintenance. All applicants shall provide adequate assurance acceptable to the City that the sign and the lot or tract upon which it is located will be maintained in good condition at all times.

Section 6. Chapter 18.50 of the Loveland Municipal Code is amended by the revision of Section 18.50.170 to read as follows:

18.50.170 Enforcement, legal procedures and penalties.

It shall be unlawful for any person to erect, maintain, or allow upon any property over which they own, manage, lease or control, any sign which is not permitted pursuant to the provisions of this sign code. Enforcement, legal procedures and penalties shall be in accordance with Chapter 18.68 of this title. Additionally, unauthorized signs on public property may be confiscated by the city and held pending notification of the owner by the city. The owner may obtain said signs from the city manager upon payment of a confiscation and storage charge in an amount established by the city council. For the purposes of the enforcement of this chapter, the Building Official and his or her designee is authorized and duly appointed to issue summonses and complaints and penalty assessment notices for a violation of this chapter.

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

Signed this _____ day of _____, 2011


ATTEST:

CITY OF LOVELAND, COLORADO

City Clerk

Mayor

APPROVED AS TO FORM:


Assistant City Attorney



**Development Services
Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
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MEMORANDUM

TO: City Council

FROM: Troy Bliss, Current Planning

DATE: September 6, 2011

SUBJECT: Amendments to Title 18, Chapter 18.50 (Signs) of the Municipal Code: Definitions, Signs Not Subject To Permit-Exempt Signs, Temporary Signs, Project Marketing Signs, and Enforcement, Legal Procedures And Penalties

I. EXHIBITS

1. Planning Commission Minutes from June 27, 2011
2. Planning Commission Staff Report from June 27, 2011 including all attachments
3. Planning Commission Minutes from August 8, 2011
4. Planning Commission Staff Report from August 8, 2011 including all attachments
5. Combined and adjusted proposed Title 18 Amendments in redline form

II. SUMMARY OF AMENDMENTS

This is a proposal which includes various amendments to Title 18 of the Municipal Code regarding signs. A majority of the work contained in these proposed amendments has been devoted to the following:

- Temporary Signs – Temporary signs are those signs which typically advertise a special sale or event for businesses and non-residential uses within the community. In most applications, they are the canvas or vinyl banners placed on building facades. Also they include a variety of other devices like balloons, pennants, valances, and flags. The most notable changes to the sign code being proposed relate to the City's temporary sign ordinance (Section 18.50.070). The proposal includes a complete overhaul of the temporary sign provisions in an effort to address newer types of advertisement methods that businesses within the community have been and are seeking to use. These amendments are prepared to provide greater accommodations to businesses for occasional advertisement purposes through the use of different sign type allowances, criteria to help lessen the burden of permitting, and new business/building location variations. In an effort to balance business needs with community aesthetics, dimensional standards and duration for permitted temporary signs were greatly restructured. The temporary sign amendments clarify and update allowances for temporary signs and provide an easier format for enforcement and interpretation.

The remaining proposed amendments are relatively minor in nature where adjustments are being proposed to help clarify existing provisions and update standards. Selected adjustments are more summarized below:

- Signs Not Subject To Permit-Exempt Signs – These are types of signs such as governmental/non-profit organization flags and real estate marketing signs which are allowed in the City without a permit. Changes to this Section of the Code were prompted to clarify the use of flags and expand on the allowances for real estate marketing needs to include allowances for the flying banners.
- Project Marketing Signs – Signs for the purpose of advertising/marketing new residential development under construction. The development community has expressed an interest to the city in adjusting these provisions to allow for longer durations in which to keep project marketing signs up for display.
- Enforcement, Legal Procedures And Penalties – This is the Section of the Code which applies to all sign provisions contained in Chapter 18.50. The proposed adjustment is simply to clarify this Section of the Code relative to how these provisions carried out.

III. PLANNING COMMISSION CONSIDERATIONS

The Planning Commission reviewed the proposed amendments in two hearings (June 27, 2011 and August 8, 2011). Discussion at the June 27, 2011 hearing prompted further amendments that were presented to the Planning Commission on August 8, 2011.

- On June 27, 2011, the Planning Commission reviewed proposed amendments pertaining to sign definitions, temporary sign regulations and sign enforcement, legal procedures and penalties. By a unanimous vote, the Planning Commission recommended approval of the amendments to City Council. At the public hearing, the Planning Commission recommended a slight adjustment to the non-permitted signs regarding flying banners. The height (thirteen (13) feet) and total size (twenty-five (25) square feet) were increased from what was presented (see **Exhibit 1**).
- On August 8, 2011, the Planning Commission reviewed the proposed amendments pertaining to signs not subject to permit-exempt signs and project marketing signs. By a unanimous vote, the Planning Commission is recommended approval of the amendments to City Council. At the public hearing, the Planning Commission recommended a slight adjustment to the non-permitted flying banners for real estate signs in which to maintain some consistency with non-permitted temporary sign provisions from June 27, 2011 (see **Exhibit 3**).

The sign amendments recommended for approval by the Planning Commission at the two hearings have been combined into one ordinance for City Council's consideration. Attached to this memorandum (see **Exhibit 5**) is a combined redline version of the proposed amendments as reflected in the ordinance that includes the Planning Commission recommendations.

IV. BACKGROUND

These proposed sign amendments were initiated due to the increase in the use of temporary signs throughout the community. Issues related to the outdated nature of the temporary sign provisions and the difficulty the City was having with enforcement of the regulations. This effort was the culmination of Title 18 Committee input, Loveland Chamber of Commerce outreach, and feedback/direction from

local sign companies with the expertise on this topic who develop and sell temporary signs. This project transpired over a two (2) year period where various input was gathered, reviewed and ultimately assembled over the following timeline:

- May 12, 2009 – City Council Study Session which directed staff to begin work on temporary sign amendments.
- October 26, 2009 – Planning Commission Study Session where initial proposed amendments to temporary signs was presented for feedback and direction.
- January 28, 2010 – City Open House to present initial proposed amendments to interested citizens for comment and feedback on.
- May 10, 2010 – Public hearing with Planning Commission. Planning Commission took no action, directing staff to address complexities of the initial proposed amendments to the temporary sign provisions.
- Between May 10, 2010 and June 27, 2011 staff had various meetings with the Title 18 Committee and sought further outreach from the Loveland Chamber of Commerce and local sign companies. This resulted in a complete overhaul of the initial proposed amendments to the temporary sign provisions.
- June 27, 2011 – Public hearing with Planning Commission.
- August 8, 2011 – Public hearing with Planning Commission.

V. OUTLINE OF AMENDMENTS AND RECOMMENDATION

Below is an outline of the main components of the proposed amendments:

- Adding definitions to types of temporary signs;
- Providing expanded allowance to businesses for the use of temporary signs and providing clearer temporary sign regulations;
- Small adjustments to the enforcement, legal procedures and penalties associated to the sign code;
- Expanding and clarifying the use of flags as exempt forms of signs;
- Providing greater allowances for real estate marketing and advertisement needs specifically relating to flying banners; and
- Allowances for new developments under construction to maintain longer durations for keeping project marketing signs.

Planning Commission and City Staff are recommending to City Council approval of the amendments to Title 18, Chapter 18.50 (Signs) of the Loveland Municipal Code as reflected in the ordinance prepared on first reading dated September 6, 2011.

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CITY OF LOVELAND
PLANNING COMMISSION MINUTES
June 27, 2011

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A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on June 27, 2011 at 6:30 p.m. Members present: Chairman Molloy; Vice Chairman Meyers; and Commissioners Dowding, Fancher, Leadbetter and Middleton. Commissioners Crescibene, Krenning and Ray were absent. City Staff present: Troy Bliss, Current Planning; Robert Paulsen, Current Planning Manager; Sunita Sharma, Assistant City Attorney.

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These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

CITIZEN REPORTS

There were no citizen reports.

STAFF REPORTS

Bob Paulsen, Current Planning Manager, reported that his office had received a petition addressed to Planning Commission regarding a joint City/County effort to identify an alignment for the extension of Boyd Lake Road from 5th Street to Highway 60. He stated that the petition was handed out to all the Commissioners. He further commented that the alignment project would be discussed when the Public Works Department presents the 2030 Transportation Plan to the Planning Commission in the fall.

Chair Molloy stated that he would like to hear about the alignment by the Public Works department before it is done.

Mr. Paulsen stated that he would ask if they could email the Commission further information on the alignment.

Vice Chair Meyers reported on a recent meeting that he and Commissioners Dowding and Middleton had worked with Planning staff on prioritizing the Comprehensive Plan and Objectives as part of the Comprehensive Plan update process. He indicated that the meeting had been productive.

1 APPROVAL OF MINUTES

2
3 *Commissioner Fancher moved to approve the Minutes of the June 13, 2011 Planning*
4 *Commission meeting. Upon a second by Commissioner Dowding the motion passed*
5 *unanimously. (Chairman Molloy abstained.)*

6
7 **Mr. Paulsen** requested that Regular Item #2 be continued to July 11, 2011.

8
9 REGULAR AGENDA

10
11 1. Amendments to Title 18 regarding sign definitions, temporary sign regulations, and sign
12 enforcement, legal procedures and penalties.

13
14 SUMMARY OF AGENDA ITEM: This is a public hearing to review temporary signs. The purpose
15 in bringing forward this amendment to the municipal code is that City staff has seen an increase in
16 the use of temporary signs throughout the community. For the most part, issues have not been related
17 to volume but relate to the City's abilities to fairly enforce the sign regulations. There are also issues
18 of clarity and currency with the existing temporary sign regulations. This application involves
19 legislative action by the Planning Commission; the Commission's recommendation will be
20 forwarded to the City Council for a final decision.

21
22 **Troy Bliss, Project Planner**, gave a brief background report on this item. He stated that staff was
23 directed by the City Council to move forward on the Temporary Sign Regulations. He spoke of the
24 outreach that was done and of the numerous community groups that staff met with, commenting that
25 staff received a large amount of feedback. He commented that there were requests to simplify the
26 definitions so that they are understandable. He clarified that the sign companies are in general
27 support the proposed amendments.

28
29 He stated that the proposed amendments are focused around the City's temporary sign regulations,
30 and are specifically structured in three main areas:

- 31
- 32 • Adding definitions to types of temporary signs;
 - 33 • Providing expanded allowance to businesses for the use of temporary signs and providing
clearer temporary sign regulations; and
 - 34 • Making a small adjustment to the enforcement, legal procedures and penalties associated
35 with the sign code.

36
37 **Mr. Bliss** stated that he received an email from Mr. Greg Muhonen requesting amendment to the
38 height and square footage of flying banners.

39
40 **Ron Busby, 1441 39th Place**, thanked Mr. Bliss and staff for their hard work and stated that the
41 modifications made by staff will help his tenants. He was specifically pleased with expanded

1 allowance for portable, sandwich board-type signs. He urged the Planning Commission to
2 recommend adoption by City Council.

3
4 **Greg Muhonen, 2085 Quillan**, also thanked staff, the Title 18 Committee, and City Council for
5 their efforts. He recommended an amendment to the flying banner provisions to increase banner
6 height allowance from 10 feet to 13 feet and to increase the flag or banner area from 20 square feet to
7 25 square feet in size. He indicated his overall support of the proposed amendments.

8
9 **Commissioner Middleton** questioned if Mr. Muhonen, who serves on the Title 18 Committee, did
10 not agree with the Committee's recommendation.

11
12 **Mr. Muhonen** stated over several months of Title 18 Committee meetings and in their previous
13 discussions about the size of the banners being 13 feet high and 25 square feet in area, he had
14 assumed that the Committee was in agreement with the height and size of the banners he was
15 advocating. He stated that he was surprised to see that the size had not been adjusted to reflect this
16 discussion.

17
18 After a brief discussion, **Mr. Bliss** stated that there are no specific industry size standards for pendent
19 signs; he stated that these types of signs are made in various heights and sizes by the various
20 manufacturers.

21
22 **Mr. Paulsen** stated the increased sign height advocated by Mr. Muhonen is not a crucial matter. He
23 emphasized, however, that the standards be clearly defined.

24
25 **Mr. Bliss** clarified that there is no application fee for a temporary sign. He reported that that staff,
26 Title 18 Committee, sign companies, the public and members of the Chamber of Commerce have
27 been working on this amendment for approximately two years

28
29 After a discussion regarding flags, **Mr. Bliss** stated that American flags are placed in the category of
30 exempt signs by the code. He noted that the review of regulations concerning government flags had
31 not been part of this effort.

32
33 **Commission Dowding** indicated support for changing the height and size of teardrop banners (flying
34 banners) as proposed by Mr. Muhonen.

35
36 **Commissioner Leadbetter** commented that he liked that the new code language was straightforward
37 and easy to understand, and he concurred with Commissioner Dowding regarding Mr. Muhonen's
38 request.

39
40 **Vice Chair Meyers** agreed with previous speakers.

41

1 **Commissioner Middleton** supported the item with the proposed amendment by Mr. Muhonen.

2

3 **Chair Molloy** spoke in support of the amendments.

4

5 *Commissioner Fancher made a motion to recommend that City Council approve the amendments*
 6 *to Title 18 regarding temporary signs as described in the June 27, 2011 Planning Commission*
 7 *staff report, and as amended on the record reflecting Mr. Muhonen's request. Upon a second by*
 8 *Commissioner Middleton the motion was unanimously adopted.*

9

10 **Following completion of the previous agenda item, a general discussion about the frequency,**
 11 **format and duration of Planning Commission meetings occurred.**

12

13 **Commissioner Leadbetter** suggested that the format of the commission meetings be changed by
 14 holding one regular hearing and a worksession per month. He felt that would be a more efficient use
 15 of staff and the Planning Commissions time.

