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, Taylor, Farley, Klassen, Shaffer, Trenary, McKean and Fogle. Councilor McEwen was absent.

PROCLAMATION — Mayor Gutierrez read the proclamation "Harold Dwayne Webster Week" which was received by Marilee Rayome.

PROCLAMATION

WHEREAS seventy years ago this week, on December 7, 1941, the surprise attack of the Imperial Japanese Naval Forces against the United States 7th Fleet at Pearl Harbor, Hawaii, occurred, marking the entry of America into World War II; and

WHEREAS the Congress of the United States has designated December 7 as National Pearl Harbor Remembrance Day (36 U.S. C. §129) to honor all who perished at Pearl Harbor; and

WHEREAS the battleship USS Arizona BB 39 commissioned in 1916, was the most heavily damaged vessel along battleship row, suffering four direct hits from 800 kg bombs which penetrated her deck, resulting in detonation of her ammunition stores thereby sinking her in less than 9 minutes and killing 1,177 crewmen ; and

WHEREAS Harold Dwayne Webster, United States Navy Seaman Second Class, born October 31, 1923 in Loveland, Colorado, who enlisted in the United States Navy on December 7, 1940, was Killed in Action on December 7, 1941 while serving on the battleship USS Arizona at Pearl Harbor, Territory of Hawaii, and

WHEREAS Harold Dwayne Webster, United States Seaman Second Class is entombed within the USS Arizona and was the first native Lovelander to lose his life in World War II,

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim the week of December 4 through December 11, 2011 as

HAROLD DWAYNE WEBSTER WEEK

in Loveland, Colorado, and in so doing, urge all citizens to join together in remembering and honoring Seaman Second Class Harold Dwayne Webster as well as all who perished at Pearl Harbor that fateful day.

Signed this 6th day of December, 2011
Cecil A. Gutierrez
Mayor

PROCEDURAL INFORMATION — Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do

not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Staff pulled Item 15 regarding the Volunteer Firefighter Pension Plan. Councilor Shaffer moved to approve the Consent Agenda with the exception of Item 15. The motion was seconded by Councilor Klassen and a roll call vote was taken with all councilors present voting in favor thereof. City Planner Bethany Clark answered questions about the funding of the downtown façade program. City Planner Mike Scholl clarified the concessionaire agreement (Item 14) with Next Door Tapas, Inc had an exclusivity agreement for serving alcohol but there was no exclusivity agreement for catering.

1. CITY MANAGER

Approval of Council Minutes

Motion

Administrative Action: A motion approving Council minutes from the November 8, 2011 special meeting and the November 15, 2011 regular meeting was approved.

2. FINANCE

Supplemental Appropriation – City's 2011 Budget

Ordinance #5651

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE CITY OF LOVELAND, COLORADO 2011 BUDGET" was approved and ordered published on second reading.

3. FINANCE

Supplemental Appropriation – 2011 Special Improvement District #1 Budget

Ordinance #5652

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 2011 BUDGET" was approved and ordered published on second reading.

4. PUBLIC WORKS

Sale of the Bishop House

Ordinance #5653

Administrative Action: "AN ORDINANCE AUTHORIZING THE SALE OF THE BISHOP HOUSE AND THE SALE OF REAL PROPERTY OWNED BY THE CITY OF LOVELAND PURSUANT SECTION 4-7 OF THE CITY OF LOVELAND MUNICIPAL CHARTER" was approved and ordered published on second reading.

5. FIRE & RESCUE

Municipal Code Amendment – Fire & Rescue Advisory Commission

Ordinance #5654

Administrative Action: "AN ORDINANCE AMENDING SECTION 2.60.110 OF THE LOVELAND MUNICIPAL CODE TO MODIFY THE PURPOSE OF THE FIRE AND RESCUE ADVISORY COMMISSION TO REFLECT THE CREATION OF A FIRE AUTHORITY AND TO INCREASE THE LOVELAND RURAL FIRE PROTECTION DISTRICT'S REPRESENTATION ON THE COMMISSION TO INCLUDE VOTING MEMBERS" was approved and ordered published on second reading.

6. ECONOMIC DEVELOPMENT

Supplemental Appropriation - Lodging Tax Fund

Ordinance #5655 Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE LODGING TAX FUND" was approved and ordered published on second reading.

7. DEVELOPMENT SERVICES

Rezoning Property in Waterfall Subdivision

Ordinance #5656 Quasi-judicial Action: "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE WATERFALL SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on second reading.

AT 6:45 P.M. CITY COUNCIL ADJOURNED AND CONVENED AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)

8. DEVELOPMENT SERVICES

Appropriation and Agreement – LURA Downtown Façade Program

a) Ordinance #5657 Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND URBAN RENEWAL AUTHORITY 2011 BUDGET" was approved and ordered published on second reading.

b) Resolution #R-78-2011 Administrative Action: Resolution #R-78-2011 of the Loveland Urban Renewal Authority approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Loveland Urban Renewal Authority for 2011 Façade Program Funding was approved.

RESOLUTION #R-78-2011

A RESOLUTION OF THE LOVELAND URBAN RENEWAL AUTHORITY APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE LOVELAND URBAN RENEWAL AUTHORITY FOR 2011 FAÇADE PROGRAM FUNDING

WHEREAS, the City of Loveland ("City") is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Loveland Urban Renewal Authority ("LURA") is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, C.R.S. (the "Act");

WHEREAS, as governmental entities in Colorado, the City and LURA 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; and

WHEREAS, in 2002, Downtown Loveland was the first project area (the "Downtown Plan Area") approved under the City of Loveland Urban Renewal Plan, as authorized by the Act; and

WHEREAS, on November 20, 2007, LURA, approved a Façade Improvement Program (the "Façade Program") pursuant to Resolution R#118-2007 making grant funds available to applicants who own property or businesses located within the boundaries of the Downtown Plan Area to further redevelopment, elimination of blight, and funding for façade improvements in a manner consistent with the Urban Renewal Plan; and

WHEREAS, on November 20, 2007, the Loveland City Council approved the transfer $155,000 in City funds to the LURA to fund the Façade Program; and

WHEREAS, on September 15, 2009, the Façade Program was modified to include the Façade Matching Grant Program pursuant to Resolution R#89-2009; and

WHEREAS, the Loveland City Council desires that LURA contractually commit to provide funding for the Façade Program, as the same may hereafter be amended, from the tax increment fund balance available to for 2011 to be expended

by LURA during its 2012 grant cycle in order to serve the public purpose of furthering redevelopment and renovation of the Downtown Plan Area and LURA is willing to make that commitment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, ACTING AS THE BOARD OF COMMISSIONERS OF THE LOVELAND URBAN RENEWAL AUTHORITY:

Section 1. That the Intergovernmental Agreement between the City and LURA for Funding of the Façade Program for 2011 ("Intergovernmental Agreement"), attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

Section 2. That the Chairman of the Board of Commissioners and the Secretary of LURA are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of LURA.

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk
Exhibit A is available in the City Clerk's Office

AT 6:45 P.M. THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY ADJOURNED AND CITY COUNCIL RECONVENED

9. DEVELOPMENT SERVICES

Agreement – LURA Downtown Façade Program

Resolution #R-79-2011 Administrative Action: Resolution #R-79-2011 of the City of Loveland, Colorado approving an Intergovernmental Agreement between the City of Loveland, Colorado and the Loveland Urban Renewal Authority for 2011 Façade Program Funding was approved.

RESOLUTION #R-79-2011

A RESOLUTION OF THE CITY OF LOVELAND, COLORADO APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE LOVELAND URBAN RENEWAL AUTHORITY FOR 2011 FAÇADE PROGRAM FUNDING

WHEREAS, the City of Loveland ("City") is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Loveland Urban Renewal Authority ("LURA") is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, C.R.S. (the "Act");

WHEREAS, as governmental entities in Colorado, the City and LURA 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; and

WHEREAS, in 2002, Downtown Loveland was the first project area (the "Downtown Plan Area") approved under the City of Loveland Urban Renewal Plan, as authorized by the Act; and

WHEREAS, on November 20, 2007, LURA, approved a Façade Improvement Program (the "Façade Program") pursuant to Resolution R#118-2007 making grant funds available to applicants who own property or businesses located within the boundaries of the Downtown Plan Area to further redevelopment, elimination of blight, and funding for façade improvements in a manner consistent with the Urban Renewal Plan; and

WHEREAS, on November 20, 2007, the Loveland City Council approved the transfer $155,000 in City funds to the LURA to fund the Façade Program; and

WHEREAS, on September 15, 2009, the Façade Program was modified to include the Façade Matching Grant Program pursuant to Resolution R#89-2009; and

WHEREAS, the Loveland City Council desires that LURA contractually commit to provide funding for the Façade Program, as the same may hereafter be amended, from the tax increment fund balance for 2011 to be expended by LURA during its 2012 grant cycle in order to serve the public purpose of furthering redevelopment and renovation of the Downtown Plan Area.

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

Section 1. That the Intergovernmental Agreement between the City and LURA for Funding of the Façade Program for 2011 ("Intergovernmental Agreement"), attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

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

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk
Exhibit A is available in the City Clerk's Office

10. DEVELOPMENT SERVICES

2012 Three Mile Plan

Resolution #R-80-2011 Legislative Action: A public hearing was held and Resolution #R-80-2011 adopting a Three Mile Plan for the City of Loveland, Colorado was approved.

RESOLUTION #R-80-2011

A RESOLUTION ADOPTING A THREE MILE PLAN FOR THE CITY OF LOVELAND, COLORADO

WHEREAS, pursuant to C.R.S. §31-12-105(1)(e)(I), as amended, prior to the completion of any annexation within a three mile area outside of the municipal boundaries of a municipality ("Three Mile Area"), a municipality is required to have in place a plan ("Three Mile Plan") which generally describes the proposed location, character and extent of certain public facilities to be provided within and the proposed land uses for the Three Mile Area; and

WHEREAS, pursuant to C.R.S. §31-12-105(1)(e)(I), as amended, the Three Mile Plan must be updated at least once annually; and

WHEREAS, the City of Loveland has enacted, adopted and approved the various plans, documents, ordinances and resolutions (collectively "Plans") listed on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the City Council has determined that the Plans, when considered together as a whole, adequately comply with the requirements of state law and shall constitute the annual updated Three Mile Plan for the City of Loveland; and

WHEREAS, to ensure that future annexations by the City of Loveland are completed in compliance with the provisions of state law, the City Council, by this Resolution, desires to formalize its understanding and intention that the Plans serve as the Three Mile Plan for the City of Loveland.

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

Section 1. The Plans, as described in Exhibit A, when considered together as a whole, shall constitute the Three Mile Plan for the City of Loveland required pursuant to C.R.S. §31-12-105(1)(e)(I), as amended.

Section 2. The Three Mile Plan shall be reviewed and revised as may be necessary at least annually, and additional Plans may be added from time to time, as they are developed and adopted.

Adopted this 6th day of December, 2011.
Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk
Exhibit A is available in the City Clerk's Office

11. CITY MANAGER

2012 Scheduled Meeting Dates

Resolution #R-81-2011 Administrative Action: Resolution #R-81-2011 adopting the schedule of the 2012 meeting dates for the Loveland City Council and the City's Boards and Commissions was approved.

RESOLUTION #R-81-2011

A RESOLUTION ADOPTING THE SCHEDULE OF THE 2012 MEETING DATES FOR THE LOVELAND CITY COUNCIL AND THE CITY'S BOARDS AND COMMISSIONS

WHEREAS, City Code Section 2.14.020B. provides that each year at the City Council's last regularly scheduled meeting, the City Council shall establish the regular meeting dates of all boards, committees, commissions, and other policymaking and rulemaking bodies of the City; and

WHEREAS, Code Section 2.14.020B. requires that seven days after such meeting dates are so established that the meeting dates shall be published once in a newspaper of general circulation in the City and be posted in a conspicuous place in the City Municipal Building; and

WHEREAS, Section 2.14.020B. also requires that the secretary or clerk of each of the City's boards, committees, commissions, and other policymaking and rulemaking bodies shall provide notification of the regularly scheduled date of such meetings in advance of or on occasion of any special meetings duly called to those qualified electors who have made written request to the City for such notification; and

WHEREAS, the purpose of this Resolution is to so establish said meeting dates, and to require the publication, posting and notifications required in City Code Section 2.14.020B.

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

Section 1. That the schedule of regular meeting dates, times and places in 2012 for the Loveland City Council and the City's boards and commissions, a copy of which is attached as Exhibit "A" and incorporated by reference, is hereby adopted as provided in City Code Section 2.14.020B.

Section 2. That the City Council may, from time to time, change by motion the date, time and place of any of its regular meetings in 2012 as established in this Resolution and those of the City's boards and commissions. In addition, the City Manager, in consultation with the Mayor, is authorized to schedule fourth Tuesday study sessions as needed and to cancel the other Tuesday study sessions if there are no study session items to present or ready to present to Council.

Section 3. That the City Clerk is directed pursuant to City Code Section 2.14.020B. to publish the meeting dates established in Exhibit "A" within seven days after the date of this Resolution to be published in a newspaper of general circulation in the City and in addition post such notice of meetings in a conspicuous place in the City Municipal Building.

Section 4. That in addition, the City Clerk shall notify the secretary of each of the City's boards, committees, commissions, and other policymaking and rulemaking bodies to provide notification of this notice of meetings to all qualified electors who have requested such notice in accordance with Section 2.14.020B.

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

Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk
Exhibit A is available in the City Clerk's Office

12. CITY MANAGER

Appointment to Larimer Emergency Telephone Authority (LETA)

Motion — Administrative Action: A motion appointing Bill Westbrook, IT Director, as the City's representative to the LETA Board was approved.

13. CITY CLERK

Municipal Code Amendment – Special Event Permits

1st Rdg Ord & P.H. — Legislative Action: A public hearing was held and "AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF LOVELAND APPROVING ITS LOCAL LICENSING AUTHORITY TO ADOPT A STREAMLINED SPECIAL EVENTS PERMIT PROCESS PURSUANT TO C.R.S. §12-48-107" was approved and ordered published on first reading.

14. ECONOMIC DEVELOPMENT

Concession Agreement for Rialto Theater & Rialto Theater Center

Motion — Administrative Action: A motion approving a contract for food and beverage concession service with Next Door Tapas, Inc and authorizing the City Manager to sign the contract on behalf of the City was approved.