16

17 **Assistant City Attorney Sharma** stated she would review the Charter to see if that recommendation
 18 would be allowed by the City Charter.

19

20 **Commissioner Middleton** stated he would support putting a time limit on the length of the
 21 meetings.

22

23 **2. Amendments to Titles 16, 17, 18 and 19 of the Loveland Municipal Code.**

24

25 SUMMARY OF AGENDA ITEM: Amendments to Titles 16-19 of the City of Loveland Municipal
 26 Code that will implement a new process for application, review and approval of site development
 27 plans and site work permits. The proposed amendments would affect all development except single-
 28 family detached dwellings, single-family attached dwellings for no more than two units, and two-
 29 family dwellings. This application involves legislative action by the Planning Commission; the
 30 Commission's recommendation will be forwarded to the City Council for a final decision.

31

32 **Staff is requested that this item be continued to the July 11, 2011 meeting so that final City**
 33 **staff review can be completed.**

34

35 *Vice Chair Meyers made a motion to open and continue Item #2 to the July 11, 2011. Upon a*
 36 *second by Commissioner Fancher the motion was unanimously adopted.*

37

38

1 ADJOURNMENT

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3 *Commissioner Middleton made a motion to adjourn. Upon a second by Vice Chair Meyers the*
4 *motion was unanimously adopted.*

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7 Robert Molloy, Chair

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10 Vicki Mesa, Secretary

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Development Services Current Planning

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ITEM NO:	1 – Regular Agenda
PLANNING COMMISSION MEETING:	June 27, 2011
<hr/>	
TITLE:	Amendments to Title 18 regarding sign definitions, temporary sign regulations, and sign enforcement, legal procedures and penalties.
LOCATION:	City-wide
APPLICANT:	City of Loveland, Current Planning Division
STAFF CONTACT:	Troy Bliss
APPLICATION TYPE:	Amendments to Title 18 of the Loveland Municipal Code
ACTION:	Recommend for adoption by City Council
STAFF RECOMMENDATION:	<i>Move to recommend that City Council approve the amendments to Title 18 regarding temporary signs as described in the June 27, 2011 Planning Commission staff report and as amended on the record.</i>

I. ATTACHMENTS

1. Loveland Municipal Code, Title 18, Chapter 18.50, Sections 18.50.010 (definitions), 18.50.070 (Temporary Signs), and 18.50.170 (Enforcement, legal procedures and penalties).
2. Proposed Amendments to the Loveland Municipal Code, Title 18, Chapter 18.50, Sections 18.50.010 (definitions), 18.50.070 (Temporary Signs), and 18.50.170 (Enforcement, legal procedures and penalties).
3. Citizen correspondence.

II. SUMMARY

The proposed amendments to Title 18 are focused around the City's temporary sign regulations, specifically structured in three main areas of focus including:

- adding definitions to types of temporary signs;
- providing expanded allowance to businesses for the use of temporary signs and providing clearer temporary sign regulations; and
- a small adjustment to the enforcement, legal procedures and penalties associated to the sign code.

This effort has resulted in a clearer description of the temporary sign provisions by defining specific types of permissible signs and standards that are both easily applied and enforced (i.e. duration, number, size, height, and location).

III. BACKGROUND

From the previous Planning Commission direction in May of 2010, the Current Planning Division has been continuing its efforts to amend Chapter 18.50 of the Loveland Municipal Code regarding temporary sign regulations. The primary focus in this effort was to simplify. Through all the input gathered during this process and prior to the May 2010 Planning Commission hearing, the proposed Temporary Sign Amendments became highly complex. Consequently, City Staff pulled back and began restructuring these amendments, starting with comparisons to surrounding Front Range communities. What City Staff found was that the proposed amendments were very generous relative to the regulations of other communities, primarily through sign exemptions and duration. To address these issues, specific yet easily distinguishable criteria have been built into the proposed Title 18 Amendments.

With these proposed amendments it was important to recognize potential over-regulation with respect to minuscule types of temporary signs such as balloons, flags/flying banners, temporary construction fence signs, etc. which have a fairly minimal visual impact to the community. From a City Staff position, we want to be practical and not get into the business of having to police these types of signs. Therefore, a section was added for temporary signs not requiring a permit.

Additionally, these provisions address circumstances where greater allowances may be considered in an effort to assist new business needs or buildings which have poor visibility from a public right-of-way. This is captured as a new section (Administrative Allowances) in which the Current Planning Manager may consider variations to the proposed temporary sign provisions relative to duration and location of the signs.

This effort was the culmination of Title 18 Committee input, Loveland Chamber of Commerce outreach, and feedback/direction from local sign companies with the expertise on this topic who develop and sell temporary signs (see **Attachment 2**).

IV. DESCRIPTION OF PROPOSED AMENDMENTS

Temporary signs are those signs which typically advertise a special sale or event. In most applications, they are the canvas or vinyl banners seen on building facades. Temporary signs also include a variety of signage devices like balloons, pennants, valances, and flags. The reason for bringing forward this amendment to the municipal code is that City staff has seen an increase in the use of temporary signs throughout the community. For the most part, issues have not been related to volume but relate to the City's abilities to fairly enforce the sign regulations. There are also issues of clarity and currency with the existing temporary sign regulations. A more detailed discussion is provided below.

A. Issues

- **Temporary sign permits are difficult to track** - Temporary sign permits are issued through the City of Loveland Building Division as specified in Section 18.50.070.D (see **Attachment 1**). From a permit tracking standpoint, there has been much difficulty in determining how long a temporary sign has been in place. This is because the current provisions state that a business is allowed a cumulative time of 60 days per calendar year in which to place a temporary sign on their building. A majority of the applicants seeking a temporary sign permit want the total allotted days allowed but not in succession. Consequently, City staff has found that the permits distribute the time allotment periodically throughout the year and most often times not all at once. This becomes difficult to track especially when permits remain on file for a year, perhaps not meeting the intent of what the temporary sign provisions were meant to be.

- **The code does not address newer temporary sign types or alternative locations for placement** - It becomes important to revisit City policies as they age over time. (Loveland's temporary sign provisions have not been updated since 1997.) As with most anything, practices change and new products get introduced. Temporary signs are no different. Businesses are constantly seeking different opportunities to display temporary signs, particularly those that are not attached to a building or defined in the code. The research that City staff has conducted from other communities and verified from the sign manufacturers has identified some of these current sign types that the Loveland code currently does not capture.

Additionally, the location or placement of temporary signs has become problematic. The code only allows temporary signs to be placed on signable walls or to extend no more than 20 feet from the front of a building. With certain types of signs, their designs are not capable of being attached to a building (i.e. temporary freestanding signs). There may be instances where a business wants to temporarily advertise for a sale but their building is setback from the street a substantial distance. With such a scenario, placing a temporary sign on the building may not be worthwhile as it cannot be seen. Consequently, other options are sought but cannot be accommodated because of current code provisions. When considering newer sign types and how they function, location becomes an important component to analyze.

- **Problems with enforcement** - Circumstances where a business/use is not in compliance with their permit or has not obtained a permit for temporary signs, has created enforcement difficulties. Loveland has nothing in place for enforcement specific to temporary signs. If any action is deemed necessary to address a temporary sign violation the Code Enforcement Division follows general guidelines which begin with verbal communication to a business owner. These verbal warnings are sometimes ignored. Subsequent measures that the City may follow include a court summons which is a more drastic approach especially when dealing with a temporary sign. Generally, the City is hesitant to resort to this approach unless there is a flagrant ongoing violation. Consequently, violations can often remain, resulting in continual clutter of temporary signage throughout the community. The intent behind the proposed amendments is to help keep enforcement manageable by means of incorporating more flexibility into temporary sign allowances (i.e. temporary signs not subject to a permit) while at the same time introducing requirements that establish a clearer approach in carrying out these provisions. Staff believes that such provisions will result in a more equitable treatment of violators.

B. Solutions

In an effort to find solutions to the issues described above, the proposed temporary sign amendments are being presented to:

- address issues relative to permit tracking by recommending a consecutive duration for permitted signs
- incorporate exemptions for specific temporary signs which are generally minor in nature
- provide allowances for a wider range of temporary sign types
- consider alternative allowances to the duration and location of temporary signs given special circumstances (i.e. new businesses or buildings which are not very visible from a public right-of-way).

To date, the proposed amendments have been presented to the Loveland Chamber of Commerce (Legislative Affairs Board) and posted on the City of Loveland website. In an effort to seek additional community feedback, this information has been provided to various organizations, clubs, citizens, etc. to assist in the decision making process with Planning Commission and City Council. Other means in trying to seek community feedback have been related to article briefs presented in the *Loveland Reporter Herald*. As mentioned above City Staff has also brought this information forward to local sign companies which manufacture these types of temporary signs. The feedback has been positive with very helpful comments restructuring these proposed amendments. Additionally, the Title 18 Committee is in full support of these amendments moving forward and therefore City staff is requesting Planning Commission review the information presented herein and make a recommendation to City Council.

V. RECOMMENDATION

Recommendation

City staff is recommending that Planning Commission recommend approval to City Council for the proposed Temporary Sign amendments presented in **Attachment 2** to this memorandum dated June 27, 2011.

18.50.020 Definitions.

As used in this chapter, the following words and phrases shall have the meanings set out in this section:

“Animated or flashing sign” means any sign or part of a sign which changes physical position by any movement or rotation, or which gives the visual impression of such movement by use of lighting, including blinking, chasing, scrolling or other animation effects, or signs which exhibit intermittent or sequential flashing of natural or artificial light or color effects. (Ord. 5431 § 1, 2009)

“Awning” means a framed exterior architectural feature which is attached to and supported from the wall of a building and/or held up by its own supports, and which is covered with canvas, fabric, or other similar material as its primary surface, and which provides or has the appearance of providing shelter from the elements to pedestrians, vehicles, property, or buildings.

“Awning sign” means a sign that is painted on or otherwise attached to an awning that is otherwise permitted by ordinance.

“Banner” means a sign which is constructed of cloth, canvas, or other type of natural or man made fabric, or other similar light material which can be easily folded or rolled, but not including paper or cardboard.

“Billboard, bench sign” or “off-premises sign” means a sign which directs attention to a business, product, service or entertainment conducted, sold or offered at a location other than on the premises on which the sign is located, but shall not include bus stop signs.

“Building frontage” means the side of the building which aligns with a street or parking lot.

“Building mounted sign” means any permanent sign fastened to or painted on any part of a building or structure in such a manner that the building is the supporting structure for or forms the background surface for the sign, including, but not limited to, wall signs, projecting signs, awning signs, and roof signs.

“Bus signs” means signs placed upon transit buses owned or operated by, or on behalf of the city pursuant to a written agreement with the city which sets forth the regulations for the size, content, placement, design and materials used for such signs. Bus signs shall not be considered “portable signs” as defined in subsection P.1. of this section.

“Bus stop signs” means signs located on benches or shelters placed in the public rights-of-way or in private property adjacent to public rights-of-way at a bus stop pursuant to a written agreement with the city which sets forth the regulations for the size, content, placement, design and materials used in the construction of said signs, benches and shelters.

“Business” means an activity concerned with the supplying and distribution of goods and services.

“Business premises” means the land, site, or lot at which, or from which, a business is principally conducted, including off-street satellite parking areas or vehicle storage areas which are approved by the City as an accessory use for the business.

“Business vehicle identification sign” means a sign which is permanently mounted or otherwise permanently affixed to a vehicle, trailer or semi-trailer and which identifies the business, products or services with which the vehicle, trailer or semi-trailer is related. For purposes of this definition, magnetic and adhesive signs shall be considered as being permanently affixed. Bumper stickers and similar size adhesive decals shall not be considered business vehicle identification signs.

“Canopy” means a framed accessory structure or exterior architectural feature which is attached

to and supported from a wall or held up by its own supports, which provides shelter from the elements to persons, vehicles, or property.

“Canopy sign” means a wall sign that is located on the roof, fascia, soffit, or ceiling of a canopy, and that is otherwise permitted by ordinance.

“Changeable copy sign” means a sign which displays words, lines, logos or symbols which can change to provide different information. Changeable copy signs include computer signs, reader boards with changeable letters and time and temperature units.

“Commemorative or memorial sign” means a sign, tablet or plaque commemorating or memorializing a person, event, structure or site.

“Construction sign” means a temporary sign erected on the premises on which construction, alteration or repair is taking place, during the period of active continuous construction, displaying the name and other relevant information about the project, and may include the names of the architects, engineers, landscape architects, contractors or similar artisans, and the owners, financial supporters, sponsors, and similar individuals or firms having a role or interest with respect to the structure or project. (Ord. 5207 § 12, 2007)

“Dissolve” means a mode of message transition on an electronic message sign accomplished by varying the light intensity or pattern, where the first message gradually and uniformly appears to dissipate and lose legibility simultaneously with the gradual and uniform appearance and legibility of the second message. (Ord. 5431 § 1, 2009; Ord. 5207 § 12, 2007)

“Election sign” means a non-illuminated sign relating to a candidate, issue, proposition, or other matter to be voted upon by the electors of the city. (Ord. 5440 § 1, 2009)

“Electronic Message Sign” means a sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means, including animated graphics and video. (Ord. 5431 § 1, 2009; Ord. 5207 § 12, 2007)

“Fade” means a mode of message transition on an electronic message sign accomplished by varying the light intensity, where the first message gradually and uniformly reduces intensity to the point of not being legible and the subsequent message gradually and uniformly increases intensity to the point of legibility. (Ord. 5431 § 1, 2009; Ord. 5207 § 12, 2007)

“Freestanding sign” means any non-movable sign not affixed to a building, and is not a portable sign.