15. CITY MANAGER

Volunteer Firefighter Pension Plan

Not Considered — This item was pulled from the agenda by staff and was not considered by Council.

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports

Dean Snyder spoke about business license requirements in the City of Loveland.

b) Business from Council

Trenary — Councilor Trenary spoke about the rededication of the Daniel Webster Park scheduled for December 7 and mentioned several holiday activities scheduled for the coming weekend. He also noted the passing of Gerald Portugal, past member of several City of Loveland Boards and Commissions.

McKean — Councilor McKean asked Council members to submit discussion topics for the 2012 Advance to the City Manager.

Klassen — Councilor Klassen mentioned the first planning meeting for the Council Advance is December 9th and the submitted due date for topics is December 27th.

Shaffer — Councilor Shaffer will be attending the Colorado Municipal League policy committee meeting. She mentioned the legislative subcommittee consisting of Councilors Trenary, Taylor Shaffer and Assistant City Manager Wensing, will be updating the legislative policy brochure for Council's review, in preparation of the 2012 Legislature session.

Gutierrez — Mayor Gutierrez mentioned several upcoming events including the Snow Sculpture event and the Parade of Lights. He attended the lighting of the community Christmas tree, the gingerbread house contest at the Library, the Hispanic Latino Institute program for getting kids involved in the community and the ribbon cutting of the Palomino's Restaurant. This week the Fire Authority Board is honoring former Councilman Larry Heckel.

c) City Manager Report — None

d) City Attorney Report — None

PROCEDURAL INFORMATION

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

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA - None

16. DEVELOPMENT SERVICE

Mariana Butte 23rd and 26th Subdivision Appeal

Quasi-judicial Action: City Councilor Farley recused himself due to his relationship with John Baxter, manager of B&B I LLC. City Planner Kerri Burchett introduced this item to Council. Also present were Ken Merritt, the developer, applicant John Baxter, manager of B&B I LLC and attorney representation,Tim Goddard. This is a quasi-judicial action to consider an appeal of the Planning Commission's denial of an amendment to the Mariana Butte 23rd PUD Preliminary Development Plan and a preliminary plat for Mariana Butte 26th Subdivision. The property is located at the northwest corner of West 1st Street and Rossum Drive, within the Mariana Butte Planned Unit Development. The property is 5.03 acres and is bordered on the west by the Buckingham Reservoir. The applicant is B&B I LLC. The Mayor opened the public hearing at 7:34 p.m. All items submitted in the packet were entered into the record. Also entered into the record are the email from Mike Knee, dated November 20, 2011 and the letter from John Baxter, dated December 3, 2011. Mayor Gutierrez asked for public comment: Joe Pugh, 5271 Dear Meadow, spoke in support of the appeal. Earl Baumgartel, 285 Rossum Dr spoke in opposition. Don Riedel, president of the Buckingham Reservoir Area Owner's Association spoke in opposition. Jennifer Bray, Mariana Points spoke in support. George Legotke, 4283 Red Fox, owner of lot 9, spoke in opposition. Darlene Kasenberg, 247 Rossum Dr spoke in opposition. Timothy Webb, 377 Rossum spoke in opposition. Dick Barton, 367 Rossum spoke in opposition. Connie Boose, 5287 Deer Meadow spoke in support. Martin Landers, 426 Mariana Point spoke in support. Rosalie Leek, 823 Rossum spoke in support. The Mayor closed the hearing at 9:50 p.m. Discussion ensued. Councilor Shaffer made a motion to uphold the Planning Commission's decision and deny the First Amendment to the Mariana Butte 23rd Subdivision PUD Preliminary Development Plan and Mariana Butte 26th Subdivision Preliminary Plat and directed staff to prepare written findings and conclusions setting forth its decision for consideration and adoption by Council within 30 days of this appeal hearing. Councilor McKean seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

ITEMS 20 & 21

It was the consensus of Council to postpone Item 20, the October 2011 Financial Report and Item 21, the October, 2011 Investment Report until the December 13, 2011 study session.

17. CITY MANAGER'S OFFICE

Building Lease Agreement – Chamber of Commerce

Resolution #R-83-2011

Administrative Action: Assistant City Manager Rod Wensing introduced this item to Council. City staff is recommending that the current 1995 lease agreement, as amended, be terminated and a new lease be approved whereby the City will lease to the Chamber, and the Chamber will lease from the City, only about half of the building for office and conference space through 2016. The City will occupy and use the remaining portion of the building for operation of the Loveland Visitor's Center. Estimated annual direct operating expenses associated with the Chamber side of the building will increase City costs by $8,300 with an offset of $6,492 in a utilities fee paid by the Chamber

resulting in a net increase of $1,808. The direct costs associated with the City taking over the Visitor Center operations side of the building are already being planned in the Community Marketing Commission budgets for 2011 and 2012. Councilor Shaffer made a motion to adopt Resolution #R-83-2011 approving a lease agreement between the City of Loveland, Colorado and the Loveland Chamber of Commerce for a portion of the building located at 5400 Stone Creek Circle in Loveland, Colorado. Councilor Trenary seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION #R-83-2011

A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE LOVELAND CHAMBER OF COMMERCE FOR A PORTION OF THE BUILDING LOCATED AT 5400 STONE CREEK CIRCLE IN LOVELAND, COLORADO

WHEREAS, the City of Loveland is the owner of that certain building located on a portion of Lots 2 and 3, Block 1, McWhinney Second Subdivision, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 5400 Stone Creek Circle, Loveland, Colorado 80538 ("Building"); and

WHEREAS, the City and the Loveland Chamber of Commerce entered into that certain "Lease Agreement Between the City of Loveland and the Loveland Chamber of Commerce" dated October 23, 1995, as amended on April 16, 1996 and on June 21, 2011 (together, the "1995 Lease Agreement"), for construction, occupancy, and use of the Building by the Chamber for office and conference space and for operation of a visitor's center ("Visitor's Center"); and

WHEREAS, the parties desire to terminate the 1995 Lease Agreement and enter into a new lease whereby the City will lease to the Chamber, and the Chamber will lease from the City, only a portion of the Building for office and conference space, and the City will occupy and use the remaining portion of the Building for operation of the Visitor's Center.

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

Section 1. That the Lease Agreement, attached hereto as Exhibit A and incorporated herein by reference, is hereby approved.

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

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

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor
Attest: Teresa G. Andrews, City Clerk
Exhibit A is available in the City Clerk's Office

18. ECONOMIC DEVELOPMENT

Letter Agreement with Brinkman Partners & Modification to Urban Renewal Area

Administrative Action: City Planner Mike Scholl introduced this item to Council. This is an administrative action to consider a series of Council resolutions that would facilitate the negotiation and financing of 533 N. Lincoln Avenue (North Catalyst project) in partnership with the Brinkman Partners. Resolution #1, the Exclusive Right to Negotiation (ERN) provides an exclusive period of negotiation beginning December 7, 2011 through May 18, 2012 during which the parties will engage in negotiations and due diligence work on an agreement for the sale and development of the parcel.

Resolution #2 and the LURA resolution to follow would authorize the blight study, approve a minor modification to the Downtown Urban Renewal Plan Area and initiate a major modification to the Block 41-Finley's Addition Urban Renewal Plan (detaching the

North Catalyst site at 533 N. Lincoln, the Museum site at 503 N. Lincoln, the 5th Street Parking lot site, and the County Building at 606 N. Cleveland from the Downtown Plan Area and adding them to the Block 41-Finley's Addition Plan Area). Resolution #2 and the LURA resolution also authorize the City to fund the blight study pursuant to an intergovernmental agreement with the Loveland Urban Renewal Authority.

Prior to the development moving forward, Council will be required to consider the completed blight study to determine whether a finding of blight can be made, a proposed major modification of the Block 41-Finley's Addition Plan to include the identified properties (including the North Catalyst site), and approve a final disposition and development agreement for the North Catalyst site and an appropriation for any negotiated financing of development incentives that will need to take place prior to closing.

a) Resolution #R-84-2011

Councilor Shaffer made a motion to approve Resolution #R-84-2011 approving a letter agreement for exclusive right to negotiate a disposition and development agreement with Brinkman Partners, LLC for the North Catalyst Site located at 533 North Lincoln Avenue, Loveland, Colorado. Councilor Trenary seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION #R-84-2011

A RESOLUTION APPROVING A LETTER AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH BRINKMAN PARTNERS, LLC FOR THE NORTH CATALYST SITE LOCATED AT 533 NORTH LINCOLN AVENUE, LOVELAND, COLORADO

WHEREAS, in January, 2011, the City of Loveland issued a Request for Proposals, Downtown Redevelopment Sites (the "RFP"); and

WHEREAS, Brinkman Partners, LLC, a Colorado limited liability company ("Brinkman") submitted a response to the RFP dated April 7, 2011 (the "Brinkman Response") for the North Catalyst Project to be located on that real property located at 533 North Lincoln Avenue, Loveland, Colorado (the "Property"); and

WHEREAS, the Scheme 1 development proposal for the North Catalyst Project (the "Project") as set forth in the Brinkman Response was selected as the preferred development alternative for the North Catalyst Project to be located on the Property; and

WHEREAS, the parties desire to enter into a Letter Agreement for Exclusive Right to Negotiate to provide additional time to complete negotiation of an agreement for disposition and development of the Property.

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

Section 1. That the Letter Agreement for Exclusive Right to Negotiate attached hereto as Exhibit A and incorporated herein by this reference (the "ERN") is hereby approved.

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

Section 3. That the City Manager is hereby authorized and directed to execute the ERN on behalf of the City of Loveland.

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

b) Resolution #R-85-2011

Councilor Shaffer made a motion to approve Resolution #R-85-2011 of the City Council of the City of Loveland conditionally approving a minor modification to the Urban Renewal Plan for Downtown Loveland, and initiating a major modification to the Urban

Renewal Plan for Block 41 – Finley's Addition. Councilor Trenary seconded the motion and a roll call vote was taken with six Councilors present voting in favor and Councilors McKean and Fogle voting against. The motion passed.

RESOLUTION #R-85-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND CONDITIONALLY APPROVING A MINOR MODIFICATION TO THE URBAN RENEWAL PLAN FOR DOWNTOWN LOVELAND, AND INITIATING A MAJOR MODIFICATION TO THE URBAN RENEWAL PLAN FOR BLOCK 41 – FINLEY'S ADDITION

WHEREAS, on October 1, 2002, the Loveland City Council adopted Resolution #R-74-2002 approving the City of Loveland Urban Renewal Plan ("Downtown Plan"); and

WHEREAS, Section 3 of the Downtown Plan legally describes, depicts, and refers to the "Urban Renewal Area for Downtown Loveland" ("Downtown Plan Area"); and

WHEREAS, on April 26, 2005, the City Council adopted Resolution #R-32-2005 modifying the Downtown Plan by removing from the Downtown Plan Area the Finley's Addition Plan Area, described below, resulting in a modified and amended Downtown Plan ("Amended Downtown Plan") and a modified and amended Downtown Plan Area ("Amended Downtown Plan Area"); and

WHEREAS, the Amended Downtown Plan Area currently includes certain real property legally described as set forth in Exhibit A, attached and incorporated by reference ("Property"), which is owned in part by the City, and in part by Larimer County; and

WHEREAS, a portion of the Property owned by the City is the site of an obsolete commercial building proposed for disposition and redevelopment as the "North Catalyst Project" ("North Catalyst Site"); and

WHEREAS, the City Council desires to remove the Property from the Amended Downtown Plan Area and add it to the Finley's Addition Plan Area, thereby allowing all of the tax increment revenues from the Property, when developed, and the Finley's Addition Plan Area, after satisfaction of all of the obligations under the "Amended and Restated Master Financing Agreement for Block 41 – Finley's Addition Urban Renewal Plan Area" dated May 22, 2007 ("MFA"), to be used by the Loveland Urban Renewal Authority ("Authority") to finance the construction of certain public improvements on the Property; and

WHEREAS, C.R.S. § 31-25-107(7) allows the City Council to further amend the Amended Downtown Plan at any time without being subject to the notice and blight finding requirements of said section, provided that such modification will not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, the removal of the Property, which consists of approximately 2.8 acres, from the existing Amended Downtown Plan Area, which currently consists of approximately 230 acres, will not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, on April 26, 2005, the City Council adopted Resolution #R-33-2005 approving an urban renewal plan referred to as the "City of Loveland Urban Renewal Plan for Block 41 – Finley's Addition" ("Finley's Addition Plan"); and

WHEREAS, the Finley's Addition Plan legally describes and depicts the Plan's boundaries ("Finley's Addition Plan Area"); and

WHEREAS, the City Council desires to modify the Finley's Addition Plan by adding the Property to the Finley's Addition Plan Area to facilitate redevelopment of the North Catalyst Site as described above; and

WHEREAS, C.R.S. § 31-25-107(7) allows the City Council to amend the Finley's Addition Plan at any time provided that any substantial changes to the Finley's Addition Plan are subject to the notice and blight finding requirements of said section, and all other applicable requirements of said section; and

WHEREAS, the addition of the Property, which consists of approximately 2.8 acres, to the existing Finley's Addition Plan Area, which currently consists of approximately 2.15 acres, will substantially change the Finley's Addition Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, pursuant to C.R.S. § 31-25-112, the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be

taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the North Catalyst Project and carrying out the Finley's Addition Plan as it may hereafter be modified and amended; and

WHEREAS, the City desires to enter into an intergovernmental agreement with the Authority to aid and cooperate with the Authority in undertaking the North Catalyst Project and carrying out the Finley's Addition Plan as it may hereafter be modified and amended; and

WHEREAS, as governmental entities in Colorado, the City and the Authority 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 City Council hereby finds that the removal of the Property from the Amended Downtown Plan Area will not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved.

Section 2. That contemporaneously with and conditioned on the City Council's future approval of the substantial modification of the Finley's Addition Plan to include the Property within its boundaries, the Amended Downtown Plan shall be deemed modified pursuant to C.R.S. § 31-25-107(7) to remove the Property from the boundaries of the Amended Downtown Plan, and that the Amended Downtown Plan Area, as modified by this Resolution, shall have the new boundaries legally described in Exhibit B attached and incorporated by reference.

Section 3. That except as modified by this Resolution and Resolution #R-32-2005, the Downtown Plan is hereby ratified and reaffirmed, shall remain unchanged in all other respects, and shall remain in full force and effect.

Section 4. That the City Council hereby finds that the addition of the Property to the Finley's Addition Plan Area will result in a substantial modification of the Finley's Addition Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved.

Section 5. That the City Council hereby requests that the Authority commission a study to determine whether the Property is a slum, blighted area, or a combination thereof ("Blight Study") in accordance with the requirements of C.R.S. § 31-25-107(1).

Section 6. That the City Council hereby directs that the proposed substantial modification to the Finley's Addition Plan be submitted to the Loveland Planning Commission for review and recommendations as to the conformity of the proposed substantial modification with the general plan for the development of the City of Loveland as a whole in accordance with the requirements of C.R.S. § 31-25-107(2).

Section 7. That the City Council hereby directs that, at least thirty (30) days prior to the City Council's public hearing on the substantial modification to the Finley's Addition Plan, notice of the public hearing be made by publication in the Loveland Reporter-Herald in accordance with the requirements of C.R.S. § 31-25-107(3)(a).

Section 8. That the City Council hereby directs that, at least thirty (30) days prior to the City Council's public hearing on the substantial modification to the Finley's Addition Plan, the proposed substantial modification and an urban renewal impact report be submitted to the Larimer County Board of Commissioners in accordance with the requirements of C.R.S. § 31-25-107(3.5).

Section 9. That the City Council hereby directs that, at least thirty (30) days prior to the City Council's public hearing on the substantial modification to the Finley's Addition Plan, notice of the public hearing be made to all property owners, residents, and owners of business concerns within the legal boundaries of the Property and the Finley's Addition Plan Area at their last known address of record in accordance with the requirements of C.R.S. § 31-25-107(4)(c).

Section 10. That the City Council hereby directs that the Thompson School District be requested to participate in an advisory capacity with respect to inclusion of provisions in the Finley's Addition Plan for the use of tax increment financing by the Authority for construction of certain public improvements on the Property in accordance with the requirements of C.R.S. § 31-25-107(9)(d).

Section 11. That the City Council hereby finds that the Property does not contain any "agricultural land" as this term is defined in C.R.S. § 31-25-103(1).

Section 12. That the City Council hereby declares that it does not intend to acquire private property by eminent domain within the Property or the Finley's Addition Plan Area.

Section 13. That the City Council hereby authorizes the City to enter into an intergovernmental agreement, in a form approved by the City Attorney, with the Authority for the purpose of making a loan from the City's general fund to the Authority in such amount as may be necessary to contract for the Blight Study, and authorizes the City Manager to sign said intergovernmental agreement on behalf of the City.

Section 14. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

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

AT 12:02 A.M. CITY COUNCIL ADJOURNED AND CONVENED AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)

19. ECONOMIC DEVELOPMENT

Authorize Blight Study

Resolution #R-86-2011

Administrative Action: City Planner Mike Scholl introduced this item to City Council. This is an administrative action to consider a Resolution to authorize the blight study for the purposes of amending the Finley's Block/Lincoln Place URA. City Councilor Shaffer made a motion to approve, with the amended Exhibit A, Resolution #R-86-2011 of the Board of the Loveland Urban Renewal Authority commissioning a blight study for property proposed to be added to the Urban Renewal Plan for Block 41 – Finley's Addition. Councilor Farley seconded the motion and a roll call vote was taken with six Councilors present voting in favor and Councilors McKean and Fogle voting against. The motion passed.

RESOLUTION #R-86-2011

A RESOLUTION OF THE BOARD OF THE LOVELAND URBAN RENEWAL AUTHORITY COMMISSIONING A BLIGHT STUDY FOR PROPERTY PROPOSED TO BE ADDED TO THE URBAN RENEWAL PLAN FOR BLOCK 41 – FINLEY'S ADDITION

WHEREAS, on October 1, 2002, the Loveland City Council adopted Resolution #R-74-2002 approving the City of Loveland Urban Renewal Plan ("Downtown Plan"); and

WHEREAS, Section 3 of the Downtown Plan legally describes, depicts, and refers to the "Urban Renewal Area for Downtown Loveland" ("Downtown Plan Area"); and

WHEREAS, on April 26, 2005, the City Council adopted Resolution #R-32-2005 modifying the Downtown Plan by removing from the Downtown Plan Area the Finley's Addition Plan Area, described below, resulting in a modified and amended Downtown Plan ("Amended Downtown Plan") and a modified and amended Downtown Plan Area ("Amended Downtown Plan Area"); and

WHEREAS, the Amended Downtown Plan Area currently includes certain real property legally described as set forth in Exhibit A, attached and incorporated by reference ("Property"), which is owned in part by the City, and in part by Larimer County; and

WHEREAS, a portion of the Property owned by the City is the site of an obsolete commercial building proposed for disposition and redevelopment as the "North Catalyst Project" ("North Catalyst Site"); and

WHEREAS, the City Council desires to remove the Property from the Downtown Plan Area and add it to the Finley's Addition Plan Area, thereby allowing all of the tax increment revenues from the Property, when developed, and the Finley's Addition Plan Area, after satisfaction of all of the obligations under the "Amended and Restated Master Financing Agreement for Block 41 – Finley's Addition Urban Renewal Plan Area" dated May 22, 2007 ("MFA"), to be used by the Loveland Urban Renewal Authority ("Authority") to finance the construction of certain public improvements on the Property; and

WHEREAS, C.R.S. § 31-25-107(7) allows the City Council to further amend the Amended Downtown Plan at any time without being subject to the notice and blight finding requirements of said section, provided that such modification will

not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, on December 6, 2011, the City Council adopted Resolution #R-85-2011, in which it found that the removal of the Property, which consists of approximately 2.8 acres, from the existing Amended Downtown Plan Area, which currently consists of approximately 230 acres, will not substantially change the Amended Downtown Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, on April 26 2005, the City Council adopted Resolution #R-33-2005 approving an urban renewal plan referred to as the "City of Loveland Urban Renewal Plan for Block 41 – Finley's Addition" ("Finley's Addition Plan"); and

WHEREAS, the Finley's Addition Plan legally describes and depicts the Plan's boundaries ("Finley's Addition Plan Area"); and

WHEREAS, the City Council desires to modify the Finley's Addition Plan by adding the Property to the Finley's Addition Plan Area to facilitate redevelopment of the North Catalyst Site as described above; and

WHEREAS, C.R.S. § 31-25-107(7) allows the City Council to amend the Finley's Addition Plan at any time provided that any substantial changes to the Finley's Addition Plan are subject to the notice and blight finding requirements of said section, and all other applicable requirements of said section; and

WHEREAS, on December 6, 2011, the City Council adopted Resolution #R-85-2011, in which it found that the addition of the Property, which consists of approximately 2.8 acres, to the existing Finley's Addition Plan Area, which currently consists of approximately 2.15 acres, will substantially change the Finley's Addition Plan in land area, land use, design, building requirements, timing, or procedure, as previously approved; and

WHEREAS, the Board of the Authority ("Board") desires to commission a study to determine whether the Property is a slum, blighted area, or a combination thereof, and provide notice of the study, in accordance with the requirements of C.R.S. § 31-25-107(1); and

WHEREAS, the Board desires to enter into an intergovernmental agreement with the City to aid and cooperate with the City in undertaking the North Catalyst Project and carrying out the Finley's Addition Plan as it may hereafter be modified and amended; and

WHEREAS, as governmental entities in Colorado, the Authority and the City 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 URBAN RENEWAL AUTHORITY OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the Board hereby commissions a study to determine whether the Property is a slum, blighted area, or a combination thereof ("Blight Study") in accordance with the requirements of C.R.S. § 31-25-107(1).

Section 2. That the Board hereby directs that notice be given to any owner of private property located in the area that is the subject of the Blight Study by mailing notice to the owner by regular mail at the last-known address of record in accordance with the requirements of C.R.S. § 31-25-107(1).

Section 3. That the Board hereby authorizes the Authority to enter into an intergovernmental agreement, in a form approved by the City Attorney, with the City for the purpose of accepting a loan from the City in such amount as may be necessary to commission the Blight Study, and authorizes the Chairman of the Board to sign said intergovernmental agreement on behalf of the Authority.

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

ADOPTED this 6th day of December, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

AT 12:05 A.M. THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY ADJOURNED AND CITY COUNCIL RECONVENED

ADJOURNMENT

Having no further business to come before Council, the December 6, 2011 Regular Meeting was adjourned at 12:05 a.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

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

AGENDA ITEM: **2**
MEETING DATE: 12/20/2011
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:
Appoint members to Affordable Housing Commission and Open Lands Advisory Commission

RECOMMENDED CITY COUNCIL ACTION:
Adopt a motion to appoint, to the Affordable Housing Commission, Pam McCrory for a partial term effective until June 30, 2012 and Scott Bader for a partial term effective until June 30, 2013.

Adopt a motion to reappoint Gale Bernhardt and Bill Zawacki to the Open Lands Advisory Commission, both for four-year terms effective until December 31, 2015.

Adopt a motion to appoint, to the Open Lands Advisory Commission, Darren Pape for a four-year term effective until December 31, 2014 and Jim Roode as an Alternate member for a one-year term effective until December 31, 2012.

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

DESCRIPTION:
This is an administrative item appointing members to the Affordable Housing Commission and appointing members to the Open Lands Advisory Commission.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
Due to resignations, the Affordable Housing Commission ("AHC") has had two partial term vacancies since Fall. During the recent bi-annual recruiting, three applications were received for AHC. Interviews were held December 9, 2011 with all three candidates. Pam McCrory is recommended for appointment to the Affordable Housing Commission for a partial term effective

until June 30, 2012. Scott Bader is recommended for appointment to the Affordable Housing Commission for a partial term effective until June 30, 2013.

Recruiting for members on the Open Lands Advisory Commission ("OLAC") resulted in six applications. One candidate was not available for an interview. One candidate withdrew his application and was not interviewed. Interviews were held December 6, 2011. The interview committee recommends the reappointment of Gail Bernhardt and Bill Zawacki to Open Lands Advisory Commission for four-year terms effective until December 31, 2015. Darren Pape is recommended for appointment to OLAC for a four-year term effective until December 31, 2015. Jim Roode is recommended for appointment as an Alternate to OLAC for a one-year term effective until December 31, 2012.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
None

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

AGENDA ITEM: **3**
MEETING DATE: 12/20/2011
TO: City Council
FROM: Terry Andrews, Finance
PRESENTER: Terry Andrews, City Clerk

TITLE:
An ordinance of the City Council for the City of Loveland approving its Local Licensing Authority to adopt a streamlined Special Events Permit process pursuant to C.R.S. §12-48-107

RECOMMENDED CITY COUNCIL ACTION:
Adopt a motion to approve and order published the ordinance on second reading

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

DESCRIPTION:
This is a legislative action. State law requires a permit for special events at which alcohol beverages are sold and/or served to the public. Currently, approval/denial of such permits is required at the City and State levels, with fees to both the City and State to help recover the cost of permitting. Recent legislation provides an option for the City to "opt in" to a process to streamline the Special Event Permit process. The simplified option eliminates the State from the approval process and retains approval at the local level only. The number of days per year which special event permit holders can hold events increased from 10 to 15 days per year.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
There is no impact to the budget. The additional time required to notify the State of permits issued by the Local Licensing Authority, is offset by not having to wait for the State to issue the permit. This legislation does not provide an option to increase local fees.

SUMMARY:
This ordinance will place certain portions of article 47 of Title 12, C.R.S. "the Special Event" process into the Municipal Code. Senate Bill 11-066 provides an option for the City to "opt in" to a process to streamline the Special Event Permit process. The bill requires the State Licensing authority to establish and maintain a website containing the state-wide permitting activity of organizations that receive permits under this process. Eliminating the State from the approval process transfers one responsibility to the City - to report the number of events each entity [non-profit or political candidate] holds annually. It is estimated that this step will add 3-5 minutes to each application processed, a function that can be absorbed without additional Staff hours. About 14 applications are processed each year at about 2.25 hours per application. The advantage for the applicant is the savings in money and time; the State fee ($10 or $25 depending on the type of permit), and the State processing turnaround which can take between 10 to 15 days.

The essential processing steps occur already at the City level, and those will not change (including sales tax, location checks by the Police Department, public posting of events, and other Code compliance reviews, etc..) The City's fee for the permit is $100 per application, the maximum allowable by State Statute. The average value of Staff time invested is approximately $177 per application (56% cost recovery).

On October 20, 2011 the Liquor Licensing Authority approved LLA Resolution #01-2011 requesting Council consider and approve an ordinance implementing the provisions detailed in Senate Bill 11-066 relative to the Special Event permits process.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
Ordinance
LLA Resolution #01-2011

FIRST READING: December 6, 2011

SECOND READING: December 20, 2011

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF LOVELAND APPROVING ITS LOCAL LICENSING AUTHORITY TO ADOPT A STREAMLINED SPECIAL EVENTS PERMIT PROCESS PURSUANT TO C.R.S. §12-48-107

WHEREAS, Loveland Municipal Code Section 8.04.010 has established a local licensing authority to implement Articles 46, 47 and 48 of Title 12 C.R.S.; and

WHEREAS, in the past approval and/or denial of special event permits has been required at both the local and state levels requiring applicants to pay fees to both the state and the city; and

WHEREAS, amendments were made in 2011 to Title 12, Article 48 of the Colorado Revised Statutes, which would allow a local licensing authority not to notify the state licensing authority for approval or disapproval of an application for a special event permit; and

WHEREAS, by not notifying the state licensing authority to obtain approval or disapproval of an application for a special event permit, such authority to approve or deny a special event permit would remain at the local level only, and applicants would only pay fees at the local level; and

WHEREAS, currently the essential steps for processing special event permits occur at the local level; and

WHEREAS, the City Council has received a recommendation from the local licensing authority that the City of Loveland retain authority to approve or disapprove special event permits at the local level only and not require an applicant to obtain the state licensing authority's approval or disapproval of applications for special event permits; and

WHEREAS, the City Council wishes to adopt the recommendations of the local licensing authority and amend the Loveland Municipal Code to reflect such changes in procedure as allowed in C.R.S. §12-48-107(5)(a).