“Governmental sign” means a sign erected and maintained by or on behalf of the United States, the state, the county or the city for the purpose of regulating traffic or for civic purposes.

“Hazardous sign” means a sign which by reason of inadequate maintenance, dilapidation, or obsolescence creates a hazard to public health, safety or welfare.

“Historic sign” means a sign which has been designated as historic as provided in subsection D of Section 18.50.150.

“Holiday decoration sign” means a temporary sign, in the nature of decorations, clearly customary and commonly associated with federal, state, local or religious holidays and contains no commercial message.

“Horizontal Profile” means a sign profile where the width of the sign is a minimum of 50% greater than the height of the sign. (Ord. 5431 § 1, 2009; Ord. 5207 § 12, 2007)

“Identification sign” means a sign giving only the nature, logo, trademark or other identifying symbol, address, or any combination of the name, symbol and address of a building, business, development or establishment.

“Illegal sign” means any sign which was erected without a sign permit in violation of any of the

ordinances of the city governing the same at the time of its erection and which sign has not been in conformance with such ordinances, including this code, and which shall include signs which are posted, nailed or otherwise fastened or attached to or painted upon structures, utility poles, trees, fences or other signs.

“Indirect lighting” means a source of external illumination of any sign.

“Information Sign” means a sign which directs or regulates pedestrians or vehicle traffic within private property and includes information of a general directive or informational nature such as no parking, disabled parking, loading area, self-service, and rest rooms; which bears no advertising matter, and does not exceed two square feet of sign area per face.

“Joint identification sign” means a sign which serves as a common or collective identification for two or more uses on the same premises.

“Leading edge” means the point of a sign, including the sign support structure, closest to the public right-of-way.

“Legal nonconforming sign” means any sign for which a sign permit was issued and said sign was lawfully erected and maintained prior to the enactment of this chapter and any amendments thereto and which does not conform to all the applicable regulations and restrictions of this code and any amendments thereto.

“Light bulbs” means incandescent bulbs used on a business or commercial premise and not a residential premise. This does not include holiday decorative lights.

“Logo” means, for the purposes of this chapter only, a symbol, image, insignia, word, word abbreviation, or initials which is designed for easy recognition, and which represents or identifies in graphic form, a nation or organization of nations, states or cities, or fraternal, religious and civic organizations or any educational institutions, irrespective of whether they are made of permanent, semi-permanent, or temporary materials.

“Menu board sign” means a wall or freestanding sign which lists the foods or other products available at drive-through facilities.

“Module” means a self-contained message component which is an integral part of a sign.

“Multi-tenant center” means one or more buildings, located on a single premise, containing two or more separate and distinct businesses or activities which occupy separate portions of the building with separate points of entrance, and which are physically separated from each other by walls, partitions, floors or ceilings.

“Nameplate sign” means a sign, located on the premises, giving only the name or address, or both, of the owner or occupant of a building or premises.

“Nonbacked or individual letter sign” means a wall sign consisting of individual letters, script or symbols without background other than a wall of a building or other structure.

“Noncommercial sign” means a sign which has no commercial content.

“Off-premises Sign.” See “Billboard, bench sign.”

“Portable sign” means a sign that is designed to be easily transportable, including but not limited to signs designed to be displayed while mounted or affixed to the trailer by which it is transported, or with wheels remaining otherwise attached during display; signs mounted on transportable frames with wheels removed; signs attached or affixed to a chassis or other moveable support constructed without wheels; signs designed as, or converted to, A-frame or Tframe

signs; signs attached temporarily to the ground, a structure, or other signs; signs mounted on a vehicle and visible from the public right-of-way, including business vehicle identification

signs; sandwich boards; and hot air or gas filled balloons which are not designed or approved for navigable flight.

“Premises” means an area of land occupied by the buildings or other physical uses which are an integral part of the activity conducted upon the land and such open spaces as are arranged and designed to be used in conjunction with that activity.

“Private sale or event sign” means a sign advertising a private sale of personal property such as a house sale, garage sale, rummage sale and the like.

“Project marketing sign” means a sign that is placed at one or more key locations within a project, which identifies the project and offers for sale, as part of the original marketing of the project, the lots, tracts, structures or units within the project.

“Projecting sign” means a sign that is wholly or partly dependent upon a building for support and which projects horizontally more than fifteen inches from such building.

“Real estate model home sign” means a sign identifying a model home and/or a temporary real estate sales office. (Ord. 5440 § 1, 2009)

“Real estate open house sign” means a sign indicating that a building or portion of a building is available for inspection by prospective buyers or renters. (Ord. 5440 § 1, 2009)

“Real estate sign” means a sign indicating only the availability for sale, rent or lease of a specific parcel, building or portion of a building and name, address and telephone number of owner or listing of real estate broker.

“Residential zoning district” means a property having one of the following Title 18 zoning designations: ER, R1e, R1, R2, R3e, R3 or a property zoned PUD where the property is designated exclusively for residential use by an approved site specific development plan. (Ord. 5440 § 1, 2009)

“Residential, commercial and industrial development identification sign” means a sign identifying only the name of a residential, commercial or industrial complex.

“Residential premise” means a lot or parcel of land containing a home or building used for dwelling purposes provided that the land is zoned for such use.

“Roof sign” means a sign any portion of which projects above the top of the wall of a building, or is mounted on the roof of a building.

“Searchlight.” See “Animated or flashing sign.”

“Sign” means any object, device, or structure, or part thereof, situated outdoors or indoors, which is visible beyond the boundaries of the premises upon which it is located, and which advertises, identifies, directs or attracts the attention of the public to a business, institution, product, organization, event or location by any means, including, but not limited to, words, letters, graphics, fixtures, symbols, colors, motion, illumination and projected images.

“Sign face” means the area of a sign upon or through which the message is displayed.

“Sign structure” means and includes all supports, braces or other framework of a sign.

“Signable wall” means a wall of a building which is visible from a street, parking area or other public or private way.

“Street frontage” means a property line which abuts a public right-of-way that provides public access to or visibility to the premises.

“Temporary sign” means a sign which, due to the materials used; the method, manner or location of display; or the method of operation for display; is suited only for brief display, including, but not limited to, those signs regulated under section 18.50.070 of this title.

“Top of wall” means the uppermost point of the vertical exterior surface of a building wall,

excluding parapet wall in which case the top of wall shall be the top of the parapet wall or three feet above the roof, which ever is less.

“Vehicular Sign.” See “Portable sign.”

“Wall sign” means a sign fastened to or painted on a wall of a building or structure in such a manner that the wall is the supporting structure for, or forms the background surface of the sign and which does not project more than fifteen inches from such building or structure.

“Window sign” means a sign that is applied to or attached to the exterior or interior of a window or located in such manner within a building that it is visible from the exterior of the building through a window, but excludes merchandise in a window display. (Ord. 5283 § 1, 2008; Ord. 4779 § 4, 2003; Ord. 4254 § 1 (part), 1997; Ord. 4219 § 1 (part), 1996; Ord. 4185 § 1 (part), 1996; Ord. 4089 §§ 1, 2, 1995; Ord. 3711 § 2, 1991; Ord. 3631 § 1, 1989; Ord. 3609 § 1 (part), 1989)

18.50.070 Temporary signs.

- A. The following objects and devices are hereby declared to be temporary signs, subject to the following requirements and limitations. Only the following temporary signs are allowed:
1. Portable Signs: The following portable signs are allowed when used in conjunction with a legal business provided that not more than two types of portable sign may be used at one time and that the cumulative total time for all portable signs for each business does not exceed 60 days per calendar year:
 - a. Balloons and other types of lighter than air objects, which have no linear dimension greater than 2 feet.
 - b. Pennants, valances, or wind powered devices.
 - c. Banner or banners which do not cumulatively exceed 100 square feet in total sign area.
 2. Light bulbs: Light bulbs are allowed when used in conjunction with a temporary use and their use does not exceed 60 days per calendar year.
 3. Large Balloons: Balloons and other types of lighter than air objects which have a dimension greater than 2 feet and are secured to the property shall only be allowed for a maximum of 7 days for special events such as circuses, carnivals, festivals, grand openings and other similar events. Large balloons for special events are allowed provided that they are used only once every six months.
 4. Searchlights: Searchlights shall be allowed for a maximum of 3 days per calendar year.
- B. Location. All temporary signs allowed pursuant to Section 18.50.070 A.1.a. through c. shall be located only on a signable wall which adjoins the portion of the building occupied by the business with which the temporary sign is associated and shall not extend more than 20 feet from the front of the building or over any vehicular way or parking area. Any temporary sign located over a public walk-way shall have a minimum clearance of 8 feet. Balloons as defined in this Section 18.50.070 are allowed to extend a maximum of 8 feet over the top of a wall or parapet.
- C. Maintenance: All temporary signs shall be kept neatly finished and repaired, including all parts and supports. The Building Official and/or an authorized representative shall inspect and shall have authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

D. Permits: All portable signs as defined in Section 18.50.070 A.1.a through c. and 18.50.070 A.3. and A.4. shall require a permit issued by the Building Division. Permit cards shall be displayed at the business with which the sign is associated until the permit expires or the temporary sign is removed. (Ord. 4254 § 1 (part), 1997; Ord. 4221 § 1 (part), 1996; Ord. 4185 § 1 (part), 1996; Ord. 4089 § 5, 1995; Ord. 3776 § 2, 1991; Ord. 3703 § 1, 1990; Ord. 3609 § 1 (part), 1989)

18.50.170 Enforcement, legal procedures and penalties.

It shall be unlawful for any person to erect, maintain, or allow upon any property over which they own, manage, lease or control, any sign which is not permitted pursuant to the provisions of this sign code. Enforcement, legal procedures and penalties shall be in accordance with Chapter 18.68 of this title. Additionally, unauthorized signs on public property may be confiscated by the city and held pending notification of the owner by the city. The owner may obtain said signs from the city manager upon payment of a confiscation and storage charge in an amount established by the city council. For the purposes of the enforcement of this chapter, the Building Official and his or her designee is authorized and duly appointed to issue summonses and complaints and penalty assessment notices for a violation of this chapter only. (Ord. 4089 § 6, 1995; Ord. 3788 § 2, 1991)

Chapter 18.50.020 Definitions

“Temporary sign” means a sign which, due to the materials used; the method, manner or location of display; or the method of operation for display; is suited only for brief **occasional, seasonal, or special event** display, including, but not limited to, those signs regulated under section 18.50.070.

“Balloon” means an airtight bag or membrane which is inflated with air or a lighter than air gas typically intended to rise or float above the ground.

“Flag/flying banner” means a type of temporary sign consisting of cloth, bunting, canvas or similar fabric, attached to a single vertical staff support structure with distinctive colors, patterns or symbolic logos for display.

“Pennant/valance” means a type of temporary sign consisting of fabric, plastic, or metal strand drapery with distinctive colors, patterns, symbolic logos, or a series of narrow tapering flags for display.

"Temporary construction fence sign" means a temporary sign affixed to or incorporated into a construction fence for displaying advertisements, messages, logos, illustrations, and graphics related only to the associated property under construction.

“Temporary event sign” means a temporary sign advertising a community event sponsored by a governmental entity or not-for-profit entity that is limited only to one type of temporary sign that may include either a banner, balloon, flag/flying banner, or pennant/valance.

Chapter 18.50.070 Temporary signs.

- A. The following objects and devices are hereby declared to be temporary signs, subject to the following requirements and limitations. Only the following temporary signs are allowed:
- 1. Portable Signs: The following portable signs are allowed when used in conjunction with a legal business provided that not more than two types of portable sign may be used at one time and that the cumulative total time for all portable signs for each business does not exceed 60 days per calendar year:
 - a. Balloons and other types of lighter than air objects, which have no linear dimension greater than 2 feet.
 - b. Pennants, valances, or wind powered devices.
 - c. Banner or banners which do not cumulatively exceed 100 square feet in total sign area.
 - 2. Light bulbs: Light bulbs are allowed when used in conjunction with a temporary use and their use does not exceed 60 days per calendar year.
 - 3. Large Balloons: Balloons and other types of lighter than air objects which have a dimension greater than 2 feet and are secured to the property shall only be allowed for a maximum of 7 days for special events such as circuses, carnivals, festivals, grand openings and other

~~similar events. Large balloons for special events are allowed provided that they are used only once every six months.~~

~~4. Searchlights: Searchlights shall be allowed for a maximum of 3 days per calendar year.~~

A. Purpose.

- 1. Temporary sign regulations are established to provide businesses and non-residential uses with the opportunity to advertise occasional, seasonal, or special events. These regulations are intended to control the visual impacts to the community of such advertisements, and to provide consistency with the spirit and intent of this title and the vision statements of the Comprehensive Plan. Temporary signs shall under no circumstance be substituted for permanent signage or be situated to screen permanent signage on an adjacent lot or premise. These temporary sign provisions shall only apply to businesses and non-residential uses.**

~~B. Location. All temporary signs allowed pursuant to Section 18.50.070 A.1.a. through c. shall be located only on a signable wall which adjoins the portion of the building occupied by the business with which the temporary sign is associated and shall not extend more than 20 feet from the front of the building or over any vehicular way or parking area. Any temporary sign located over a public walk-way shall have a minimum clearance of 8 feet. Balloons as defined in this Section 18.50.070 are allowed to extend a maximum of 8 feet over the top of a wall or parapet.~~

B. Temporary signs subject to a permit.

- 1. For all businesses and non-residential uses, the following sign types are permissible:**
 - a. Banners**
 - b. Balloons**
 - c. Pennants/valances**
 - d. Flags/flying banners**
 - e. Any sign device which operates from an external power source including but not limited to searchlights, balloons, and animated signs**
- 2. Permit and duration.**
 - a. All permissible temporary signs as specified in Section 18.50.070.B.1 shall require the approval of a temporary sign permit application by the building division.**
 - b. Temporary sign permit applications shall be made in increments of fifteen (15) consecutive days. A maximum of four (4) temporary sign permits may be issued to an individual business or non-residential use per calendar year and may be approved in succession. The maximum cumulative display for all permitted temporary signs shall not exceed sixty (60) days per calendar year unless a variation is approved under Section 18.50.070.E.**

3. Number.

- a. No more than two (2) of the sign types specified in Section 18.50.070.B of this chapter shall be permitted on a lot or premise for an individual business or non-residential use.