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

Section 1. Title 8 of the Loveland Municipal Code is revised by the addition of a new Chapter 8.10 to read as follows:

SPECIAL EVENT PERMITS
Sections:

8.10.010 Special event permits authorized

The local licensing authority, as defined in Section 8.04.010 of this Code, may issue a special event permit for the sale, by the drink only, of fermented malt beverages, as defined in C.R.S. Section 12-46-103, or the sale, by the drink only, of malt, spirituous, or vinous liquors, as defined in C.R.S. Section 12-47-103, to organizations and political candidates qualifying under this chapter, subject to the applicable provisions of articles 46 and 47 of title 12, C.R.S., and to the limitations imposed by this chapter.

8.10.020 Qualifications of organizations for permit--qualifications of municipalities or municipalities owning arts facilities--qualifications of candidates

(1) A special event permit issued under this chapter may be issued to an organization, whether or not presently licensed under articles 46 and 47 of title 12, C.R.S., which has been incorporated under the laws of this state for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain, or which is a regularly chartered branch, lodge, or chapter of a national organization or society organized for such purposes and being nonprofit in nature, or which is a regularly established religious or philanthropic institution, or which is a state institution of higher education, and to any political candidate who has filed the necessary reports and statements with the secretary of state pursuant to article 45 of title 1, C.R.S. For purposes of this chapter, a state institution of higher education includes each principal campus of a state system of higher education.
(2) A special event permit may be issued to any City owned arts facilities at which productions or performances of an artistic or cultural nature are presented for use at such facilities, subject to the provisions of this chapter.

8.10.030 Grounds for issuance of special event permits

(1)(a) A special event permit may be issued under this chapter notwithstanding the fact that the special event is to be held on premises licensed under the provisions of C.R.S. sections 12-47-403, 12-47-403.5, 12-47-416, 12-47-417, or 12-47-422. The holder of a special event permit issued pursuant to this chapter shall be responsible for any violation of article 47 of title 12, C.R.S.
(b) If a violation of article 48 or of article 47 of title 12, C.R.S. occurs during a special event wine festival and the responsible licensee can be identified, such licensee may be charged and the appropriate penalties may apply. If the responsible licensee cannot be identified, the local licensing authority may send written notice to every licensee identified on the permit applications and may fine each the same dollar amount. Such fine shall not exceed twenty-five

dollars per licensee or two hundred dollars in the aggregate. No joint fine levied pursuant to this subparagraph (b) shall apply to the revocation of a limited wineries license under C.R.S. section 12-47-601.
(2) Nothing in this chapter shall be construed to prohibit the sale or dispensing of malt, vinous, or spirituous liquors on any closed street, highway, or public byway for which a special event permit has been issued.

8.10.040 Fees for special event permits

(1) Special event permit fees shall be set at one hundred dollars ($100.00) for each permit issued.
(2) All fees are payable in advance to the City Clerk's Office for applications for special event permits submitted to the local licensing authority for approval.

8.10.050 Restrictions related to permits

(1) Each special event permit shall be issued for a specific location and is not valid for any other location.
(2) A special event permit authorizes sale of the beverage or the liquors specified only during the following hours:
(a) Between the hours of five a.m. of the day specified in a malt beverage permit and until twelve midnight on the same day;
(b) Between the hours of seven a.m. of the day specified in a malt, vinous, and spirituous liquor permit and until two a.m. of the day immediately following.
(3) The local licensing authority shall not issue a special event permit to any organization for more than fifteen days in one calendar year.
(4) No issuance of a special event permit shall have the effect of requiring the state or local licensing authority to issue such a permit upon any subsequent application by an organization.
(5) Sandwiches or other food snacks shall be available during all hours of service of malt, spirituous, or vinous liquors, but prepared meals need not be served.

8.10.060 Grounds for denial of special event permit

(1) The local licensing authority may deny the issuance of a special event permit upon the grounds that the issuance would be injurious to the public welfare because of the nature of the special event, its location within the community, or the failure of the applicant in a past special event to conduct the event in compliance with applicable laws.
(2) Public notice of the proposed permit and of the procedure for protesting issuance of the permit shall be conspicuously posted at the proposed location for at least ten days before approval of the permit by the local licensing authority.

8.10.070 Applications for special event permit

(1) Applications for a special event permit shall be made with the local licensing authority on forms provided by the state licensing authority and shall be verified by oath or affirmation of an officer of the organization or of the political candidate making application.
(2) An applicant shall include payment of the fee established by the local licensing authority, not to exceed one hundred dollars, for both investigation and issuance of a permit. In reviewing an application, the local licensing authority shall apply the same standards for approval and denial applicable to the state licensing authority.

(3) The local licensing authority shall cause a hearing to be held if, after investigation and upon review of the contents of any protest filed by affected persons, sufficient grounds appear to exist for denial of a permit. Any protest shall be filed by affected persons within ten days after the date of notice pursuant to section 8.10.060(2) of this code. Any hearing required by this subsection (3) or any hearing held at the discretion of the local licensing authority shall be held at least ten days after the initial posting of the notice, and notice thereof shall be provided the applicant and any person who has filed a protest.
(4) The local licensing authority may assign all or any portion of its functions under this chapter to an administrative officer.
(5)(a) The local licensing authority is not required to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of an application for a special event permit. The local licensing authority is only required to report to the liquor enforcement division, within ten days after it issues a permit, the name of the organization to which a permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service.
(b) The local licensing authority shall promptly act upon each application and either approve or disapprove each application for a special event permit.
(c) The state licensing authority has established and maintains a web site containing the statewide permitting activity of organizations that receive permits. In order to ensure compliance with C.R.S. section 12-48-105(3), which restricts the number of permits issued to an organization in a calendar year, the local licensing authority shall access information made available on the web site of the state licensing authority to determine the statewide permitting activity of the organization applying for the permit. The local licensing authority shall consider compliance with C.R.S. section 12-48-105(3) before approving any application

8.10.080 Exemptions

An organization otherwise qualifying under section 8.10.020 of this code shall be exempt from the provisions of this chapter and shall be deemed to be dispensing gratuitously and not to be selling fermented malt beverages or malt, spirituous, or vinous liquors when it serves, by the drink, fermented malt beverages or malt, spirituous, or vinous liquors to its members and their guests at a private function held by such organization on an unlicensed premises so long as any admission or other charge, if any, required to be paid or given by any such member as a condition to entry or participation in the event is uniform as to all without regard to whether or not a member or such member's guest consumes or does not consume such beverages or liquors. For purposes of this section, all invited attendees at a private function held by a state institution of higher education shall be considered members or guests of the institution.

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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED _____ day of _____, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO

_____

City Clerk

_____

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

Assistant City Attorney

LLA RESOLUTION #01-2011

A RESOLUTION OF THE CITY OF LOVELAND LIQUOR LICENSE AUTHORITY IN SUPPORT OF AN ORDINANCE ELECTING TO ADOPT A STREAMLINED SPECIAL EVENT PERMIT PROCESS PURSUANT TO C.R.S. §12-48-107

WHEREAS, Loveland Municipal Code Section 8.04.010 has established a local licensing authority to implement Articles 46, 47 and 48 of Title 12 C.R.S.; and

WHEREAS, in the past approval and/or denial of special event permits has been required at both the local and state levels, requiring applicants to pay fees to both the state and the city; and

WHEREAS, amendments were made in 2011 to Title 12, Article 48 of the Colorado Revised Statutes, which would allow a local licensing authority not to notify the state licensing authority for approval or disapproval of an application for a special event permit; and

WHEREAS, by foregoing notification to the state licensing authority to obtain approval or disapproval of an application for a special event permit, such authority to approve or deny a special event permit would remain at the local level only, and applicants would only pay fees for such permits at the local level; and

WHEREAS, currently the essential steps for processing special event permits occur at the local level; and

WHEREAS, the local licensing authority recommends to the Loveland City Council that the City of Loveland retain authority to approve or disapprove special event permits at the local level only and not require an applicant to obtain the state licensing authority's approval or disapproval of applications for special event permits; and

WHEREAS, in support thereof, the local licensing authority recommends that an ordinance amending the Loveland Municipal Code be enacted to reflect such change in procedure.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF LOVELAND LOCAL LICENSING AUTHORITY OF THE CITY OF LOVELAND, COLORADO THAT:

Section 1. The City of Loveland Local Liquor Licensing Authority does hereby recommend City Council consideration and approval of an ordinance, attached hereto and incorporated herein as **Exhibit A,** amending the City of Loveland Municipal Code with the addition of Chapter 8.10 regarding the issuance of special event permits to serve alcohol.

Section 2. Such amendment to the Loveland Municipal Code would allow the City of Loveland Local Licensing Authority not to notify the state licensing authority of an application for a special event permit, pursuant to C.R.S. §12-48-107(5)(a); but would retain approval or disapproval of any special event permit applications at the local level.

Section 3. Staff is directed to present the aforementioned ordinance along with this resolution of support to City Council for their consideration.

Section 4. This resolution shall be effective as of the date and time of its adoption.

ADOPTED this 20th day of October, 2011.

William E. Starks, Local Licensing Authority

ATTEST:

Secretary to the Authority

SEAL

APPROVED AS TO FORM:

Assistant City Attorney

EXHIBIT A

FIRST READING:_____

SECOND READING:_____

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF LOVELAND APPROVING ITS LOCAL LICENSING AUTHORITY TO ADOPT A STREAMLINED SPECIAL EVENTS PERMIT PROCESS PURSUANT TO C.R.S. §12-48-107

WHEREAS, Loveland Municipal Code Section 8.04.010 has established a local licensing authority to implement Articles 46, 47 and 48 of Title 12 C.R.S.; and

WHEREAS, in the past approval and/or denial of special event permits has been required at both the local and state levels requiring applicants to pay fees to both the state and the city; and

WHEREAS, amendments were made in 2011 to Title 12, Article 48 of the Colorado Revised Statutes, which would allow a local licensing authority not to notify the state licensing authority for approval or disapproval of an application for a special event permit; and

WHEREAS, by not notifying the state licensing authority to obtain approval or disapproval of an application for a special event permit, such authority to approve or deny a special event permit would remain at the local level only, and applicants would only pay fees at the local level; and

WHEREAS, currently the essential steps for processing special event permits occur at the local level; and

WHEREAS, the City Council has received a recommendation from the local licensing authority that the City of Loveland retain authority to approve or disapprove special event permits at the local level only and not require an applicant to obtain the state licensing authority's approval or disapproval of applications for special event permits; and

WHEREAS, the City Council wishes to adopt the recommendations of the local licensing authority and amend the Loveland Municipal Code to reflect such changes in procedure as allowed in C.R.S. §12-48-107(5)(a).

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

Section 1. Title 8 of the Loveland Municipal Code is revised by the addition of a new Chapter 8.10 to read as follows:

SPECIAL EVENT PERMITS
Sections:

8.10.010 Special event permits authorized

The local licensing authority, as defined in Section 8.04.010 of this Code, may issue a special event permit for the sale, by the drink only, of fermented malt beverages, as defined in C.R.S. Section 12-46-103, or the sale, by the drink only, of malt, spirituous, or vinous liquors, as defined in C.R.S. Section 12-47-103, to organizations and political candidates qualifying under this chapter, subject to the applicable provisions of articles 46 and 47 of title 12, C.R.S., and to the limitations imposed by this chapter.

8.10.020 Qualifications of organizations for permit--qualifications of municipalities or municipalities owning arts facilities--qualifications of candidates

(1) A special event permit issued under this chapter may be issued to an organization, whether or not presently licensed under articles 46 and 47 of title 12, C.R.S., which has been incorporated under the laws of this state for purposes of a social, fraternal, patriotic, political, or athletic nature, and not for pecuniary gain, or which is a regularly chartered branch, lodge, or chapter of a national organization or society organized for such purposes and being nonprofit in nature, or which is a regularly established religious or philanthropic institution, or which is a state institution of higher education, and to any political candidate who has filed the necessary reports and statements with the secretary of state pursuant to article 45 of title 1, C.R.S. For purposes of this chapter, a state institution of higher education includes each principal campus of a state system of higher education.
(2) A special event permit may be issued to any City owned arts facilities at which productions or performances of an artistic or cultural nature are presented for use at such facilities, subject to the provisions of this chapter.

8.10.030 Grounds for issuance of special event permits

(1)(a) A special event permit may be issued under this chapter notwithstanding the fact that the special event is to be held on premises licensed under the provisions of C.R.S. sections 12-47-403, 12-47-403.5, 12-47-416, 12-47-417, or 12-47-422. The holder of a special event permit issued pursuant to this chapter shall be responsible for any violation of article 47 of title 12, C.R.S.
(b) If a violation of article 48 or of article 47 of title 12, C.R.S. occurs during a special event wine festival and the responsible licensee can be identified, such licensee may be charged and

the appropriate penalties may apply. If the responsible licensee cannot be identified, the local licensing authority may send written notice to every licensee identified on the permit applications and may fine each the same dollar amount. Such fine shall not exceed twenty-five dollars per licensee or two hundred dollars in the aggregate. No joint fine levied pursuant to this subparagraph (b) shall apply to the revocation of a limited wineries license under C.R.S. section 12-47-601.
(2) Nothing in this chapter shall be construed to prohibit the sale or dispensing of malt, vinous, or spirituous liquors on any closed street, highway, or public byway for which a special event permit has been issued.

8.10.040 Fees for special event permits

(1) Special event permit fees shall be set at one hundred dollars ($100.00) for each permit issued.
(2) All fees are payable in advance to the City Clerk's Office for applications for special event permits submitted to the local licensing authority for approval.

8.10.050 Restrictions related to permits

(1) Each special event permit shall be issued for a specific location and is not valid for any other location.
(2) A special event permit authorizes sale of the beverage or the liquors specified only during the following hours:
(a) Between the hours of five a.m. of the day specified in a malt beverage permit and until twelve midnight on the same day;
(b) Between the hours of seven a.m. of the day specified in a malt, vinous, and spirituous liquor permit and until two a.m. of the day immediately following.
(3) The local licensing authority shall not issue a special event permit to any organization for more than fifteen days in one calendar year.
(4) No issuance of a special event permit shall have the effect of requiring the state or local licensing authority to issue such a permit upon any subsequent application by an organization.
(5) Sandwiches or other food snacks shall be available during all hours of service of malt, spirituous, or vinous liquors, but prepared meals need not be served.

8.10.060 Grounds for denial of special event permit

(1) The local licensing authority may deny the issuance of a special event permit upon the grounds that the issuance would be injurious to the public welfare because of the nature of the special event, its location within the community, or the failure of the applicant in a past special event to conduct the event in compliance with applicable laws.
(2) Public notice of the proposed permit and of the procedure for protesting issuance of the permit shall be conspicuously posted at the proposed location for at least ten days before approval of the permit by the local licensing authority.

8.10.070 Applications for special event permit

(1) Applications for a special event permit shall be made with the local licensing authority on forms provided by the state licensing authority and shall be verified by oath or affirmation of an officer of the organization or of the political candidate making application.

(2) An applicant shall include payment of the fee established by the local licensing authority, not to exceed one hundred dollars, for both investigation and issuance of a permit. In reviewing an application, the local licensing authority shall apply the same standards for approval and denial applicable to the state licensing authority.
(3) The local licensing authority shall cause a hearing to be held if, after investigation and upon review of the contents of any protest filed by affected persons, sufficient grounds appear to exist for denial of a permit. Any protest shall be filed by affected persons within ten days after the date of notice pursuant to section 8.10.060(2) of this code. Any hearing required by this subsection (3) or any hearing held at the discretion of the local licensing authority shall be held at least ten days after the initial posting of the notice, and notice thereof shall be provided the applicant and any person who has filed a protest.
(4) The local licensing authority may assign all or any portion of its functions under this article to an administrative officer.
(5)(a) The local licensing authority is not required to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of an application for a special event permit. The local licensing authority is only required to report to the liquor enforcement division, within ten days after it issues a permit, the name of the organization to which a permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service.
(b) The local licensing authority shall promptly act upon each application and either approve or disapprove each application for a special event permit.
(c) The state licensing authority has established and maintains a web site containing the statewide permitting activity of organizations that receive permits. In order to ensure compliance with C.R.S. section 12-48-105(3), which restricts the number of permits issued to an organization in a calendar year, the local licensing authority shall access information made available on the web site of the state licensing authority to determine the statewide permitting activity of the organization applying for the permit. The local licensing authority shall consider compliance with C.R.S. section 12-48-105(3) before approving any application

8.10.080 Exemptions

An organization otherwise qualifying under section 8.10.020 of this code shall be exempt from the provisions of this chapter and shall be deemed to be dispensing gratuitously and not to be selling fermented malt beverages or malt, spirituous, or vinous liquors when it serves, by the drink, fermented malt beverages or malt, spirituous, or vinous liquors to its members and their guests at a private function held by such organization on an unlicensed premises so long as any admission or other charge, if any, required to be paid or given by any such member as a condition to entry or participation in the event is uniform as to all without regard to whether or not a member or such member's guest consumes or does not consume such beverages or liquors. For purposes of this section, all invited attendees at a private function held by a state institution of higher education shall be considered members or guests of the institution.

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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED _____ day of _____, 2011.

ATTEST:

City Clerk

CITY OF LOVELAND, COLORADO

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF LOVELAND
FIRE & RESCUE DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM: **4**
MEETING DATE: 12/20/2011
TO: City Council
FROM: Merlin D. Green, Loveland Fire & Rescue
PRESENTER: Merlin D. Green / Fire Marshal

TITLE:
A public hearing and an ordinance repealing and reenacting Chapter 15.28 of the City of Loveland Municipal Code regarding the Fire Code and adopting by reference thereto the International Fire Code, 2009 Edition.

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and adopt a motion to approve the ordinance on first reading and direct staff to schedule a public hearing for January 17, 2012.

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

DESCRIPTION:
This is a legislative action to adopt the International Fire Code, 2009 Edition. This replaces the previous adopted International Fire Code, 2006 Edition.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
Adoption of the International Fire Code, 2009 Edition will provide the city with the most current and comprehensive fire code and allow design professionals to incorporate current construction technologies, methods and materials into building designs. The code includes updated building design features related to fire safety, building structural elements and exiting requirements. This

code does not include the provision to require residential sprinkler systems in ***all*** new single family dwelling units.

The Loveland Fire & Rescue staff has worked in a collaborative effort with the City of Loveland Building Department to incorporate into the city code the international codes that are of common interest and provide for the protection and safety of citizens.

City staff recommends adoption of the International Fire Code, 2009 Edition as presented in the ordinance.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
Ordinance

First Reading December 20, 2011
Second Reading _____

ORDINANCE _____

AN ORDINANCE REPEALING AND REENACTING CHAPTER 15.28 OF THE CITY OF LOVELAND MUNICIPAL CODE REGARDING THE FIRE CODE AND ADOPTING BY REFERENCE THERETO THE INTERNATIONAL FIRE CODE, 2009 EDITION

WHEREAS, on June 5, 2007, pursuant to Ordinance 5189, the City of Loveland adopted by reference the International Fire Code, 2006 Edition, as its fire code with certain amendments thereto to guard the health, safety and general welfare of the public and to regulate conditions hazardous to life and property; and

WHEREAS, in order to maintain the most current and comprehensive fire code standards for protecting the public welfare, the City desires to repeal Municipal Code Chapter 15.28, International Fire Code, 2006 Edition, including amendments thereto and to replace it with the International Fire Code, 2009 Edition, including amendments thereto; and

WHEREAS, pursuant to Section 4-12 of the Charter of the City of Loveland, the City Council is authorized to adopt, by ordinance, any code by reference in accordance with procedures established by state law; and

WHEREAS, the City Council has received the recommendation of the Fire & Rescue Advisory Commission, the Construction Advisory Board and the Planning Commission recommending the adoption of the International Fire Code, 2009 Edition, and certain appendices, amendments and modifications thereto; and

WHEREAS, the City Council has conducted a public hearing pursuant to Section 31-16-203, C.R.S. concerning the adoption of the International Fire Code, 2009 Edition, by reference and finds and determines that it is necessary to the health, safety and general welfare of the public that the City regulate conditions hazardous to life and property by the adoption of the International Fire Code, 2009 Edition, and certain appendices, amendments and modifications thereto.

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

Section 1. That Loveland Municipal Code Chapter 15.28 is hereby repealed and re-enacted to read as follows:

Chapter 15.28 – Fire Code

Sections:

Section 15.28.010 International Fire Code-Adopted.

The International Fire Code 2009 Edition, issued and published by the International Code Council, 4501 West Flossmoor Road, Country Club Hills, IL 60478-5795, including appendices B, C, D, I and J, is hereby adopted by reference as the fire code of the city. The purpose of the fire code is to provide minimum standards to safeguard life and limb, health, property and the public welfare by regulating fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises; and to provide for the issuance of permits and collection of fees therefore. At least one copy of the International Fire Code, 2009 Edition, which has been certified by the mayor and city clerk, shall be on file in the office of the city clerk, and may be inspected during regular business hours.

Section 15.28.020 Modifications to International Fire Code – 2009 Edition

The International Fire Code, 2009 Edition, adopted in this chapter, is modified as follows:

A. Subsection 101.1 of Section 101 is amended to read in full, as follows:

101.1 Title. These regulations shall be known as the City of Loveland Fire Code hereinafter referred to as "the fire code".

B. Subsection 108.1 of Section 108 is amended to read in full, as follows:

108.1 Appeals. Appeals arising from the application of the International Fire Code, 2009 Edition, shall be pursuant to Sections 15.04.150 and 15.04.152 of the Loveland Municipal Code.

C. Subsection 108.2 of Section 108 is deleted in its entirety.

D. Subsection 108.3 of Section 108 is deleted in its entirety.

E. Subsection 109.3 of Section 109 is deleted in its entirety.

F. Subsection 111.4 of Section 111 is deleted in its entirety.

G. Subsection 113 of Section 113 is amended to read in full, as follows:

113.2 Schedule of Permit Fees. Fees for any permit, inspections, and services authorized by the fire code shall be assessed in accordance with the fee schedule established by resolution of the city council.

H. Subsection 113.5 of Section 113 is amended to read in full, as follows;

113.5 Refunds. The fire code official shall be permitted to authorize a refund of not more than fifty percent (50%) of the permit fee when no work has been done under a permit issued in accordance with this code. This refund shall only be redeemable within twelve months, (12) of issuance of the permit.

The fire code official shall not be permitted to authorize refunding of any fee paid except upon written application filed by the original applicant not later than sixty (60) days after the date of fee payment.

I. Section 308 is amended in part by the addition of a new subsection 308.1.1 to read in full as follows:

308.1.1 Open Flames. Sky Lanterns. The lighting of, and the release of, Sky Lanterns shall be prohibited.

J. Subsection 311.5 of Section 311 is deleted in its entirety.

K. Subsection 503.2.5 of Section 503 is amended to read in full as follows:

503.2.5 Dead Ends. Dead-end fire apparatus access roads in excess of one hundred-fifty (150) feet in length shall be provided with an approved area for turning around fire apparatus. Dead-ends in excess of one thousand (1,000) feet are not allowed.

L. Subsection 503.6 of Section 503 is amended to read in full as follows:

503.6 Security Gates. The installation of security gates across a fire apparatus access road shall be *approved* by the fire code official. Where security gates are installed, they shall have an *approved* means of emergency operation. The security gates and the emergency operation shall be maintained operational at all times. Electric gate operators, where provided, shall be *listed* in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200.

Exception: Private driveways serving a single-family residence.

M. Subsection 505.1 of Section 501 is amended to read in full as follows:

505.1 Premises Identification. New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in

a position that is plainly legible and visible from the street or road fronting the property. The color of these numbers shall contrast with their background. Address numbers shall be Arabic numerals. New residential buildings that contain not more than two dwelling units shall have minimum 4-inch high numbers, with a minimum stroke width of ½ inch. Individual suite or unit addresses shall be displayed with minimum 4-inch high numbers, with a minimum stroke width of ½ inch. New multiple-family or commercial buildings shall have minimum 6-inch high numbers, with a minimum stoke width of ½ inch. New buildings three or more stories in height or with a floor area of 15,000 to 100,000 square feet, shall have minimum 8-inch high numbers, with a minimum stroke width of 1 inch. Buildings with a total floor area of 100,000 square feet or greater shall have minimum 12-inch high numbers, with a minimum stroke width of 1½ inches. Where building setbacks exceed 100 feet from the street or access road, additional numbers shall be displayed at the property entrance. The fire code official may require address numbers to be displayed on more than one side of the building, if primary vehicle access is not from the street or road fronting the property.

N. Subsection 507.3 Section 507 is amended to read in full as follows:

507.3 Fire Flow. Fire flow requirements for buildings or portions of buildings and facilities shall be determined in accordance with Appendix B.

O. Subsection 507.5 of Section 507 is amended to read in full as follows:

507.5 Fire Hydrant Systems. Fire hydrant systems shall comply with Sections 507.5.1 through 507.5.6 of this fire code.

P. Subsection 507.5.1 of Section 507 is amended to read in full, as follows:

507.5.1 Where Required. Fire hydrants shall be spaced six hundred (600) feet apart for Group R-3 occupancies and three hundred-fifty (350) feet apart for all other occupancies.

Q. Subsection 507.5 of Section 507 is amended in part by the addition of a new Section 507.5.7 to read in full, as follows:

507.5.7 Fire Department Connections. A fire hydrant shall be located within one hundred-fifty (150) feet of a fire department connection, using an approved route without obstacles.

R. Section 510 is amended in part by the addition of a new Section 510.4 to read in full as follows:

510.4 Where required. Where adequate radio coverage cannot be established within a building, as defined by the fire code official, public safety radio amplification systems shall be installed in the following locations:

1. New buildings with a total building area greater than fifty thousand (50,000) square feet. For the purpose of this section, fire walls shall not be used to define separate buildings.
2. All new basements larger than ten thousand (10,000) square feet.
3. Existing buildings meeting the criteria of item 1 or 2 of this section undergoing alterations or additions exceeding fifty percent (50%) of the existing aggregate area of the building as of the date of this ordinance.

Exceptions:

1. One and two-family dwellings and townhouses.
2. If approved by the fire code official, buildings that provide a documented engineering analysis indicating the building is in compliance with radio reception levels in accordance with Section 510.4.1 and final fire department testing.

510.4.1 Design and Installation Standard. Public safety radio amplification systems shall be designed and installed in accordance with the criteria established by the fire code official based on the capabilities and communication features of emergency services.

510.4.2 Maintenance. Public safety radio amplification systems shall be tested annually and maintained in an operative condition at all times and shall be replaced or repaired where defective.

S. Subsection 901.1 of Section 901 is amended to read in full as follows:

901.1 Scope. The provisions of this chapter shall specify where fire protection systems are required and shall apply to the design, installation, inspection, operation, testing and maintenance of all fire protection systems. When the requirements of this code and the adopted building code are in conflict, the more restrictive shall apply.

T. Subsection 903.1.1 of Section 903 is amended to read in full as follows:

903.1.1 Alternative Protection. Alternative automatic fire-extinguishment systems complying with Section 904 shall be permitted in lieu of automatic sprinkler protection where recognized by the applicable standard and approved by the building code official and fire code official.

U. Part (4) of subsection 903.2.7 of Section 903 is amended to read in full as follows:

(4) A group M occupancy used for the display and sale of upholstered furniture which does not exceed six thousand (6,000) square feet.

V. Section 903 is amended in part by the addition of a new Section 903.2.12, to read in full as follows:

903.2.13 Dead-end Roadways. An automatic fire sprinkler system shall be installed in all Group R fire areas, including single family detached residences, when the residential structure is located beyond four hundred, (400) feet of the entrance to a dead-end roadway.

W. Subsection 903.3.1.3 of Section 903 is amended to read in full as follows:

Section 903.3.1.3 NFPA 13D Sprinkler Systems. Automatic sprinkler systems shall not be required in one- or two-family dwellings including townhouses that are located within six hundred (600) feet of a fire hydrant meeting minimum flow and pressure requirements and located within four hundred (400) feet from the entrance on a dead-end roadway. All other one- and two-family dwellings including townhouses shall have automatic sprinkler systems installed in accordance with NFPA 13D.

X. Subsection 903.4.3 of Section 903 is amended to read in full as follows:

Section 903.4.3 Floor Control Valves. Approved supervising indicating control valves shall be provided at the point of connection to the riser on each floor in all multi-story structures.

Y. Section 903 is amended in part by the addition of a new Section 903.3.5.1 to read in full as follows:

903.3.5.1 Backflow Protection. All fire sprinklers systems undergoing modification, unless exempt by the Director of the City of Loveland Water and Power Department, shall be isolated from the public water system by a backflow prevention device meeting the requirements of the Loveland Municipal Code.