4. Sign Area and Location.

a. **Banners:** A banner or banners must not cumulatively exceed one-hundred (100) square feet in total sign area and shall only be attached to an exterior building wall. All portions of such banner(s) shall be in contact with the building wall, and shall not flap, extend beyond the wall nor be fastened to support structures.

b. **Balloons:** Except as allowed in Section 18.50.070.D.1.a., Balloons shall not exceed a maximum dimension of ten (10) feet, inclusive of a base. Attaching Balloons to tethers is permitted providing the tether is no greater than fifteen (15) feet in length. Balloons must be secured to a building (including but not limited to roof, parapet, or façade), structure, stable object, or the ground and shall not extend beyond the boundaries of the lot or premise. Balloons shall not be attached to trees or shrubs planted within the lot or premise.

c. **Pennants/valances:** A single pennant/valance strand shall not exceed fifty (50) feet in length. Each pennant/valance strand must be secured to a building, structure, stable object, or the ground at both ends. pennant/valance strands shall not be attached to trees or shrubs planted within the lot or premise.

d. **Flags/flying banners:** Except as allowed in Section 18.50.070.D.1.b., each flag/flying banner shall not exceed twenty-five (25) feet in height inclusive of the staff or support structure and seventy-five (75) square feet in size. Flags/flying banners are to be attached to a single vertical staff support structure only. The support structure may be mounted securely to a building, structure, stable object, or the ground. Flags/flying banners shall not extend beyond the boundaries of the lot or premise. Flags/flying banners shall not be attached to trees or shrubs planted within the lot or premise.

e. **Sign devices operated from an external power source:** Sign devices operated from an external power source shall comply at all times with the city's noise ordinance. These types of temporary signs shall be secured to the ground and limited to twenty-five (25) feet in height providing they do not extend beyond the boundaries of the lot or premise. The lighting component for searchlights must be projected upward so as not to diminish public safety and welfare.

5. Lighting.

- a. Temporary signs may only be illuminated indirectly by means of a separate light source (excluding Searchlights). It shall be demonstrated that no off-site impacts associated to glare will occur by indirectly illuminating a temporary sign. The light source shall also comply with applicable

provisions of the *City of Loveland Site Development Performance Standards and Guidelines.*

~~C. Maintenance: All temporary signs shall be kept neatly finished and repaired, including all parts and supports. The Building Official and/or an authorized representative shall inspect and shall have authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.~~

C. Maintenance.

- 1. All temporary signs shall be kept neatly finished and repaired, including all parts and supports. The Building Official and/or an authorized representative shall inspect and shall have authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.**

~~D. Permits: All portable signs as defined in Section 18.50.070 A.1.a through c. and 18.50.070 A.3. and A.4. shall require a permit issued by the Building Division. Permit cards shall be displayed at the business with which the sign is associated until the permit expires or the temporary sign is removed. (Ord. 4254 § 1 (part), 1997; Ord. 4221 § 1 (part), 1996; Ord. 4185 § 1 (part), 1996; Ord. 4089 § 5, 1995; Ord. 3776 § 2, 1991; Ord. 3703 § 1, 1990; Ord. 3609 § 1 (part), 1989)~~

D. Temporary Signs not subject to permit.

- 1. The following temporary signs shall not require a permit and shall not be limited in number or duration upon a lot or premise associated to a business or non-residential use, unless specified otherwise. Internal or external illumination for these specific signs shall be strictly prohibited.**
 - a. Balloons having a maximum dimension no greater than two (2) feet;**
 - b. Flags/flying banners placed within a lot or premise, providing no more than four (4) are installed and each does not exceed a maximum of ten (10) feet in height and twenty (20) square feet in size;**
 - c. Temporary construction fence sign as defined in Section 18.50.020, provided the sign does not extend above the fence;**
 - d. Temporary event sign as defined in Chapter 18.50.020 subject to Section 18.50.070.B.4. and limited to a duration of no more than five (5) days;**
 - e. Portable signs as defined in this chapter limited only to a-frame or t-frame signs which do not exceed six (6) square feet and have a maximum height of four (4) feet. These portable signs shall be located within ten (10) feet of the business entrance and allow for a minimum unobstructed access width of five (5) feet along all sidewalks. For the purpose of this section, portable a-frame or t-frame signs shall not be placed in public right-of-way; and**

f. Any signage device similar to those described in items a. through e. above if so determined by the Current Planning Manager.

E. Administrative Allowances.

1. Variations from these temporary sign provisions relating to the duration and location may be provided by the Current Planning Manager. Such variations can only be provided to businesses operating at a new location for less than six (6) months or for businesses which have poor visibility from the street. To obtain a variation, the applicant must make a written request and demonstrate that:

- a. A substantial hardship exists in carrying out the provisions of this Chapter; and**
- b. The spirit and intent of this chapter will be secured in granting a variation.**

2. Variations will be considered on a case-by-case basis. The Current Planning Manager may impose conditions that ensure the intent of this chapter is maintained. Appeal of the Current Planning Manager’s decision shall follow the procedures outlined in Chapter 18.80 of the Loveland Municipal Code.

F. Enforcement.

1. Any unauthorized deviation from this chapter shall be subject to the enforcement, legal procedures and penalties as described in Chapter 18.50.170.

18.50.170 Enforcement, legal procedures and penalties.

It shall be unlawful for any person to erect, maintain, or allow upon any property over which they own, manage, lease or control, any sign which is not permitted pursuant to the provisions of this sign code. Enforcement, legal procedures and penalties shall be in accordance with Chapter 18.68 of this title. Additionally, unauthorized signs on public property may be confiscated by the city and held pending notification of the owner by the city. The owner may obtain said signs from the city manager upon payment of a confiscation and storage charge in an amount established by the city council. For the purposes of the enforcement of this chapter, the Building Official and his or her designee is authorized and duly appointed to issue summonses and complaints and penalty assessment notices for a violation of this chapter ~~only~~. (Ord. 4089 § 6, 1995; Ord. 3788 § 2, 1991)

Troy Bliss

m: cj_luke@msn.com on behalf of CJ Luke <connie@highimpact-signs.com>
Sent: Monday, June 20, 2011 9:04 AM
To: Troy Bliss
Subject: RE: City of Loveland Proposed Temporary Sign Amendments

Looks good, Troy. Thanks for the opportunity to provide input.

Connie Luke
 High Impact Signs & Graphics
 1546 Taurus Court
 Loveland, CO 80537
www.highimpact-signs.com
 Ph 970.278.9980

From: blisst@ci.loveland.co.us
To: connie@highimpact-signs.com; dezender@mesanetworks.net; aero@aerographics.com; firststreetsigns@comcast.net; marylee@mountainstatesta.com
Date: Fri, 17 Jun 2011 16:44:41 -0600
Subject: City of Loveland Proposed Temporary Sign Amendments

Greetings,

Thank you all for taking the time to speak with me over the phone a few days ago. I certainly appreciate you all providing me your contact information in an effort to share with you the attached amendments to the City of Loveland Municipal Code the Current Planning Division has been working on relative to Temporary Signs. Please note these proposed amendments only focus on Temporary Signs (Chapter 18.50, Section 18.50.070 of the Loveland Municipal Code). These proposed amendments will be presented to our Planning Commission on June 27, 2011 at 6:30 p.m. in the City Council Chambers of the Municipal Complex located at 500 East Third Street. I welcome any feedback and comments from you all prior to this meeting. They can be sent to me directly if you would like. Also, you are certainly welcome to attend the Planning Commission hearing should you wish to share with the Commissioner's any thoughts or just participate in the process. If there are any questions please do not hesitate to contact me. Again thank you, your professional expertise on this topic is much appreciated in our efforts towards implementing amendments to the Temporary Sign regulations.

Troy Bliss
 Senior Planner
 Current Planning
 Development Services
 City of Loveland
 (970) 962-2522
blisst@ci.loveland.co.us

Troy Bliss

From: Doug Zender <dezender@mesanetworks.net>
Sent: Saturday, June 18, 2011 10:16 AM
To: Troy Bliss
Subject: Re: City of Loveland Proposed Temporary Sign Amendments

Hey Troy,

Thank you for sending proposed changes to the sign code. After having read through the information, I have a question that was not addressed. On numerous occasions, I've produced banners for customer pick-up... they install it & maintain it... do I suffer consequences of their failure to follow the code? Since I am a sign guy, not a policeman or code enforcement officer, I don't feel an obligation to babysit them... how will this kind of thing be handled? Is it not, then, their responsibility to pull permits & meet code requirements? In these cases, I usually have never even been to their property nor seen the application of the sign or where or how it is affixed... is there some sure criteria for this?? It would seem to me, that, once the thing leaves my shop, it is the property of my client & his responsibility to deal w/ the legalities.... is this the case, or no?? At this point I'm not sure what to advise such a customer. Is there any kind of provision anticipated? I am personally not too fond of banners or many other temporary type signs, since their tendency is, over time, to look a bit shabby, but also have to make a living, so try to serve my customers as best I can w/o side-stepping the law. I appreciate your efforts to keep signage in a reasonable visual realm since I believe all signs should have some aesthetic appeal in their surroundings & I anticipate your positive response regarding this issue... Thanks,

Doug Zender
 A to Z Unlimited
 4469 West Eisenhower Blvd.
 Loveland, Colorado 80537
 Phone: 970-669-8303

----- Original Message -----

From: Troy Bliss
To: 'connie@highimpact-signs.com'; 'dezender@mesanetworks.net'; 'aero@aerographics.com'; 'firststreetsigns@comcast.net'; 'marylee@mountainstatesta.com'
Sent: Friday, June 17, 2011 4:44 PM
Subject: City of Loveland Proposed Temporary Sign Amendments

Greetings,

Thank you all for taking the time to speak with me over the phone a few days ago. I certainly appreciate you all providing me your contact information in an effort to share with you the attached amendments to the City of Loveland Municipal Code the Current Planning Division has been working on relative to Temporary Signs. Please note these proposed amendments only focus on Temporary Signs (Chapter 18.50, Section 18.50.070 of the Loveland Municipal Code). These proposed amendments will be presented to our Planning Commission on June 27, 2011 at 6:30 p.m. in the City Council Chambers of the Municipal Complex located at 500 East Third Street. I welcome any feedback and comments from you all prior to this meeting. They can be sent to me directly if you would like. Also, you are certainly welcome to attend the Planning Commission hearing should you wish to share with the Commissioner's any thoughts or to participate in the process. If there are any questions please do not hesitate to contact me. Again thank you, your professional expertise on this topic is much appreciated in our efforts towards implementing amendments to the Temporary Sign regulations.

Troy Bliss
Senior Planner
Current Planning
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City of Loveland
(970) 962-2522
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**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
August 8, 2011**

The meeting of the City of Loveland Planning Commission was held in the City Council Chambers on August 8, 2011 at 6:30 p.m. Members present: Chair Molloy; Vice Chair Meyers; and Commissioners Crescibene, Middleton, Dowding and Leadbetter. Commissioners Absent: Krenning, Ray and Fancher. City Staff present: Troy Bliss, Current Planning; Brian Burson Current Planning; Robert Paulsen, Current Planning Manager; Sunita Sharma, Assistant City Attorney.

These minutes are a general summary of the meeting. For more detailed information, the audio and videotapes are available for review in the Community Services office.

STAFF MATTERS

Assistant City Attorney Judy Schmidt briefly introduced herself to the Planning Commission explaining that she would soon be assuming the duties of Assistant City Attorney that Ms. Sharma has been performing. She indicated that the change is simply an ongoing effort within the City Attorney's Office to cross-train and work with other city departments and the various boards and commissions.

Robert Paulsen, Current Planning Manager, reported that he provided the Commission with a memorandum regarding the Comprehensive Plan update. He stated that ten (10) revised and consolidated objectives have been identified and he asked the Planning Commission to review the objectives prior to the discussion at the August 22, 2011 Planning Commission Meeting.

APPROVAL OF MINUTES

Commissioner Meyers made a motion to adopt the June 27, 2011 meeting minutes. Upon a second by Commissioner Dowding the motion was unanimously adopted. Commissioner Crescibene abstained.

After a brief discussion regarding the lack of a quorum at the July 25, 2011 Planning Commission meeting, **Assistant City Attorney Sunita Sharma** reported there were no minutes from July 25, 2011 to approve, as no action other than continuance of agenda items was taken.

COMMITTEE REPORTS

Vice Chair Meyers stated that the Title 18 Committee will not meet in August and the items before the Commission are the items that they have been working on.