Z. Subsection 907.2.11.2 of Section 907 is amended in part by the addition of a new Paragraph 4 to read in full as follows:

Groups R-2, R-3, R-4 and I-1:

4. In Groups R-2, R-3, R-4 and I-1 occupancies, and, in all attached garages, an interconnected heat detector shall be installed.

AA. Section 907 is amended in part by the addition of a new Section 907.2.11.5 to read in full as follows:

907.2.11.5 Exterior Strobe. An exterior strobe shall be provided on the exterior of all R-1 and R-2 occupancies in a location readily visible from the roadway

fronting the structure. This strobe shall alarm upon activation of any smoke or heat detection.

BB. Section 1004 is amended in part by the addition of new Section 1004.10 to read in full as follows:

1004.10 Design. Buildings and facilities shall be designed and constructed to be accessible in accordance with this code; the ICC A117.1, most current edition; and the Colorado Revised Statutes Title 9 Article 5, 9-5-101, et seq., as amended.

CC. Subsection 2403.2 of Section 2403 is amended to read in full as follows:

2403.2 Approval Required. Tents/Canopies and membrane structures in excess of seven hundred (700) square feet shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official.

DD. Subsection 3301.1.3 of Section 3301 is amended to read in full as follows:

3301.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited unless permitted by state and local laws.

EE. Exception 4. of subsection 3301.1.3 of Section 3301 is amended to read in full as follows:

4. The possession, storage, sale, handling and use of permissible fireworks in accordance with the criteria established by the fire code official.

FF. Section 3302 is amended by the addition of a new definition to read as follows:

3302 Permissible Fireworks. As defined by the Colorado Revised Statues §12-28-101.

GG. Chapter 33 is amended by the addition of a new Section 3310 to read in full as follows:

Section 3310
Permissible Fireworks

3310.1 General. Permissible fireworks use shall be as detailed in this section and in accordance with state and local laws.

3310.2 Use of Fireworks. The use of permissible fireworks shall be in accordance with Sections 3310.2.1 through 3310.2.4.

3310.2.1 It shall be unlawful for any person to possess, store, offer for sale, expose for sale, sell at retail, or use, or discharge any fireworks, other that permissible fireworks.

3310.2.2 It shall be unlawful for any person to knowingly furnish to any person under the age of sixteen (16) years of age, by gift, sale, or any other means, any fireworks, or permissible fireworks.

3310.2.3 It shall be unlawful for any person under sixteen (16) years of age to purchase fireworks, including permissible fireworks.

3310.2.4 It shall not be unlawful for a person under sixteen (16) years of age to possess and discharge permissible fireworks if such person is under adult supervision throughout the act of possession and discharge.

HH. Subsection 3404.2.9.6.1 of Section 3404 is amended to read in full as follows:

3404.2.9.6.1 Location where above-ground storage tanks are prohibited. Storage of Class I and II liquids in above-ground storage tanks outside of buildings is prohibited within the city limits.

Exceptions:

1. Above-ground tank storage of aviation fuels at the Fort Collins-Loveland Airport fuel farm.
2. Protected above-ground tank storage (UL 2085) not exceeding one thousand (1,000) gallons in size per tank or two thousand (2,000) gallons per site.
3. Above-ground storage tanks not exceeding 500 gallons for supply of emergency generators or fire pumps when approved by the fire code official.

II. Subsection 3404.2.13.1.4 of Section 3404 is deleted in its entirety.

JJ. Subsection3406.2.4 of Section 3406 is amended to read in full as follows:

3406.2.4 Permanent and temporary tanks. The capacity of permanent aboveground tanks containing Class I or Class II liquids shall not exceed five hundred (500) gallons. The capacity of temporary aboveground tanks containing Class I or Class II liquids shall not exceed two thousand (2,000) gallons unless a larger amount is approved in writing by the fire code official. Tanks shall be of single-compartment design.

KK. Subsection 3406.2.4.4 of Section 3406 is deleted in its entirety.

LL. Subsection 3804.2 of Section 3804 is amended to read in full, as follows:

3804.2 Maximum capacity within established limits. Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested areas, the aggregate capacity of any one installation shall not exceed a water capacity of five hundred, (500), gallons.

Section 15.28.030 Violations and Penalties.

A. No person who operates, occupies or maintains a premises or vehicle subject to the provisions of this chapter shall allow a fire hazard to exist, nor shall fail to take immediate action to abate a fire hazard when ordered or notified to do so.

B. Any person who shall violate any of the provisions of this chapter or who shall violate or fail to comply with any orders made hereunder or who shall act in any way in violation of any permits issued hereunder shall, severally and for each and every violation in noncompliance respectively, be guilty of a misdemeanor punishable by the penalty set forth is Section 1.12.010 of the Loveland Municipal Code. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all persons shall be required to correct or remedy the violations or defects within a reasonable time, and when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense. The application of any penalty pursuant hereto shall not be held to prevent the forced removal of prohibited conditions nor the suspension or removal of a permit or license issued hereunder.

Section 2. That the City Council has introduced the adopting ordinance and shall schedule a public hearing on January 17, 2012. The City Clerk shall publish notice of such hearing twice in a newspaper of general circulation in the City of Loveland, once at least fifteen days preceding the hearing, and once at least eight days preceding it. Upon passage of this ordinance the City Clerk shall have at least one copy of the International Fire Code, 2009 Edition available for inspection by the public during regular business hours.

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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED this _____ day of _____, 2012.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

AN ORDINANCE REPEALING AND REENACTING CHAPTER 15.28 OF THE CITY OF LOVELAND MUNICIPAL CODE REGARDING THE FIRE CODE AND ADOPTING BY REFERENCE THERETO THE INTERNATIONAL FIRE CODE, 2009 EDITION

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: **5**
MEETING DATE: 12/20/2011
TO: City Council
FROM: Marcy Abreo, Public Works Transit
PRESENTER: Marcy Abreo

TITLE:

A) A Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado, the City of Fort Collins, Colorado, and Larimer County, Colorado for bus service between Fort Collins and Longmont for the calendar year 2011

B) A Resolution approving an Intergovernmental Agreement (IGA) between the City of Loveland, Colorado, the City of Fort Collins, Colorado, and Larimer County, Colorado for bus service between Fort Collins and Longmont for the calendar year 2012

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to approve the Resolutions as submitted

OPTIONS:

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

DESCRIPTION:

This is an administrative action to consider two Resolutions both approving Intergovernmental Agreements (IGA) with Fort Collins and Larimer County to provide regional bus service between Fort Collins and Longmont along the U.S. Highway 287 corridor. This service is referred to as the Fort Collins-Longmont Express or FLEX route. There is an IGA for the 2011 calendar year and a second one for the 2012 calendar year.

BUDGET IMPACT:

☐ Positive
☐ Negative
☒ Neutral or negligible

Funds for the local match portion of the contract ($45,800) are budgeted into the annual core transit budget for each year (2011 and 2012).

SUMMARY:
The City of Loveland has been a partner in the regional bus route between Fort Collins and Loveland, previously known as Foxtrot, since 1999. In June of 2010, the City of Loveland was the project sponsor and received funds through the Congestion Mitigation Air Quality (CMAQ) program to fund a three-year pilot project that extended the route from downtown Fort Collins to Longmont. Additional project participants include Larimer County, Fort Collins, Berthoud, City of Longmont, and Boulder County.

The FLEX route was established with a performance expectation of a minimum of 20 passengers per hour after the three-year pilot as acceptable for continued operations. After 17 months of operation the route is performing at just over 20 passengers per hour.

The operating year for the FLEX route is June 1-May 31. The CMAQ funds are “flexed” from Colorado Department Transportation (CDOT) to the Federal Transit Administration (FTA). This required an additional approval process that delayed the contracting process between the local entities for 2011.

Loveland is the grant sponsor and has contracted with the City of Fort Collins/Transfort to operate the service with the commitment of local match funding from the partner agencies and the expectation that operation expenses will be reimbursed by Loveland. As the route operator, Fort Collins/Transfort assumes the risk that the federal allocated dollar amount will be available for payment. In turn, Loveland requests reimbursement from the FTA for the federal portion of the awarded grant.

The grant funding covers a two year period which allows for the 2012 IGA agreement to be approved at this time.

Funds for the local match portion of the contract ($45,800) are budgeted into the core transit budget annually. Future funding options for the long-term operations of the regional route will need to be considered moving forward and will be brought to Council at a later date.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
Two Resolutions

RESOLUTION #R-87-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO, THE CITY OF FORT COLLINS, COLORADO, AND LARIMER COUNTY, COLORADO FOR BUS SERVICE BETWEEN FORT COLLINS AND LONGMONT FOR THE CALENDAR YEAR 2011

WHEREAS, the City of Loveland desires to partner with the City of Fort Collins and Larimer County to provide regional connector bus service between the City of Fort Collins and the City of Longmont along the U.S. Highway 287 corridor, which service is referred to as the "Fort Collins-Longmont Express," or "FLEX"; and

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

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

Section 1. That the Intergovernmental Agreement for Bus Service Between Fort Collins and Longmont, attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.

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

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

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

ADOPTED this 20th day of December, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

INTERGOVERNMENTAL AGREEMENT
FOR BUS SERVICE BETWEEN FORT COLLINS AND LONGMONT

This Agreement is made this _____ day of _____, 2011, between the **City of Fort Collins, Colorado**, a municipal corporation, the **City of Loveland, Colorado**, a municipal corporation, and the **Board of County Commissioners, County of Larimer, State of Colorado**.

I. RECITALS

1. WHEREAS, the parties desire to provide regional connector bus service between the City of Fort Collins and the City of Longmont; and

2. WHEREAS, the City of Fort Collins has its own fixed-route bus system ("Transfort") and has arranged for provision of regional connector bus service along the U.S. Highway 287 corridor between the City of Fort Collins and the City of Longmont (referred to as the "Fort Collins-Longmont Express (FLEX)"); and

3. WHEREAS, the parties have determined that significant economic and efficiency benefits will result for each party through the proposed system of providing connector bus service to the Fort Collins-Longmont Express (FLEX) through the City of Fort Collins Transfort system.

II. CONSIDERATION

4. Now, therefore, in consideration of the mutual promises herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the parties agree as follows:

III. TERMS

5. The City of Fort Collins shall provide connector bus service in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, consisting of one (1) page, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. Additional service may be provided by the City of Fort Collins, at its discretion, to the extent the City of Fort Collins determines appropriate given the demand for service and available resources.

6. The City of Fort Collins agrees that all services provided under this Agreement shall be provided consistent with Transfort system operating policies and procedures, as the same may be amended, and that all such services shall be provided consistent with the schedule for operation of Transfort.

7. In consideration of the services provided by the City of Fort Collins under this Agreement and the mutual financial commitment herein made, the parties agree that each of the parties shall contribute to the direct and indirect cost of operating the FLEX Route, supplemented by such additional federal or state grant funds as may be available therefor. The City of Loveland

shall make its payment in the amount of Forty Five Thousand Eight Hundred ($45,800) Dollars and the County shall make its payment in the amount of Thirty Nine Thousand Five Hundred Twelve ($39,512) Dollars to the City of Fort Collins within 60 days after receipt of invoice.

8. Any additional revenues collected by the City of Loveland or Larimer County from the operation of the FLEX, shall be remitted to the City of Fort Collins. Such revenue, and any additional revenues collected by the City of Fort Collins from the operation of the FLEX, shall be used to supplement the operation expenses of the FLEX and will equally benefit all responsible parties.

9. The City of Fort Collins shall prepare all necessary grant and pay applications for Federal Transit Administration Section 5307 funds, in the amount of Fifty One Thousand, Six Hundred Ninety Seven ($51,697) Dollars, or any such additional amount of federal or state grant funding as may become available hereafter for use in connection with the FLEX.

10. The City of Loveland shall prepare all necessary grant and pay applications for Congestion Mitigation and Air Quality funds, in the amount of Six Hundred Nine Thousand, Seven Hundred Thirty Three ($609,733) Dollars, or any such additional amount of Congestion Mitigation and Air Quality grant funding as may become available hereafter for use in connection with the FLEX.

11. Revenue from advertising on exterior signs and interior panels on the FLEX bus or from bus shelters or bus bench advertising for bus stops that are served exclusively by the FLEX (collectively, "FLEX Revenue") shall be remitted to the City of Fort Collins. FLEX Revenue will be used to supplement the operation expenses of the FLEX and will equally benefit all responsible parties. **Exhibit B**, consisting of one page, attached hereto and incorporated by this reference, identifies all existing bus benches or bus shelters subject to this subparagraph. **Exhibit B** constitutes a current inventory, but any additional revenue-producing shelters or benches added during the term of this Agreement shall also be subject to this subparagraph. The parties acknowledge and agree that the budget proposal for operation of the FLEX for 2011 (and for subsequent years in the event the term of this Agreement is extended pursuant to Section 20 below) includes projected FLEX Revenue and anticipated revenues from bus fares pursuant to Section 14 below ("FLEX Fare Revenue"). If FLEX Revenue and FLEX Fare Revenue for 2011 (or any subsequent year in the event the term of this Agreement is extended pursuant to section 20 below) is insufficient to meet the budget for operation of the FLEX the parties may elect to appropriate and pay their prorata share of any shortage. If any party does not appropriate and pay its prorata share of the shortage in FLEX Revenue and FLEX Fare Revenue, the City of Fort Collins may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address such a shortage, or terminate FLEX service.

12. The parties anticipate that the FLEX will be supported by additional contributions from the City of Berthoud, the City of Longmont, and Boulder County pursuant to separate Intergovernmental Agreements (the "Additional Supporting Entities") and the budget proposal for operation of the FLEX for 2011 (and for subsequent years in the event the term of this Agreement is

extended pursuant to Section 20 below) includes projected contributions from the Additional Supporting Entities. If any Additional Supporting Entity does not enter into such a separate Intergovernmental Agreement and appropriate and pay its anticipated contribution to support the operation of the FLEX, the City of Fort Collins may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address any resulting shortage of revenue, or terminate FLEX service.

13. In the event the City of Fort Collins determines that circumstances require modification of the FLEX in order to better accommodate the demand for service or the efficient provision of service, the City of Fort Collins shall be entitled to implement such modification, provided that advance notice of any such modification is provided to the City of Loveland, and Larimer County.

14. The basic cash fare to be charged for the FLEX shall be One Dollar and Twenty Five ($1.25) Cents per ride, provided, however, that the City of Fort Collins shall be entitled to modify the fare to be charged by up to fifty percent (50%), as necessary for the efficient and cost-effective operation of the FLEX, provided that advance notice of any such modification is provided to the City of Loveland, and Larimer County. All City of Fort Collins discounted fare categories for Transfort bus service will apply to the FLEX. The City of Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. The City of Fort Collins shall prepare quarterly reports of such receipts and ridership levels, and shall provide such quarterly reports to each of the parties hereto.

15. All City of Fort Collins and Loveland bus pass programs will be accepted as full fare to ride the FLEX. Transfers from the FLEX to the Transfort or COLT bus systems will be honored.

16. Each party shall designate a representative, who shall be responsible for managing such party's performance of the terms of this Agreement, and shall provide each other party with written notice thereof, along with address and telephone information. All notices to be provided under this Agreement shall be provided to such designated representatives.

17. The City of Fort Collins agrees to prepare and submit any applications, reports, or other documentation required in connection with the grant funding provided for the FLEX in accordance with Section 9, above.

18. The City of Loveland agrees to prepare and submit any applications, reports, or other documentation required in connection with the grant funding provided for the FLEX in accordance with Section 10, above.

19. The parties agree to cooperate fully in the development and implementation of any surveys or studies undertaken by any of the parties in order to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of the FLEX service or the need for such service, provided, however that such cooperation shall not include the expenditure of funds in excess of the specific amounts set forth in paragraph 7 above unless

approved and appropriated by the parties.

20. This Agreement shall commence on January 1, 2011, and shall continue in full force and effect until December 31, 2011, unless sooner terminated as herein provided. In addition, the parties may extend the Agreement for additional one year periods not to exceed one (1) additional one year period. A written addendum to this Agreement extending its term in accordance with this Section 20 and setting forth the amounts to be contributed by each party during each fiscal year of the extended term of this Agreement shall be executed by the parties no later than sixty (60) days prior to the end of each term of the Agreement. This Agreement is not a multi-year fiscal obligation of any of the parties hereto, and the amount to be contributed or borne by each party in future fiscal years is subject to annual appropriation by the parties.

21. In the event a party has been declared in default, such defaulting party shall be allowed a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to terminate the Agreement and so notify the defaulting party in writing. Any amounts due the non-defaulting party shall be paid within fifteen (15) days of the date of notice of termination is received.

22. Liability of the parties shall be apportioned as follows:

a. The City of Fort Collins shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of the City of Fort Collins or its officers, employees, and agents, in connection with the performance of this Agreement.

b. The City of Loveland shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of the City of Loveland or its officers, employees, and agents, in connection with the performance of this Agreement.

c. Larimer County shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of Larimer County or its officers, employees, and agents, in connection with the performance of this Agreement.

d. Nothing in this Section 22 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the City of Fort Collins, the City of Loveland, Larimer County, Town of Berthoud, the City of Longmont, or Boulder County may have under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., et seq.) or any other defenses, immunities, or limitations of liability available to any party by law.

23. This Agreement embodies the entire agreement of the parties. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of

any kind or nature not set forth herein.

24. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by all parties, except as provided herein.

25. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement.

26. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Darin Atteberry, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Deputy City Attorney

CITY OF LOVELAND, COLORADO
a municipal corporation

By: _____
William D. Cahill, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO

By: _____
Frank Lancaster, County Manager

ATTEST:

_____
Deputy Clerk

APPROVED AS TO FORM:

_____
Assistant County Attorney

EXHIBIT A

The City of Fort Collins will operate regional connector bus service between the City of Longmont and the City of Fort Collins. Service will be provided within the following parameters:

- **Days of Service** – Monday – Saturday, except for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

- **Hours of Service** – 5AM – 8 PM

- **Frequency of Service** – 60 Minutes

- **Service Area** – Route begins in Fort Collins at The Downtown Transit Center and travels southbound on US 287. The bus stops at US 287 and Prospect Road, US-287 and Drake Road, US-287 and Harmony Road as well as US 287 and Skyway Drive in Fort Collins. The route will proceed on to US 287 resuming southbound direction. The bus will enter the Orchards Shopping Center via the northern entrance to the Transfer Point. The bus will exit the shopping center on Buchanan Avenue. The route will travel south on US 287 and the bus will stop on 8th Street. The route will continue south bound on US 287 and the bus will stop on SW 14th Street. The route will follow US 287 to Co Rd 15 into Berthoud. The route will turn West on Mountain Avenue and the bus will stop at Mountain Avenue and 3rd Street. The route will continue west on Mountain Avenue and resume the Southbound direction at US 287. The route will continue South on US 287 into Longmont. The bus will stop at 23rd and Main Street as well as 9th and Coffman in Longmont. Due to the limited number of stops along this route, this route is not a fixed route and complementary paratransit service is not required.

EXHIBIT B

BENCHES AND SHELTERS SERVED EXCLUSIVELY BY THE FORT COLLINS-LONGMONT EXPRESS (FLEX):

Fort Collins:

NB Hwy 287 N/O Skyway ES	Bench #1105
NB College Ave N/O Fossil Creek Parkway ES	Bench #1106
SB College Ave S/O Cameron Rd WS	Shelter #1073
SB College Ave S/O Harmony Rd WS	Shelter #1072
NB College Ave N/O Harmony Road ES	Shelter #1107
NB College Ave Troutman Parkway ES	Shelter #1108
NB College Ave Boardwalk ES	Shelter #1109
NB College Ave S/O Horsetooth ES	Bench #1110

Larimer County:

NB Hwy 287 S/O Carpenter Rd ES	Shelter #1103
SB Hwy 287 S/O Trilby WS	Shelter #1075

Loveland:

NB Hwy 287 N/O 37th St ES	Shelter #1097
SB Hwy 287 S/O 37th St ES	Bench #1082
SB Hwy 287 S/O 41st St WS	Bench #1081
NB Hwy 287 S/O 43rd St ES	Bench #1098
NB Hwy 287 N/O 45th St ES	Bench #1099
SB Hwy 287 S/O 45th St WS	Shelter #1080
NB Hwy 287 N/O 50th St ES	Bench #1100
SB Hwy 287 S/O 50th St WS	Bench #1079
SB Hwy 287 S/O 57th St WS	Bench #1078
NB Hwy 287 N/O 57th St ES	Shelter #1101
NB Hwy 287 N/O 71st St ES	Bench #1102
SB Hwy 287 S/O 71st St WS	Shelter #1077

RESOLUTION #R-88-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO, THE CITY OF FORT COLLINS, COLORADO, AND LARIMER COUNTY, COLORADO FOR BUS SERVICE BETWEEN FORT COLLINS AND LONGMONT FOR THE CALENDAR YEAR 2012

WHEREAS, the City of Loveland desires to partner with the City of Fort Collins and Larimer County to provide regional connector bus service between the City of Fort Collins and the City of Longmont along the U.S. Highway 287 corridor, which service is referred to as the "Fort Collins-Longmont Express," or "FLEX"; and

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

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

Section 1. That the Intergovernmental Agreement for Bus Service Between Fort Collins and Longmont, attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.

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

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

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

ADOPTED this 20th day of December, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

INTERGOVERNMENTAL AGREEMENT
FOR BUS SERVICE BETWEEN FORT COLLINS AND LONGMONT

This Agreement is made this _____ day of _____, 2012, between the **City of Fort Collins, Colorado**, a municipal corporation, the **City of Loveland, Colorado**, a municipal corporation, and the **Board of County Commissioners, County of Larimer, State of Colorado**.

I. RECITALS

1. WHEREAS, the parties desire to provide regional connector bus service between the City of Fort Collins and the City of Longmont; and

2. WHEREAS, the City of Fort Collins has its own fixed-route bus system ("Transfort") and has arranged for provision of regional connector bus service along the U.S. Highway 287 corridor between the City of Fort Collins and the City of Longmont (referred to as the "Fort Collins-Longmont Express (FLEX)"); and

3. WHEREAS, the parties have determined that significant economic and efficiency benefits will result for each party through the proposed system of providing connector bus service to the Fort Collins-Longmont Express (FLEX) through the City of Fort Collins Transfort system.

II. CONSIDERATION

4. Now, therefore, in consideration of the mutual promises herein and other good and valuable consideration, receipt and adequacy of which is acknowledged, the parties agree as follows:

III. TERMS

5. The City of Fort Collins shall provide connector bus service in accordance with the terms of this Agreement and as specifically identified and described in **Exhibit A**, consisting of one (1) page, attached hereto and incorporated herein by this reference, throughout the term of this Agreement. Additional service may be provided by the City of Fort Collins, at its discretion, to the extent the City of Fort Collins determines appropriate given the demand for service and available resources.

6. The City of Fort Collins agrees that all services provided under this Agreement shall be provided consistent with Transfort system operating policies and procedures, as the same may be amended, and that all such services shall be provided consistent with the schedule for operation of Transfort.

7. In consideration of the services provided by the City of Fort Collins under this Agreement and the mutual financial commitment herein made, the parties agree that each of the parties shall contribute to the direct and indirect cost of operating the FLEX Route, supplemented by such additional federal or state grant funds as may be available therefor. The City of Loveland

shall make its payment in the amount of Forty Five Thousand Eight Hundred ($45,800) Dollars and the County shall make its payment in the amount of Thirty Seven Thousand, Nine Hundred Thirty Two ($37,932) Dollars to the City of Fort Collins within 60 days after receipt of invoice.

8. Any additional revenues collected by the City of Loveland or Larimer County from the operation of the FLEX, shall be remitted to the City of Fort Collins. Such revenue, and any additional revenues collected by the City of Fort Collins from the operation of the FLEX, shall be used to supplement the operation expenses of the FLEX and will equally benefit all responsible parties.

9. The City of Fort Collins shall prepare all necessary grant and pay applications for Federal Transit Administration Section 5307 funds, in the amount of One Thousand, Five Hundred Eighty ($1,580) Dollars, or any such additional amount of federal or state grant funding as may become available hereafter for use in connection with the FLEX.

10. The City of Loveland shall prepare all necessary grant and pay applications for Congestion Mitigation and Air Quality funds, in the amount of Seven Hundred Twelve Thousand, Eight Hundred Seventy ($712,870) Dollars, or any such additional amount of Congestion Mitigation and Air Quality grant funding as may become available hereafter for use in connection with the FLEX.

11. Revenue from advertising on exterior signs and interior panels on the FLEX bus or from bus shelters or bus bench advertising for bus stops that are served exclusively by the FLEX (collectively, "FLEX Revenue") shall be remitted to the City of Fort Collins. FLEX Revenue will be used to supplement the operation expenses of the FLEX and will equally benefit all responsible parties. **Exhibit B**, consisting of one page, attached hereto and incorporated by this reference, identifies all existing bus benches or bus shelters subject to this subparagraph. **Exhibit B** constitutes a current inventory, but any additional revenue-producing shelters or benches added during the term of this Agreement shall also be subject to this subparagraph. The parties acknowledge and agree that the budget proposal for operation of the FLEX for 2012 (and for subsequent years in the event the term of this Agreement is extended pursuant to Section 20 below) includes projected FLEX Revenue and anticipated revenues from bus fares pursuant to Section 14 below ("FLEX Fare Revenue"). If FLEX Revenue and FLEX Fare Revenue for 2012 (or any subsequent year in the event the term of this Agreement is extended pursuant to section 20 below) is insufficient to meet the budget for operation of the FLEX the parties may elect to appropriate and pay their prorata share of any shortage. If any party does not appropriate and pay its prorata share of the shortage in FLEX Revenue and FLEX Fare Revenue, the City of Fort Collins may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address such a shortage, or terminate FLEX service.

12. The parties anticipate that the FLEX will be supported by additional contributions from the City of Berthoud, the City of Longmont, and Boulder County pursuant to separate Intergovernmental Agreements (the "Additional Supporting Entities") and the budget proposal for operation of the FLEX for 2012 (and for subsequent years in the event the term of this Agreement is

extended pursuant to Section 20 below) includes projected contributions from the Additional Supporting Entities. If any Additional Supporting Entity does not enter into such a separate Intergovernmental Agreement and appropriate and pay its anticipated contribution to support the operation of the FLEX, the City of Fort Collins may reduce FLEX services as necessary to reduce operating expenses in an amount sufficient to address any resulting shortage of revenue, or terminate FLEX service.

13. In the event the City of Fort Collins determines that circumstances require modification of the FLEX in order to better accommodate the demand for service or the efficient provision of service, the City of Fort Collins shall be entitled to implement such modification, provided that advance notice of any such modification is provided to the City of Loveland, and Larimer County.

14. The basic cash fare to be charged for the FLEX shall be One Dollar and Twenty Five ($1.25) Cents per ride, provided, however, that the City of Fort Collins shall be entitled to modify the fare to be charged by up to fifty percent (50%), as necessary for the efficient and cost-effective operation of the FLEX, provided that advance notice of any such modification is provided to the City of Loveland, and Larimer County. All City of Fort Collins discounted fare categories for Transfort bus service will apply to the FLEX. The City of Fort Collins shall collect any fares due from passengers and accurately record and account for such fare receipts and ridership levels. The City of Fort Collins shall prepare quarterly reports of such receipts and ridership levels, and shall provide such quarterly reports to each of the parties hereto.

15. All City of Fort Collins and Loveland bus pass programs will be accepted as full fare to ride the FLEX. Transfers from the FLEX to the Transfort or COLT bus systems will be honored.

16. Each party shall designate a representative, who shall be responsible for managing such party's performance of the terms of this Agreement, and shall provide each other party with written notice thereof, along with address and telephone information. All notices to be provided under this Agreement shall be provided to such designated representatives.

17. The City of Fort Collins agrees to prepare and submit any applications, reports, or other documentation required in connection with the grant funding provided for the FLEX in accordance with Section 9, above.

18. The City of Loveland agrees to prepare and submit any applications, reports, or other documentation required in connection with the grant funding provided for the FLEX in accordance with Section 10, above.

19. The parties agree to cooperate fully in the development and implementation of any surveys or studies undertaken by any of the parties in order to evaluate demand, usage, cost, effectiveness, efficiency, or any other factor relating to the success or performance of the FLEX service or the need for such service, provided, however that such cooperation shall not include the expenditure of funds in excess of the specific amounts set forth in paragraph 7 above unless

approved and appropriated by the parties.