CONSENT AGENDA

1. Lee Farm 1st Subdivision

SUMMARY OF AGENDA ITEM: Consideration of a request for a two year extension for the approval of the Lee Farm 1st Subdivision preliminary plat, consisting of 246.86 acres. The preliminary plat was originally approved by the Planning Commission on August 23, 2010.

With the original approval of the related Lee Farm 1st Subdivision PUD Preliminary Development Plan, vested rights were acquired, assuring the validity of the PDP for three years. Since the preliminary plat and PDP are interrelated, it is appropriate to grant validity to the preliminary plat for the same length of time.

This application involves administrative action by the Planning Commission. Absent an appeal, the Planning Commission's action is final.

Commissioner Middleton made a motion to approve the Consent Agenda. Upon a second by Commissioner Crescibene the motion was unanimously adopted.

REGULAR AGENDA

1. Amendments to Title 18 Regarding Signs Not Subject to Permit-Exempt Signs and Project Marketing Signs.

SUMMARY OF AGENDA ITEM: This is a public hearing to consider the proposed amendments to Title 18 which are focused on the City's exempt sign and project marketing sign provisions. The amendments are considered minor and are associated with the larger set of Temporary Sign amendments reviewed and recommended for approval by the Planning Commission on June 27, 2011.

Troy Bliss, Project Planner, gave a staff presentation on this item. He reported that staff had initiated some minor adjustments to the signage provisions for government flags and real estate marketing signs following the July 25, 2011 Planning Commission hearing. These adjustments responded to issues raised during the discussion of Temporary signs.

He stated that the proposed amendments are to the City's exempt and project marketing sign provisions, specifically structured in three main areas of focus:

- Expanding and clarifying the use of flags as exempt forms of signs;
- Providing greater allowances for real estate marketing and advertisement needs specifically relating to flying banners-type signs; and
- Allowing a longer duration period for the use of project marketing signs for new residential developments.

He reported that these amendments were presented to the Title 18 Committee on July 14 and received full support of the Committee. He stated that with the Planning Commission's review of these amendments, staff intends to incorporate them into the Temporary Sign amendments when they are presented to the City Council in early September.

Vice Chair Meyers thanked staff for their patience and flexibility in accommodating real estate and business owners. He stated he fully supported the item.

Commissioner Dowding stated that at the June 27, 2011 meeting the Planning Commission supported provisions to accommodate flying banners that were 13 foot high with a total of 25 square feet in area. She questioned why the new amendment specifies a maximum width allowances rather than a square footage limit; she suggested that the standards be consistent on all temporary signage.

Mr. Bliss concurred that the width limitation was not specified in the original Temporary Sign amendments. He clarified that in the new amendments staff is specifying a width of 4 feet, not a specific square footage limitation on the size of the banner.

Vice Chair Meyers he stated that there is no industry standard and that all signs are custom made.

Mr. Bliss clarified that the Commission approved a maximum height of 13 feet and maximum square footage allowance of 25 square feet for flying banners used in commercial applications; he further stated that staff had not specified a width limit. He asked if the Commission would like to keep the height to 13 feet with the maximum width of 25 square feet.

Commissioner Dowding asked if the Commission was comfortable with maintaining a different standard for business and real estate signs.

Vice Chair Meyers reemphasized there are no industry standards for the tear drop banners and that the temporary signs for businesses have already been determined, and for clarification the Commission is only looking at temporary real estate signs. He stated that most signs made are customized.

Mr. Bliss stated staff's intent is to allow a height and width standard for residential banners, vs. the commercial provisions that only identify height and square footage. He further commented that commercial businesses are allowed to have four (4) banners (approx. 100 square ft.) without a permit, and residential banners are limited to two (2) banners and when the height and width is calculated it is approximately the same in square footage.

Vice Chair Meyers, after alluding to the previous hearing, commented that he would not support the 4 foot width and stated that he would support what was approved at the hearing on June 27, 2011.

Assistant City Attorney Sharma noted that she believed that there was an error in the minutes of the June 27, 2011 hearing that were previously adopted. She stated that she believed that the intent of the Commission was for flying banners to be limited to 25 square feet in total area and that the reference in the minutes to “width” was incorrect.

PUBLIC COMMENT

There was no public comment.

Upon closing the public comment portion of the hearing, there was a discussion involving several Commissioners to the effect that the amendment regarding flying banners should include a height limit of 13 feet, a width limit of 4 feet, and a square footage limit of 25 feet for each flying banner type sign. This position appeared to represent a consensus of the Commission.

Vice Chair Meyers made a motion to recommend that City Council approve the amendments to Title 18 regarding signs not subject to permit-exempt signs and project marketing signs as described in the August 8, 2011 Planning Commission staff report, as amended on the record, and to authorize the City Attorney’s Office to correct spelling, punctuation, and clerical and typographical errors, and make other such modifications in form, but not substance, as necessary to effectuate the purposes of the recommended amendments. Upon a second by Commissioner Leadbetter the motion was unanimously adopted.

2. Amendments to Title 18 to allow small wind energy systems (wind turbines) on residential properties

SUMMARY OF AGENDA ITEM: This is a public hearing to consider amendments to Title 18 of the City of Loveland Municipal Code to allow small wind energy systems, (small wind turbines) on all residential properties in the City, subject to specific standards and process. Small wind energy systems could be either building-mounted or freestanding. Small wind turbines that fully comply with all of the specific standards would be a use-by-right as an accessory use. Small wind turbines that do not fully comply with all of the specific standards would be a use-by-special review. If approved as a use-by-special review, the small wind energy system would still be deemed as an accessory use.

Brian Burson, Project Planner, gave a brief history and staff report on this item. He commented that information from the American Wind Energy Association was very helpful in guiding staff in drafting the proposed regulations. He stated that the majority of the sources that staff utilized in developing the regulations encouraged the removal of regulatory obstacles in making allowances for small wind energy systems.

Mr. Burson commented that Loveland is considered to be a poor wind generating community (it is located in an area which has relatively low potential for wind power generation) and the amount of energy that could be generated would be used for limited functions; however, future technological advancements could although with on-going technology staff believes that could change. He reported that the majority of the small-scale wind generators come in a kit and can be mounted on a pole or a roof. He stated that the wind systems can be purchased in numerous

places and that the purchaser or a contractor can mount them. He stated that the manufacturers generally provide devices that are designed and stamped by an engineer; the proposed regulations do not require that a Colorado PE stamp the plans for such units. . He stated that the installation of turbines, whether pole or roof-mounted, would be subject to applicable building codes and inspections.

He outlined the proposed standards as follows:

- Limit of one per property, with a maximum rating of 10 kilowatts;
- Limit the height to 10 feet above the ridge line of the roof or 35 feet from grade for freestanding;
- Require appropriate distances from all property lines and all overhead utility lines to limit the impacts and prevent damage to other property and improvements;
- Minimize visual impacts by requiring neutral or muted colors, minimizing guy wires, and prohibiting signs and lights on the devices or towers;
- Assure compliance with the existing noise ordinance for residential properties.

Mr. Burson noted that under the recommended motion, a reference was made to Attachment #3; the reference should read Attachment #2. He concluded by stating that staff is requesting that small wind power generators be allowed as uses by right on all residential properties.

Commissioner Crescibene stated he did not support the proposed amendments and felt that that the small wind turbines would be an eye sore and create visual clutter. He questioned their benefit if Loveland is not in an area that produces a sufficient amount of wind and stated he was opposed to allowing them to be in the City limits, specifically not in a residential area.

Vice Chair Meyers commented that he felt it was important to allow citizens a choice on whether they want to use this type of alternative energy. He spoke of the advances in technology that have recently occurred, stating that there are bladeless generators that can operate with winds of 5 miles per hour.

Mr. Burson responded to a question from Commissioner Middleton, and clarified that a building permit would be required.

Commissioner Middleton stated he supported the amendment and felt that we were behind the green power curve on the alternative power issue in the United States.

Commissioner Dowding stated she support the proposed amendment but expressed concerns that it may potentially create a battleground with Homeowner's Associations.

Commissioner Crescibene commented that due to federal regulations any issue regarding energy supersedes any regulations that a Homeowner's Association may have.

Mr. Burson clarified that the Colorado State Legislature passed legislation that prohibits Homeowner's Associations from denying the generators, but stated they can control how they look and where they are located.

Commissioner Leadbetter stated that he is not a proponent of seeing these generators going up, but he believed there is a need for this type of alternative energy and that it is necessary to have regulations in place. He clarified that his concern was that there be a permitting process to make sure that they are properly erected and that the mounting should be stamped by a local engineer.

Chair Molloy commented that currently the generators may not produce much electricity but believed with time and with advances in technology they will become more efficient. He stated that a reduction in energy usage was a benefit to the community.

PUBLIC COMMENT

There was no public comment.

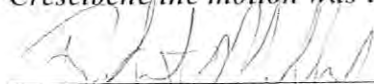
Commissioner Middleton made a motion to recommend the City Council approve the amendments to Title 18 of the Loveland Municipal Code, as set forth in Attachment #2 of the attached Planning Commission staff memorandum, dated July 25, 2011, as amended on the record, and to authorize the City Attorney's Office to correct spelling, punctuation, and clerical and typographical errors, and make other such modifications in form, but not substance, as necessary to effectuate the purposes of the recommended amendments. Upon a second by Vice Chair Meyers the motion was adopted 5-1 (Commissioner Crescibene voting Nay).

(Secretary's note: There was a brief recess)


Vice Chair Meyers made a motion to redact his previous motion to approve the June 27, 2011 meeting minutes. Upon a second by Commissioner Middleton the motion was unanimously adopted.

ADJOURNMENT

Commissioner Middleton made a motion to adjourn. Upon a second by Commissioner Crescibene the motion was unanimously adopted.



 Rob Molloy, Chair



 Vicki Mesa, Secretary



Development Services Current Planning

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ITEM NO:	1 – Regular Agenda
PLANNING COMMISSION MEETING:	August 8, 2011
<hr/>	
TITLE:	Amendments to Title 18 regarding signs not subject to permit-exempt signs and project marketing signs.
LOCATION:	City-wide
APPLICANT:	City of Loveland, Current Planning Division
STAFF CONTACT:	Troy Bliss
APPLICATION TYPE:	Amendments to Title 18 of the Loveland Municipal Code
ACTION:	Recommend for adoption by City Council
STAFF RECOMMENDATION:	<i>Move to recommend that City Council approve the amendments to Title 18 regarding signs not subject to permit-exempt signs and project marketing signs as described in the August 8, 2011 Planning Commission staff report, as amended on the record, and to authorize the City Attorney's Office to correct spelling, punctuation, and clerical and typographical errors, and make other such other modifications in form, but not substance, as necessary to effectuate the purposes of the recommended amendments.</i>

I. ATTACHMENTS

1. Proposed Amendments to the Loveland Municipal Code, Title 18, Chapter 18.50.050 (Signs not subject to permit-exempt signs) and 18.50.085 (Project marketing signs).

II. SUMMARY

The proposed amendments to Title 18 are focused around the City's exempt and project marketing sign provisions, specifically structured in three main areas of focus:

- Expanding and clarifying the use of flags as exempt forms of signs;
- Providing greater allowances for real estate marketing and advertisement needs specifically relating to flags/flying banners; and
- Allowances for new developments under construction to maintain longer durations for keeping project marketing signs.

The amendments described above are considered minor amendments associated with the larger set of Temporary Sign amendments reviewed and recommended for approval by the Planning Commission on June 27, 2011. Work on the three amendments was prompted as follows:

- 1) Concerns expressed by Planning Commissioners regarding the limitation on the display of government flags (the current code limit being three) as specific in the sign provisions of the code.
- 2) Concerns expressed by development community representatives following the Planning Commission's June 27, 2011 hearing on Temporary signs relating to the marketing of real estate.

The amendments were presented to the Title 18 Committee on July 14th and received full support of the Committee. Following the Planning Commission's review of these amendments, staff intends to incorporate these amendments into the Temporary Sign amendments when they are presented to the City Council in early September.

City staff is requesting Planning Commission review of the amendments and is recommending that the Commission vote to recommend approval to the City Council.

III. RECOMMENDATION

Recommendation

City staff is recommending that Planning Commission recommend approval to City Council for the proposed exempt and project marketing sign amendments presented in **Attachment 1** to this Planning Commission Staff Report dated August 8, 2011.

PROPOSED TITLE 18 PERMIT-EXEMPT AND PROJECT MARKETING SIGN AMENDMENTS

Chapter 18.50

SIGNS

Sections:

18.50.010 Purpose.

18.50.020 Definitions.

18.50.030 General sign regulations in all zones.

18.50.040 Measurement of sign dimensions in all zones.

18.50.050 Signs not subject to permit-Exempt signs.

18.50.060 Prohibited signs.

18.50.070 Temporary signs.

18.50.075 Business vehicle identification signs.

18.50.080 Residential, commercial and industrial project identification signs.

18.50.085 Project marketing signs.

18.50.090 Sign regulations for nonresidential uses in a residential zone.

18.50.095 Sign setback from adjacent residentially zoned land.

18.50.100 Sign regulations in nonresidential zones.

18.50.110 Sign regulations for structures with minimal building setback along a street right-of-way or in the Downtown Sign District.