20. This Agreement shall commence on January 1, 2012, and shall continue in full force and effect until December 31, 2012, unless sooner terminated as herein provided. In addition, the parties may extend the Agreement for additional one year periods not to exceed one (1) additional one year period. A written addendum to this Agreement extending its term in accordance with this Section 20 and setting forth the amounts to be contributed by each party during each fiscal year of the extended term of this Agreement shall be executed by the parties no later than sixty (60) days prior to the end of each term of the Agreement. This Agreement is not a multi-year fiscal obligation of any of the parties hereto, and the amount to be contributed or borne by each party in future fiscal years is subject to annual appropriation by the parties.

21. In the event a party has been declared in default, such defaulting party shall be allowed a period of thirty (30) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to terminate the Agreement and so notify the defaulting party in writing. Any amounts due the non-defaulting party shall be paid within fifteen (15) days of the date of notice of termination is received.

22. Liability of the parties shall be apportioned as follows:

a. The City of Fort Collins shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of the City of Fort Collins or its officers, employees, and agents, in connection with the performance of this Agreement.

b. The City of Loveland shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of the City of Loveland or its officers, employees, and agents, in connection with the performance of this Agreement.

c. Larimer County shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of Larimer County or its officers, employees, and agents, in connection with the performance of this Agreement.

d. Nothing in this Section 22 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the City of Fort Collins, the City of Loveland, Larimer County, Town of Berthoud, the City of Longmont, or Boulder County may have under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., et seq.) or any other defenses, immunities, or limitations of liability available to any party by law.

23. This Agreement embodies the entire agreement of the parties. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of

any kind or nature not set forth herein.

24. No changes, amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by all parties, except as provided herein.

25. The laws of the State of Colorado shall be applied to the interpretation, execution and enforcement of this Agreement.

26. Any provision rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
Darin Atteberry, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Deputy City Attorney

CITY OF LOVELAND, COLORADO
a municipal corporation

By: _____
William D. Cahill, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO

By: _____
Frank Lancaster, County Manager

ATTEST:

_____
Deputy Clerk

APPROVED AS TO FORM:

_____
Assistant County Attorney

EXHIBIT A

The City of Fort Collins will operate regional connector bus service between the City of Longmont and the City of Fort Collins. Service will be provided within the following parameters:

- **Days of Service** – Monday – Saturday, except for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

- **Hours of Service** – 5AM – 8 PM

- **Frequency of Service** – 60 Minutes

- **Service Area** – Route begins in Fort Collins at The Downtown Transit Center and travels southbound on US 287. The bus stops at US 287 and Prospect Road, US-287 and Drake Road, US-287 and Harmony Road as well as US 287 and Skyway Drive in Fort Collins. The route will proceed on to US 287 resuming southbound direction. The bus will enter the Orchards Shopping Center via the northern entrance to the Transfer Point. The bus will exit the shopping center on Buchanan Avenue. The route will travel south on US 287 and the bus will stop on 8th Street. The route will continue south bound on US 287 and the bus will stop on SW 14th Street. The route will follow US 287 to Co Rd 15 into Berthoud. The route will turn West on Mountain Avenue and the bus will stop at Mountain Avenue and 3rd Street. The route will continue west on Mountain Avenue and resume the Southbound direction at US 287. The route will continue South on US 287 into Longmont. The bus will stop at 23rd and Main Street as well as 9th and Coffman in Longmont. Due to the limited number of stops along this route, this route is not a fixed route and complementary paratransit service is not required.

EXHIBIT B

BENCHES AND SHELTERS SERVED EXCLUSIVELY BY THE FORT COLLINS-LONGMONT EXPRESS (FLEX):

Fort Collins:

NB Hwy 287 N/O Skyway ES	Bench #1105
NB College Ave N/O Fossil Creek Parkway ES	Bench #1106
SB College Ave S/O Cameron Rd WS	Shelter #1073
SB College Ave S/O Harmony Rd WS	Shelter #1072
NB College Ave N/O Harmony Road ES	Shelter #1107
NB College Ave Troutman Parkway ES	Shelter #1108
NB College Ave Boardwalk ES	Shelter #1109
NB College Ave S/O Horsetooth ES	Bench #1110

Larimer County:

NB Hwy 287 S/O Carpenter Rd ES	Shelter #1103
SB Hwy 287 S/O Trilby WS	Shelter #1075

Loveland:

NB Hwy 287 N/O 37th St ES	Shelter #1097
SB Hwy 287 S/O 37th St ES	Bench #1082
SB Hwy 287 S/O 41st St WS	Bench #1081
NB Hwy 287 S/O 43rd St ES	Bench #1098
NB Hwy 287 N/O 45th St ES	Bench #1099
SB Hwy 287 S/O 45th St WS	Shelter #1080
NB Hwy 287 N/O 50th St ES	Bench #1100
SB Hwy 287 S/O 50th St WS	Bench #1079
SB Hwy 287 S/O 57th St WS	Bench #1078
NB Hwy 287 N/O 57th St ES	Shelter #1101
NB Hwy 287 N/O 71st St ES	Bench #1102
SB Hwy 287 S/O 71st St WS	Shelter #1077

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **6**
MEETING DATE: 12/20/2011
TO: City Council
FROM: Marcy Abreo, Public Works
PRESENTER: Marcy Abreo

TITLE:
A Resolution approving an Intergovernmental Agreement (IGA) between the City of Loveland, Colorado and the North Front Range Transportation and Air Quality Planning Council, D/B/A the North Front Range Metropolitan Planning Organization, (MPO) for "Job Access and Reverse Commute" Section 5316 Grant Funds

RECOMMENDED CITY COUNCIL ACTION:
Adopt a motion to approve the Resolution

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

DESCRIPTION:
An administrative action approving the IGA between the City of Loveland and North Front Range Metropolitan Planning Organization for operation of transit services with a Job Access Reverse Commute (JARC) grant.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
The grant amount of $47,500 and local matching funds of $47,500 are included in the 2012 City of Loveland budget.

SUMMARY:
The Job Access Reverse Commute program, or JARC Section 5316, is a federally funded grant program through the Federal Transit Administration (FTA) with the purpose of addressing the

unique transportation challenges facing low-income persons seeking to obtain and maintain employment. Many of the entry-level jobs are located in suburban areas where low-income persons have difficultly accessing these jobs due to limited transit options. JARC funds are eligible to transit providers in large urbanized areas and are administered through the North Front Range Metropolitan Planning Organization (MPO).

JARC funds may be used to finance capital, planning and operating expenses. The Federal share of eligible capital and planning costs may not exceed 80 percent of the net cost of the activity. The Federal share of the eligible operating costs may not exceed 50 percent of the net operating costs of the activity. Recipients may use up to 10 percent of their apportionment to support program administrative costs including administration, planning, and technical assistance, which may be funded at 100 percent Federal share.

JARC funding has been awarded to Loveland for operation of routes that serve as a means for residents to get to and from employment centers typically catering to economically challenged populations. The grant will fund operations of the COLT Route 100 that serves as the direct connection from the downtown Loveland area to Orchards Shopping Center which in turn connects to the regional route between Loveland and Fort Collins. Route 100 is a hybrid of the former Orange and Blue routes. The route has been modified to offer a more direct service with greater convenience for passengers commuting to and from work in the downtown area, including those coming from Fort Collins. Route 100 also includes new service to the Justice Center and the Boys and Girls Club.

In 2012, COLT will use the awarded amount of $47,570 in JARC funds for operations of Route 100 with a local match of $47,500 from the transit operating budget. The annual estimated operating cost of Route 100 is $250,000. Loveland has received $864,000 in JARC funds since 2000.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
Resolution

RESOLUTION #R-89-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE NORTH FRONT RANGE TRANSPORTATION AND AIR QUALITY PLANNING COUNCIL, D/B/A THE NORTH FRONT RANGE METROPOLITAN PLANNING ORGANIZATION, FOR "JOB ACCESS AND REVERSE COMMUTE" SECTION 5316 GRANT FUNDS

WHEREAS, the Job Access and Reverse Commute ("JARC") Program, administered by the Federal Transit Administration, provides grants to communities for the purpose of filling gaps in employment transportation to primarily benefit low-income families who would otherwise have a difficult time getting to jobs and related services; and

WHEREAS, JARC grants are administered locally through a Master Agreement dated October 1, 2009 ("Master Agreement") between the Unites States of America, Department of Transportation, Federal Transit Administration ("FTA") and the North Front Range Transportation and Air Quality Planning Council, d/b/a the North Front Range Metropolitan Planning Organization ("MPO") (a copy of the Master Agreement is on file with the Loveland City Clerk and available at www.fta.dot.gov/documents/16-Master.pdf); and

WHEREAS, the City of Loveland has been awarded JARC Program funding ("5316 Grant Funds") in the amount of $47,570 for operation of Route 100, which serves as the direct connection from downtown Loveland to Orchards Shopping Center and connects to the regional route between Loveland and the City of Fort Collins, and therefore provides a means for Loveland residents to get to and from employment centers typically catering to economically challenged populations; and

WHEREAS, the City desires to enter into a subagreement with the MPO in order to receive the 5316 Grant Funds; and

WHEREAS, as governmental entities in Colorado, the City and the MPO 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 "2011 Federal Transit Administration Section 5316 Funds Subagreement," attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.

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

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

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

ADOPTED this 20th day of December, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shawn L. Ellis
Assistant City Attorney

Exhibit A

2011 Federal Transit Administration Section 5316 Funds
SUBAGREEMENT

THIS SUBAGREEMENT, made this ____ day of _____, 2011, by and between The North Front Range Transportation and Air Quality Planning Council, DBA the North Front Range Metropolitan Planning Organization (the "MPO") and City of Loveland Transit/COLT.

SECTION 1. PURPOSE OF SUBAGREEMENT. The purpose of this Subagreement is to state the terms, conditions, and mutual understandings of the parties as to the manner in which the Project will be undertaken and completed. The Project to be undertaken is more particularly described on Exhibit A, "Scope of Work and Conditions" attached hereto and incorporated herein by this reference.

SECTION 2. ACCOMPLISHMENT OF THE PROJECT.

A. General Requirements. The Subrecipient shall commence, carry out, and complete the Project with all practicable dispatch, in a sound, economical, and efficient manner, in accordance with the terms and conditions of this Subagreement, and the terms and conditions of Exhibit A, "Scope of Work and Conditions" incorporated herein by this reference and all applicable laws, regulations, and published policies. In general, the terms of the U.S. Department of Transportation regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18, are applicable to Projects with governmental and nongovernmental bodies.

B. Application of Federal, State, and Local Laws and Regulations

1. Pursuant to Federal, State, and Local Law. In performance of its obligations under this Subagreement, the Subrecipient shall comply with all applicable provisions of Federal, State, and local law. All limits or standards set forth in this Subagreement to be observed in the performance of the Project are minimum requirements, and all more stringent State or local standards as outlined in the body of this Subagreement shall be applicable to the performance of the Project.

2. Pursuant to Master Agreement. In performance of its obligations under this Subagreement, the Subrecipient shall comply with the Master Agreement between the MPO and the United States of America Department of Transportation, Federal Transit Administration and its corresponding Grant Agreement (collectively hereafter referred to as the "Master Agreement") out of which Master Agreement the funds for this Subagreement arise and are hereby passed through to the Subrecipient. The MPO and the Subrecipient understand that, pursuant to Section 2(D)(2) of the Master Agreement, the MPO may delegate any or almost all Project responsibilities to one or more Subrecipients but that the Recipient (MPO) continues to remain responsible to the FTA for compliance with federal requirements. Accordingly, the Subrecipient will perform no act or omission which places, or could place, the MPO at risk of violation of the Master Agreement. Any such act or omission by the Subrecipient shall constitute a violation of the terms of this Subagreement justifying the MPO to terminate the same for cause pursuant to Section 3(C) hereof. By way of emphasis, and not by way of limitation, the Subrecipient specifically agrees to be bound according to the terms of Section 2(E)(2)(b) of the Master Agreement pertaining to subagreements. The Master Agreement is attached hereto and incorporated herein by this reference as Exhibit "B" and any primary responsibilities for the Project which are usually

performed by the Recipient (MPO) but hereby delegated to the Subrecipient must be performed by the Subrecipient according to the requirements applicable to the Recipient imposed by the Master Agreement throughout each tier to the extent appropriate. The MPO shall have the right to conduct an initial audit of the Subrecipient's program to ensure that all practices and procedures are within the FTA regulations and guidelines. If any deficiencies are noted, the Subrecipient shall promptly correct said deficiencies and notify the MPO of the correction.

3. Revisions in Laws and Regulations. The Subrecipient acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the Project on the date that this Subagreement is executed may be modified from time to time.

4. Redundant Referencing/Controlling Agreement. This Subagreement contains certain provisions on subject matter which is also addressed in the Master Agreement. The purpose of this double referencing is to emphasize the importance of the issues so referenced and to specifically apply the same to the Subrecipient but is not intended to mean that the Subrecipient need only comply with those provisions contained in this Subagreement, and not those provisions contained in the Master Agreement. To the extent that there is a conflict between the provisions of this Subagreement and those of the Master Agreement, the Master Agreement shall control.

C. Changed Conditions of Performance. The Subrecipient agrees to notify the MPO immediately of any change in local conditions or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Subagreement. In addition, the Subrecipient agrees to notify the MPO immediately of any decision, dispute, breach or default pertaining to the Subrecipient's conduct or litigation that may affect the MPO's interests in the Project or the MPO's administration or enforcement of applicable Federal laws or regulations. Before the Subrecipient may name the MPO as a party to litigation for any reason, the Subrecipient agrees to inform the MPO; this provision applies to any type of litigation whatsoever, in any forum.

D. No MPO Obligations to Third Parties. Absent the MPO's express written consent, and not withstanding any concurrence by the MPO in or approval of the award of any contract of the Subrecipient (third party contract) or subcontract of the Subrecipient (third party subcontract) or the solicitation thereof, the MPO shall not be subject to any obligations or liabilities to third party Subrecipients or third party subcontractors or any other person not a party to this Subagreement in connection with the performance of this Project.

E. Code of Ethics. The Subrecipient agrees that no employee, officer, board member, or agent