18.50.115 Portable Signs – Downtown Sign District

18.50.120 I-25 Corridor.

18.50.130 Sign regulations for signs in the Highway 34 corridor.

18.50.135 Sign regulations for convenience stores.

18.50.140 Maintenance.

18.50.145 Abandoned/obsolete signs.

18.50.150 Nonconforming signs.

18.50.160 Approval procedures.

18.50.170 Enforcement, legal procedures and penalties.

18.50.180 Variances.

18.50.190 Appeals.

18.50.050 Signs not subject to permit-Exempt signs.

E. Flags:

1. Flags of the United States;
2. Flags and insignias of the state of Colorado, the city of Loveland, Larimer County, **governmental agencies**, and nonprofit organizations exempt from federal tax, when displayed on premise, and where no single side exceeds forty-eight (48) square feet in area;
3. **Except as provided in Section 18.50.050.E.4**, no more than three (3) flags shall be exempt for each premise. **Any additional flag shall be subject to a sign permit and the square footage shall be included in the sign area measurement for a freestanding sign.**

4. Upon written request, the current planning manager may authorize additional flags on a premise provided that the flags are not used as a sign, as defined in this chapter, and are compatible within the context of the premise and the surrounding neighborhood. Any final decision of the current planning manager may be appealed to the planning commission in accordance with Chapter 18.80 of this code.

M. Real estate model home signs. One (1) real estate model home sign **and a maximum of two (2) flying banners are** is permitted per street frontage of the premise on which a model home or a temporary real estate sales office is located. Real estate model home signs shall not exceed thirty-two (32) square feet of sign area per face; free-standing real estate model home signs are limited to six (6) feet in height and wall mounted real estate model home signs shall not extend above the top of the wall or parapet wall of the building to which the wall sign is attached. **Flying banners shall not exceed a dimension of four (4) feet in width and thirteen (13) feet in height.** All surfaces incorporated into a real estate model home sign and sign structure including, but not limited to, pole covers, monument style sign bases, and background surfaces shall be counted in the allowable sign area.

N. Real estate open house signs. A maximum of six (6) real estate open house signs are allowed for an open house event and such signs shall be displayed only on the day of the open house and the day prior to the open house. On-premise or off-premises display of real estate open house signs is permitted, but display in the public right-of-way is prohibited. Real estate open house signs shall not exceed six (6) square feet of sign area per face and four (4) feet in height. Pennants and balloons may be affixed to real estate open house signs provided that such attachments do not encroach upon street or sidewalk right-of-way or create a street or sidewalk safety hazard; balloons that are affixed to real estate open house signs shall **not have a vertical or horizontal dimension** ~~no linear dimension~~ greater than two (2) feet.

18.50.085 Project marketing signs.

A. Sign Area. The maximum sign area for a project marketing sign in residential zones and residential PUDs shall be fifty square feet. The maximum sign area for a project marketing sign in non-residential zones and non-residential PUDs shall be seventy-five square feet. The sign area shall include only the extreme limits of lettering and depictions, except when the surface area of any structure to which the sign is affixed exceeds fifty percent of the area of the sign face, in which case all additional surface area will be included in the sign area measurement. Monument style sign bases and pole covers shall be included in calculating all such additional surfaces which are subject to the fifty percent limitation.

B. Number. There shall be no more than one sign per project entry from any adjacent street and no more than two signs per project or phase of a project.

C. Height. Project marketing signs shall be no more than 12 feet in height.

D. Lighting. Any lighting shall be indirect. All lighting shall be aimed and/or shielded to insure that no direct light is seen upon the driving surface of any streets or upon any nearby residential properties.

E. Duration. Signs shall be allowed to remain for no more than 2 years following commencement of construction of the public improvements within the project, **unless a written request to extend**

~~this time period is approved by the current planning manager. or until such time that a permanent project identification sign, as defined in subsection 18.50.020, is installed, whichever is less.~~

F. Location. Signs shall be located within the boundaries of a project or premise which is part of the original marketing of the lots, tracts, structures or units. For projects within a mixed use planned unit development, the premise shall constitute the boundaries of the entire planned unit development.

G.F. Maintenance. All applicants shall provide adequate assurance acceptable to the City that the sign and the lot or tract upon which it is located will be maintained in good condition at all times.

**Amendments to Title 18, Chapter 18.50 (Signs) of the Municipal Code:
Definitions, Signs Not Subject To Permit-Exempt Signs, Temporary
Signs, Project Marketing Signs, and Enforcement, Legal Procedures And
Penalties**

Chapter 18.50.020 Definitions

“Temporary sign” means a sign which, due to the materials used; the method, manner or location of display; or the method of operation for display; is suited only for brief **occasional, seasonal, or special event** display, including, but not limited to, those signs regulated under section 18.50.070.

“Balloon” means an airtight bag or membrane which is inflated with air or a lighter than air gas typically intended to rise or float above the ground.

“Flying banner” means a type of temporary sign consisting of cloth, bunting, canvas or similar fabric, attached to a single vertical staff support structure with distinctive colors, patterns or symbolic logos for display.

“Pennant” means a type of temporary sign consisting of fabric, plastic, or metal strand drapery with distinctive colors, patterns, symbolic logos, or a series of narrow tapering flags for display.

“Temporary construction fence sign” means a temporary sign affixed to or incorporated into a construction fence for displaying advertisements, messages, logos, illustrations, and graphics related only to the associated property under construction.

“Temporary event sign” means a temporary sign advertising a community event sponsored by a governmental entity or not-for-profit entity that is limited only to one type of temporary sign that may include either a banner, balloon, flying banner, or pennant/valance.

“Valance” shall include the same definitions as a pennant.

18.50.050 Signs not subject to permit-Exempt signs.

E. Flags:

1. Flags of the United States;
2. Flags and insignias of the state of Colorado, the city of Loveland, Larimer County, **governmental agencies**, and nonprofit organizations exempt from federal tax, when displayed on premise, and where no single side exceeds forty-eight (48) square feet in area;
3. **Except as provided in Section 18.50.050.E.4, no more than three (3) flags shall be exempt for each premise. Any additional flag shall be subject to a sign permit and the square footage shall be included in the sign area measurement for a freestanding sign.**

4. Upon written request, the current planning manager may authorize additional flags on a premise provided that the flags are not used as a sign, as defined in this chapter, and are compatible within the context of the premise and the surrounding neighborhood. Any final decision of the current planning manager may be appealed to the planning commission in accordance with Chapter 18.80 of this code.

M. Real estate model home signs. One (1) real estate model home sign **and a maximum of two (2) flying banners are** is permitted per street frontage of the premise on which a model home or a temporary real estate sales office is located. Real estate model home signs shall not exceed thirty-two (32) square feet of sign area per face; free-standing real estate model home signs are limited to six (6) feet in height and wall mounted real estate model home signs shall not extend above the top of the wall or parapet wall of the building to which the wall sign is attached. **Flying banners shall not exceed a dimension of four (4) feet in width, thirteen (13) feet in height and twenty-five (25) square feet in total size.** All surfaces incorporated into a real estate model home sign and sign structure including, but not limited to, pole covers, monument style sign bases, and background surfaces shall be counted in the allowable sign area.

N. Real estate open house signs. A maximum of six (6) real estate open house signs are allowed for an open house event and such signs shall be displayed only on the day of the open house and the day prior to the open house. On-premise or off-premises display of real estate open house signs is permitted, but display in the public right-of-way is prohibited. Real estate open house signs shall not exceed six (6) square feet of sign area per face and four (4) feet in height. Pennants and balloons may be affixed to real estate open house signs provided that such attachments do not encroach upon street or sidewalk right-of-way or create a street or sidewalk safety hazard; balloons that are affixed to real estate open house signs shall **not have a vertical or horizontal dimension** ~~no linear dimension~~ greater than two (2) feet.

Chapter 18.50.070 Temporary signs.

~~A. The following objects and devices are hereby declared to be temporary signs, subject to the following requirements and limitations. Only the following temporary signs are allowed:~~

- ~~— 1. Portable Signs: The following portable signs are allowed when used in conjunction with a legal business provided that not more than two types of portable sign may be used at one time and that the cumulative total time for all portable signs for each business does not exceed 60 days per calendar year:

 - ~~— a. Balloons and other types of lighter than air objects, which have no linear dimension greater than 2 feet.~~
 - ~~— b. Pennants, valances, or wind powered devices.~~
 - ~~— c. Banner or banners which do not cumulatively exceed 100 square feet in total sign area.~~~~
- ~~— 2. Light bulbs: Light bulbs are allowed when used in conjunction with a temporary use and their use does not exceed 60 days per calendar year.~~
- ~~— 3. Large Balloons: Balloons and other types of lighter than air objects which have a dimension greater than 2 feet and are secured to the property shall only be allowed for a maximum of 7 days for special events such as circuses, carnivals, festivals, grand openings and other~~

similar events. Large balloons for special events are allowed provided that they are used only once every six months.

—4. Searchlights: Searchlights shall be allowed for a maximum of 3 days per calendar year.

A. Purpose.

Temporary sign regulations are established to provide businesses and non-residential uses with the opportunity to advertise occasional, seasonal, or special events. These regulations are intended to control the visual impacts to the community of such advertisements, and to provide consistency with the spirit and intent of this title and the vision statements of the Comprehensive Plan. Temporary signs shall under no circumstance be substituted for permanent signage or be situated to screen permanent signage on an adjacent lot or premise. These temporary sign provisions shall only apply to businesses and non-residential uses. These provisions shall not be applicable to signs listed under Section 18.50.050.

~~B. Location. All temporary signs allowed pursuant to Section 18.50.070 A.1.a. through c. shall be located only on a signable wall which adjoins the portion of the building occupied by the business with which the temporary sign is associated and shall not extend more than 20 feet from the front of the building or over any vehicular way or parking area. Any temporary sign located over a public walk way shall have a minimum clearance of 8 feet. Balloons as defined in this Section 18.50.070 are allowed to extend a maximum of 8 feet over the top of a wall or parapet.~~

B. Temporary signs subject to a permit.

1. For all businesses and non-residential uses, the following sign types are permissible:

- a. Banners
- b. Balloons
- c. Pennants
- d. Valances
- e. Flying banners
- f. Any sign device which operates from an external power source including but not limited to searchlights, balloons, and animated signs

2. Permit and duration.

a. All permissible temporary signs as specified in Section 18.50.070.B.1 shall require the approval of a temporary sign permit application by the building division.

b. Temporary sign permit applications shall be made in increments of fifteen (15) consecutive days. A maximum of four (4) temporary sign permits may be issued to an individual business or non-residential use per calendar year and may be approved in succession. The maximum cumulative display for all permitted temporary signs shall not exceed sixty (60) days per calendar year unless a variation is approved under Section 18.50.070.E.

3. Number.

No more than two (2) of the sign types specified in Section 18.50.070.B of this chapter shall be permitted on a lot or premise for an individual business or non-residential use.

4. Sign Area and Location.

a. **Banners:** A banner or banners must not cumulatively exceed one-hundred (100) square feet in total sign area and shall be attached to an exterior building wall. All portions of such banner(s) shall be in contact with the building wall, and shall not flap, extend beyond the wall nor be fastened to support structures.

b. **Balloons:** Except as allowed in Section 18.50.070.D.1.a., Balloons shall not exceed a total maximum dimension of ten (10) feet, inclusive of a base. Attaching Balloons to tethers is permitted providing the tether is no greater than fifteen (15) feet in length. Balloons must be secured to a building, structure, stable object, or the ground and shall not extend beyond the boundaries of the lot or premise. Balloons shall not be attached to trees or shrubs planted within the lot or premise.

c. **Pennants and valances:** A single pennant or valance strand shall not exceed fifty (50) feet in length. Each pennant or valance strand must be secured to a building, structure, stable object, or the ground at both ends. Pennant and valance strands shall not be attached to trees or shrubs planted within the lot or premise.

d. **Flying banners:** Except as allowed in Section 18.50.070.D.1.b., each flying banner shall not exceed twenty-five (25) feet in height inclusive of the staff or support structure and seventy-five (75) square feet in size. Flying banners are to be attached to a single vertical staff support structure only. The support structure may be mounted securely to a building, structure, stable object, or the ground. Flying banners shall not extend beyond the boundaries of the lot or premise. Flying banners shall not be attached to trees or shrubs planted within the lot or premise.

e. **Sign devices operated from an external power source:** Sign devices operated from an external power source shall comply at all times with the city's noise ordinance. These types of temporary signs shall be secured to the ground and limited to twenty-five (25) feet in height providing they do not extend beyond the boundaries of the lot or premise. The lighting component for searchlights must be projected upward so as not to diminish public safety and welfare.

5. Lighting.

Temporary signs may only be illuminated indirectly by means of a separate light source (excluding Searchlights). It shall be demonstrated that no off-site impacts associated to glare will occur by indirectly illuminating a temporary sign. The light source shall also comply with applicable

provisions of the *City of Loveland Site Development Performance Standards and Guidelines*.

~~C. Maintenance: All temporary signs shall be kept neatly finished and repaired, including all parts and supports. The Building Official and/or an authorized representative shall inspect and shall have authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.~~

C. Maintenance.

All temporary signs shall be kept neatly finished and repaired, including all parts and supports. The Building Official and/or an authorized representative shall inspect and shall have authority to order the painting, repair, alteration or removal of a sign which constitutes a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation or obsolescence.

~~D. Permits: All portable signs as defined in Section 18.50.070 A.1.a through c. and 18.50.070 A.3. and A.4. shall require a permit issued by the Building Division. Permit cards shall be displayed at the business with which the sign is associated until the permit expires or the temporary sign is removed. (Ord. 4254 § 1 (part), 1997; Ord. 4221 § 1 (part), 1996; Ord. 4185 § 1 (part), 1996; Ord. 4089 § 5, 1995; Ord. 3776 § 2, 1991; Ord. 3703 § 1, 1990; Ord. 3609 § 1 (part), 1989)~~

D. Temporary Signs not subject to permit.

1. The following temporary signs shall not require a permit and shall not be limited in number or duration upon a lot or premise associated to a business or non-residential use, unless specified otherwise. Internal or external illumination for these specific signs shall be strictly prohibited.

- a. **Balloons which do not have maximum horizontal or vertical dimension greater than two (2) feet;**
- b. **Flying banners placed within a lot or premise, providing no more than four (4) are installed and each individual flying banner does not exceed a maximum of thirteen (13) feet in height and twenty-five (25) square feet in total size;**
- c. **Temporary construction fence sign as defined in Section 18.50.020, provided the sign does not extend above the fence;**
- d. **Temporary event sign as defined in Chapter 18.50.020 subject to Section 18.50.070.B.4. and limited to a duration of no more than five (5) days;**
- e. **Portable signs as defined in this chapter limited to A-frame or T-frame signs which do not exceed six (6) square feet and have a maximum height of four (4) feet. These portable signs shall be located within ten (10) feet of the business entrance and allow for a minimum unobstructed access width of five (5) feet along all sidewalks. For the purpose of this section,**

portable A-frame or T-frame signs shall not be placed in a public right-of-way; and

f. Any signage device similar to those described in items a. through e. above if so determined and approved in writing by the Current Planning Manager.

2. Internal or external illumination for the signs listed in subsection D.1 above, shall be strictly prohibited.

E. Administrative Allowances.

1. Variations from these temporary sign provisions relating to the duration and location may be provided by the Current Planning Manager. Such variations may only be provided to businesses operating at a new location for less than six (6) months or for businesses which have poor visibility from the street. To obtain a variation, the applicant must make a written request and demonstrate the following:

a. A substantial hardship exists in carrying out the provisions of this chapter; and

b. The spirit and intent of this chapter will be secured in granting a variation.

2. Variations will be considered on a case-by-case basis. The Current Planning Manager may impose conditions to ensure that the intent of this chapter is maintained. Appeal of the Current Planning Manager's decision shall follow the procedures outlined in Chapter 18.80 of the Loveland Municipal Code.

F. Enforcement.

Any unauthorized deviation from this chapter shall be subject to the enforcement, legal procedures and penalties as described in Chapter 18.50.170.

18.50.085 Project marketing signs.

A. Sign Area. The maximum sign area for a project marketing sign in residential zones and residential PUDs shall be fifty square feet. The maximum sign area for a project marketing sign in non-residential zones and non-residential PUDs shall be seventy-five square feet. The sign area shall include only the extreme limits of lettering and depictions, except when the surface area of any structure to which the sign is affixed exceeds fifty percent of the area of the sign face, in which case all additional surface area will be included in the sign area measurement. Monument style sign bases and pole covers shall be included in calculating all such additional surfaces which are subject to the fifty percent limitation.

B. Number. There shall be no more than one sign per project entry from any adjacent street and no more than two signs per project or phase of a project.

C. Height. Project marketing signs shall be no more than 12 feet in height.

D. Lighting. Any lighting shall be indirect. All lighting shall be aimed and/or shielded to insure that no direct light is seen upon the driving surface of any streets or upon any nearby residential properties.

E. Duration. Signs shall be allowed to remain for no more than 2 years following commencement of construction of the public improvements within the project, **unless a written request to extend this time period is approved by the current planning manager.** ~~or until such time that a permanent project identification sign, as defined in subsection 18.50.020, is installed, whichever is less.~~

F. Location. Signs shall be located within the boundaries of a project or premise which is part of the original marketing of the lots, tracts, structures or units. For projects within a mixed use planned unit development, the premise shall constitute the boundaries of the entire planned unit development.

~~G.~~ Maintenance. All applicants shall provide adequate assurance acceptable to the City that the sign and the lot or tract upon which it is located will be maintained in good condition at all times.

18.50.170 Enforcement, legal procedures and penalties.

It shall be unlawful for any person to erect, maintain, or allow upon any property over which they own, manage, lease or control, any sign which is not permitted pursuant to the provisions of this sign code. Enforcement, legal procedures and penalties shall be in accordance with Chapter 18.68 of this title. Additionally, unauthorized signs on public property may be confiscated by the city and held pending notification of the owner by the city. The owner may obtain said signs from the city manager upon payment of a confiscation and storage charge in an amount established by the city council. For the purposes of the enforcement of this chapter, the Building Official and his or her designee is authorized and duly appointed to issue summonses and complaints and penalty assessment notices for a violation of this chapter ~~only~~. (Ord. 4089 § 6, 1995; Ord. 3788 § 2, 1991)



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: 1\$

MEETING DATE: 9/6/2011

TO: City Council

FROM: Keith Reester, Director, Public Works Department

PRESENTER: David Klockeman, City Engineer

TITLE:

1. Resolution Approving an Intergovernmental Agreement Between the City of Loveland, Colorado, and the Colorado Department of Transportation for 7th Street and Garfield Avenue (Truscott Elementary) Sidewalk Improvements.
2. Public Hearing and consideration of an ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2011 City of Loveland Budget for the Installation of 7th Street and Garfield Avenue (Truscott Elementary) Sidewalk Improvements.

DESCRIPTION:

This is an administrative action to consider:

1. Resolution approving intergovernmental agreement between the City of Loveland and the Colorado Department of Transportation (CDOT) for projects funded by the Federal Safe Routes to School (SRTS) program for the installation of 7th Street and Garfield Avenue (Truscott Elementary) Sidewalk Improvements.
2. First reading of an ordinance to appropriate a federal grant fund for the project included in the intergovernmental agreement.

BUDGET IMPACT:

Yes ● No

The project is funded from grant funds and City funds. The source of City funds is the approved 2011 budget for the Transportation Capital Program.

SUMMARY:

CDOT will provide federal funds to the City of Loveland to reimburse it for the costs, up to \$85,880, of installing sidewalk and associated improvements along the north side of Truscott Elementary School on 7th Street from Grant Avenue to Garfield Avenue. Construction is planned for late 2011 or early 2012.

Funding Summary:

Federal Funds		\$ 85,880
Local Agency Match Funds*	\$ 0	
Local Agency Overmatch Funds **	<u>\$ 30,000</u>	
Subtotal Local Funds	\$ 30,000	<u>\$ 30,000</u>
Total Project Funds:		\$115,880

* Local Agency Match Funds are defined as funding required to be provided by a local entity as part of the Federal grant process. For Safe Routes to School Funds, a Local Agency Match is not required. (Typically, the Federal funds account for 80 percent of the project cost and the Local Agency Match Funds account for the remaining 20 percent.) Therefore, the amount shown above for that line is \$0.

** Local Agency Overmatch Funds are defined as funding provided by a local entity above the required amount of Local Agency Match Funds in order to complete a project. In this case, the difference between the Federal grant and the cost of completing the project is \$30,000. Since no Local Agency Match Funds were required, but providing local funds is encouraged, this amount was included in the grant application and the entire amount is shown as an “overmatch”.

An ordinance is required to appropriate the Federal Funds as the award of this project occurred after the 2011 budget was adopted.

The Intergovernmental Agreement will be signed by the City Manager.

LIST OF ATTACHMENTS:

1. A Resolution Approving an Intergovernmental Agreement Between the City of Loveland, Colorado and the Colorado Department of Transportation for 7th Street and Garfield Avenue (Truscott Elementary) Sidewalk Improvements
2. An Ordinance Enacting a Supplemental Budget and Appropriation to the 2011 City of Loveland Budget for Installation of 7th Street and Garfield Avenue (Truscott Elementary) Sidewalk Improvements

RECOMMENDED CITY COUNCIL ACTION:

1. Move for approval of the Resolution.
2. Conduct a Public Hearing and approve the ordinance on first reading.

REVIEWED BY CITY MANAGER:

RESOLUTION #R-53-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR 7TH STREET AND GARFIELD AVENUE AREA (TRUSCOTT ELEMENTARY) SIDEWALK IMPROVEMENTS

WHEREAS, the City of Loveland desires to the install sidewalk and associated improvements along 7th Street between Grant Avenue and Garfield Avenue (along the north side of Truscott Elementary School) in Loveland (the “Project”), which is to be funded by federal-aid funds administered and made available through the State of Colorado, acting through the Colorado Department of Transportation (“CDOT”); and

WHEREAS, federal-aid funds are available for the Project in the amount of \$85,880; and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement, a copy of which is attached hereto Exhibit A and incorporated herein by this reference (the “Agreement”), to define the division of responsibilities with regard to the Project; and

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

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

Section 1. That the Intergovernmental Agreement in the form substantially similar to that attached hereto as Exhibit A and incorporated herein by reference, is hereby approved and the City Manager is authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City

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

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

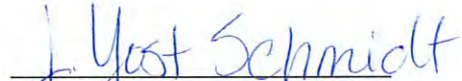
ADOPTED this 6th day of September, 2011.

Cecil Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A

(FMLAWRK)
PROJECT SAR M830-061 (18430)
REGION 4 PCO

Rev 7/8/09
Routing # 12 HA4 34679
SAP O/L# 331000433

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Loveland

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1. PARTIES

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

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

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

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

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

i. Federal Authority

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

ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-14.

B. Consideration

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

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA. The City of Loveland will design and constructs pedestrian related improvements on 7th Street along the frontage of Truscott Elementary School in Loveland, Colorado.

D. References

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

4. DEFINITIONS

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

A. Agreement or Contract

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

B. Agreement Funds

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

C. Budget

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

D. Consultant and Contractor

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

E. Evaluation

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

F. Exhibits and Other Attachments

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

G. Goods

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

H. Oversight

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

I. Party or Parties

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

J. Work Budget

Work Budget means the budget described in Exhibit C.

K. Services

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

L. Work

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

M. Work Product

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

5. TERM and EARLY TERMINATION.

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

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in Exhibit A. The Colorado Department of Transportation (CDOT) will oversee the City of Loveland (city) when the city designs and constructs pedestrian related improvements on 7th Street along the

frontage of Truscott Elementary in Loveland, CO, to improve pedestrian facilities and promote traffic calming/pedestrian crossing safety. This work may contain the following features: sidewalks, crosswalks, pedestrian refuge islands, and a mini-roundabout island.

Safe Routes to School federal funds have been awarded to this project along with overmatch funds from the city. CDOT and the city believe it will be beneficial to perform this work because Truscott Elementary is missing a sidewalk along its' north frontage and crossing busy Garfield Avenue at 7th Street is challenging for school children.

This work will conform to the American with Disabilities Act and the Larimer County Urban Area Street Standards. The design phase of this work is already underway as it is funded separately from this contract by the city. The design phase will identify more exact requirements and will result in the production of detailed plans and specifications. The construction phase of the contract is planned for the early summer 2012 (design approval is expected well in advance) and is anticipated to take approximately one month. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services

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

C. Employees

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

D. State and Local Agency Commitments

i. Design

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

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

ii. Local Agency Work

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract

(and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:

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

iii. Construction

- a) If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with Exhibit E. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.
- b) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part,

due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

c) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

(a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefor, as required by 23 C.F.R. 633.102(e).

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

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

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

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

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

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

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

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

iv. State's Commitments

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

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

v. ROW and Acquisition/Relocation

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

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

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

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

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

vi. Utilities

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

vii. Railroads

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

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

viii. Environmental Obligations

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

ix. Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all

applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

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

A. Option 1- Level of service change within current term due to unexpected overmatch in an overbid situation only.

In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding. The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (**Exhibit D**), which will bring the maximum amount payable under this contract to the amount indicated in **Exhibit C-1** attached to the executed Option Letter (future changes to **Exhibit C** shall be labeled as **C-2**, **C-3**, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

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

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

C. **Option 3 - To update funding (increases and/or decreases) with a new Exhibit C.**

This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (**Exhibit C**) in the Original Contract with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc). The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in **Exhibit C-1**, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the contract will be considered to include this option provision.

8. PAYMENTS

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

A. **Maximum Amount**

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

share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit B.

B. Payment

i. Advance, Interim and Final Payments

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

ii. Interest

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

iii. Available Funds-Contingency-Termination

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

iv. Erroneous Payments

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

C. Use of Funds

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

D. Matching Funds

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

E. Reimbursement of Local Agency Costs

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

i. Reasonable and Necessary

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

ii. Net Cost

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

9. ACCOUNTING

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

A. Local Agency Performing the Work

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

B. Local Agency-Checks or Draws

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

C. State-Administrative Services

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

D. Local Agency-Invoices

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

E. Invoicing Within 60 Days

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

F. Reimbursement of State Costs

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

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

10. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

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

B. Litigation Reporting

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

C. Noncompliance

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

D. Documents

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

11. LOCAL AGENCY RECORDS

A. Maintenance

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

B. Inspection

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

conforms to Agreement requirements and may exercise the remedies available under this Agreement at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

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

D. Final Audit Report

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

12. CONFIDENTIAL INFORMATION-STATE RECORDS

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

A. Confidentiality

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

B. Notification

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

C. Use, Security, and Retention

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

D. Disclosure-Liability

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

13. CONFLICT OF INTEREST

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency

shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

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

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

C. Licenses, Permits, Etc.

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

15. INSURANCE

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

A. The Local Agency

i. Public Entities

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

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance

coverage and policies meeting the same requirements set forth in §15(B) with respect to sub-contractors that are not "public entities".

B. Contractors

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

i. Worker's Compensation

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

ii. General Liability

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

iii. Automobile Liability

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

iv. Additional Insured

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

v. Primacy of Coverage

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

vi. Cancellation

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

vii. Subrogation Waiver

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

C. Certificates

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

16. DEFAULT-BREACH

A. Defined

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

B. Notice and Cure Period

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

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

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

i. Obligations and Rights

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

ii. Payments

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

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact

amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

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

C. Remedies Not Involving Termination

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

i. Suspend Performance

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

ii. Withhold Payment

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

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

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

18. NOTICES and REPRESENTATIVES

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

A. State:

Abra Geissler
CDOT Region 4
1420 2 nd Street
Greeley, CO 80631
(970)350-2269

B. Local Agency:

Derek Schuler, P.E.
Civil Engineer
City of Loveland
105 W. 5 th Street
Loveland, CO 80537
(970)962-2647

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

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

20. GOVERNMENTAL IMMUNITY

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

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

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

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

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

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

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in Exhibit J (Section 37) and Exhibit K (Section 38 - Supplemental Federal Provisions).

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

24. DISPUTES

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

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at

assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

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

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification - General

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

G. Jurisdiction and Venue

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

H. Limitations of Liability

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

I. Modification

i. By the Parties

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

ii. By Operation of Law

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

J. Order of Precedence

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and

attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

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

K. Severability

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

L. Survival of Certain Agreement Terms

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

M. Taxes

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

N. Third Party Beneficiaries

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

O. Waiver

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

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26. COLORADO SPECIAL PROVISIONS

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

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

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

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

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

3. GOVERNMENTAL IMMUNITY.

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

4. INDEPENDENT CONTRACTOR

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees.

Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

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

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

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

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

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

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

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

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

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

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

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

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

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number 12 HA4 34679

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

THE LOCAL AGENCY
City of Loveland

By: _____
Name of Authorized Individual

Title: _____
Official Title of Authorized Individual

*Signature

Date: _____

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Colorado Department of Transportation
Donald E. Hunt Executive Director

By : Timothy J. Harris, CDOT Chief Engineer

Date: _____

2nd The Local Agency Signature if Needed

By: _____
Name of Authorized Individual

Title: _____
Official Title of Authorized Individual

*Signature

Date: _____

LEGAL REVIEW
John W. Suthers, Attorney General

By: _____

Signature - Assistant Attorney General

Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
David J. McDermott, CPA

By: _____

Colorado Department of Transportation

Date: _____

28. EXHIBIT A – SCOPE OF WORK

COLORADO DEPARTMENT OF TRANSPORTATION DESIGN DATA		Orig.Date: 03/31/2011		Project Code # (SA#): 18430		STIP#: SR47001	
		Rev.Date:		Project #: SAR M830-061			
		Revision #: 0		PE Project Code: 18430			
		Region #: 04					
Page 1 to 3							
Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised							
Submitted By PM: TUTTLET				Approved by Program Engineer:			
Date:							
Revised by:							
Date:							
Project Description: Truscott Elementary Sidewalks (SRTS)							
County: 069							
Municipality: Loveland							
System Code: Z-Not on any Federal-Aid Highway							
Oversight By: A-Exempt							
Planned Length: 0.100							

Geographic Location: NEAR TRUSCOTT ELEMENTARY SCHOOL IN LOVELAND

Type of Terrain: Urban

Description of Proposed Construction/Improvement(Attach map showing site location)
CONSTRUCT NEW SIDEWALK & IMPROVE CURBS

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

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

3 Utilities (list names of known utility companies)

4 Railroad Crossings	# of Crossings:
Recommendations :	

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

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

7 Construction Method	Advertised By: None	NoAd Reason: Design	Entity / Agency Contact Name: Derek Schuler	Phone #: 970-962-2907
------------------------------	---------------------	---------------------	---	-----------------------

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

Page 3 of 3	Project Code #(SA#): 18430	Project #: SAR M830-061	Revise Date:	
-------------	-------------------------------	----------------------------	--------------	--

12 Major Structures S= to stay, R= to be removed, P= proposed new structure

Structure ID#	▼	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built
---------------	---	--------	-----------------	---------------------	----------------	-------------------	---------------------	----------------------	--------------------	------------

Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):

13 Remarks

Local Agency is responsible for design, utilities, ROW, environmental, ad, award, and construction management.

The Colorado Department of Transportation (CDOT) will oversee the City of Loveland (city) when the city designs and constructs pedestrian related improvements on 7th Street along the frontage of Truscott Elementary in Loveland, CO, to improve pedestrian facilities and promote traffic calming/pedestrian crossing safety. This work may contain the following features: sidewalks, crosswalks, pedestrian refuge islands, and a mini-roundabout island.

Safe Routes to School federal funds have been awarded to this project along with overmatch funds from the city. CDOT and the city believe it will be beneficial to perform this work because Truscott Elementary is missing a sidewalk along its# north frontage and crossing busy Garfield Avenue at 7th Street is challenging for school children.

This work will conform to the American with Disabilities Act and the Larimer County Urban Area Street Standards. The design phase of this work is already underway as it is funded separately from this contract by the city. The design phase will identify more exact requirements and will result in the production of detailed plans and specifications. The construction phase of the contract is planned for the early summer 2012 (design approval is expected well in advance) and is anticipated to take approximately one month.

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

A. EXHIBIT C

SAR M830-061, 18430, Truscott Elementary Sidewalks.

The Local Agency has estimated the total cost of the Project to be \$115,880.00 which is to be funded as follows:

BUDGETED FUNDS			
a. Federal Funds			\$85,880.00
	(100% of Participating Costs)		
b. Local Agency Matching Funds			\$0.00
c. Local Agency Overmatch			\$30,000.00
TOTAL BUDGETED FUNDS			\$115,880.00
2 ESTIMATED CDOT-INCURRED COSTS			
a. Federal Share			\$0.00
	(0% Participating Costs)		
b. Local Share			
	Local Agency Share of Participating Costs	\$0.00	
	Non-Participating Costs (Including Non-Participating Indirects)	\$0.00	
	Estimated to be Billed to Local Agency		\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS			\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY			
a. Federal Funds Budgeted (1a)			\$85,880.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)			\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY			\$85,880.00
4 FOR CDOT ENCUMBRANCE PURPOSES			
<i>*Note- Only \$0.00 is currently available. Remaining funds and/or Local Agency Overmatch will be added in the future either by Option Letter or Amendment.</i>			
Total Encumbrance Amount			\$85,880.00
Local Overmatch Contribution			\$30,000.00
Less Estimated ROW Costs			\$0.00
Net to be encumbered as follows:			\$115,880.00
	WBS Element 18430.10.30	Design 3020	\$0.00
	WBS Element 18430.20.10	Const * 3301	\$0.00

- B. The matching ratio for the federal participating funds for this project is 100% federal-aid funds (CFDA #20 2050) to 0% Local Agency funds, it being understood that such ratio applies only to the \$85,880.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$85,880.00, and additional federal funds are made available for the project, the Local Agency shall pay 0% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the local agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$85,880.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.
- C. The maximum amount payable to the Local Agency under this contract shall be \$85,880.00. For CDOT accounting purposes, the federal funds of \$85,880.00 and Local Overmatch of \$30,000.00 will be encumbered for a total encumbrance of \$115,880.00 unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. ****Note- Only \$0.00 in Design Funding is currently available. Remaining funds and/or the Local Agency Overmatch will be added in the future either by Option Letter or amendment.*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.
- D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from federal and/or state and/or Local Agency sources, as applicable. Should these sources, either federal or Local Agency, fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.
- E. The Local Agency understands and accepts that future reimbursement of the Federal funding for the Project is contingent upon the FHWA making such funds available to the State in future fiscal years, and to the budgeting of such funds by the Transportation Commission for reimbursement to the Local Agency. The Local Agency understands that the FHWA has *not* currently obligated all Federal funds for the project. The Local Agency does not by this Agreement irrevocably pledge present case reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

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

NOTE: This option is limited to the specific contract scenarios listed below

AND may be used in place of exercising a formal amendment.

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

Vendor name: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVALS:

For the The Local Agency:

Legal Name of the Local Agency

By: _____
Print Name of Authorized Individual

Signature: _____

Date: _____

Title: Official Title of Authorized Individual

State of Colorado:
Bill Ritter, Jr., Governor

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
David J. McDermott, CPA

By: _____

Date: _____

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

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

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

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

Project No. SAR M830-061	STIP No.	Project Code 18430	Region 04
Project Location Truscott Elementary School on 7 th St in the City of Loveland			Date 6/28/11
Project Description Truscott Elementary Sidewalks			
Local Agency City of Loveland	Local Agency Project Manager Derek Schuler		
CDOT Resident Engineer Long Nguyen	CDOT Project Manager Tim Tuttle		

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

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

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

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

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463	X	X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5-4	Conduct Design Scoping Review meeting	X	
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	X	X
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5-9	Obtain Utility and Railroad Agreements	X	
5-10	Conduct Final Office Review (FOR)	X	X
5-11	Justify Force Account Work by the Local Agency	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished items	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) <u>Long Nguyen</u> <u>6/28/11</u> CDOT Resident Engineer(Signature on File) Date		X
6-3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6-4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7-2	Advertise for Bids	X	
7-3	Distribute "Advertisement Set" of Plans and Specifications	X	
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	X	
7-5	Open Bids	X	
7-6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDDE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to Award		X
7-8	Approve Rejection of Low Bidder		X
7-9	Award Contract	X	
7-10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Project Safety	X	#
8-3	Conduct Conferences:		
	Pre-construction Conference (Appendix B)	X	
	Presurvey		
	• Construction staking	X	
	• Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8-4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." <u>Derek Schuler</u> <u>970-962-2907</u> Local Agency Professional Engineer Phone number	X	

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

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

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

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

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

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

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

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

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

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

SECTION 2. DBE Obligation.

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

SECTION 3 DBE Program.

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

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

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 23.41

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

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

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

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

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

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

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

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

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

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

Evaluation factors for final selection are the consultant's:

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

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

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

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA Form 1273

FHWA-1273 Electronic version – March 10, 1994

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal

Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor

either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

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

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

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

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

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

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

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

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

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

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

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to

be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed

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

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

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

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

b. Trainees:

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

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

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

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

c. Helpers:

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

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

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

6. Withholding:

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

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

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

2. Payrolls and Payroll Records:

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

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

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

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

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

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

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

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

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise

disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

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

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

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

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification - Primary Covered Transactions:

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

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

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

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

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

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

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

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency

entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Covered Transactions:

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

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

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

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

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

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

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

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

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

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

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

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

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

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of

any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

2 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

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

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

37. EXHIBIT J – FEDERAL REQUIREMENTS

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

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

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

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

B. Executive Order 11246

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

C. Copeland "Anti-Kickback" Act

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

D. Davis-Bacon Act

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

E. Contract Work Hours and Safety Standards Act

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

F. Clear Air Act

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

G. Energy Policy and Conservation Act

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

H. OMB Circulars

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

I. Hatch Act

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

J. Nondiscrimination

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

K. ADA

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

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

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

M. Drug-Free Workplace Act

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

N. Age Discrimination Act of 1975

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

O. 23 C.F.R. Part 172

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

P. 23 C.F.R Part 633

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

Q. 23 C.F.R. Part 635

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

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

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

S. Nondiscrimination Provisions:

S. Nondiscrimination Provisions:

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

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation

(Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

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

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

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

iv. Information and Reports

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

v. Sanctions for Noncompliance.

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

T. Incorporation of Provisions§22

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

Exhibit K

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

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

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

Award *does not* include:

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

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

employee, perquisites or property) for the Executive exceeds \$10,000.

- 1.16. "Transparency Act"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 "Vendor"** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
- 2. Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**
- 3.1. CCR.** Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information.
- 3.2. DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
- 4. Total Compensation.** Contractor shall include Total Compensation in CCR for each of its five most highly compensated Executives for the preceding fiscal year if:
- 4.1.** The total Federal funding authorized to date under the Award is \$25,000 or more; and
- 4.2.** In the preceding fiscal year, Contractor received:
- 4.2.1.** 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.2.2.** \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.3.** The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
- 5. Reporting.** Contractor shall report data elements to CCR and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
- 6. Effective Date and Dollar Threshold for Reporting.** The effective date of these supplemental

provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

- 7. Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.
- 7.1 To CCR.** A Subrecipient shall register in CCR and report the following data elements in CCR *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
- 7.1.1 Subrecipient DUNS Number;
 - 7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 7.1.3 Subrecipient Parent DUNS Number;
 - 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
- 7.2.1 Subrecipient's DUNS Number as registered in CCR.
 - 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
- 8. Exemptions.**
- 8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
 - 8.2. A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
 - 8.3. Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
 - 8.4. There are no Transparency Act reporting requirements for Vendors.
- 9. Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

FIRST READING September 6, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR 7TH STREET AND GARFIELD AVENUE AREA (TRUSCOTT ELEMENTARY) SIDEWALK IMPROVEMENTS

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 \$85,880 from a Federal Safe Routes to School (SRTS) Grant in the Capital Projects Fund 02 are available for appropriation. These revenues are appropriated for the installation of sidewalk and related improvements along the north side of Truscott Elementary (7th Street from Grant Avenue to Garfield Avenue). The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Capital Projects Fund 02 – 7th and Garfield Sidewalk Improvements**

Revenues		
002-0270-334-48-00-EN1103	Federal Grants – Sidewalk Improvements	\$85,880
Total Revenue		\$85,880
Appropriations		
002-0270-409-09-60-EN1103	Construction – Sidewalk Improvements	\$85,880
Total Appropriations		\$85,880

Section 2. That as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

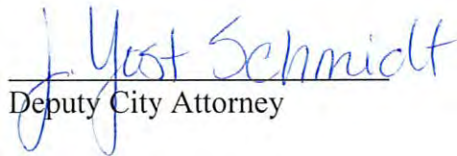
ADOPTED this ____ day of September, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney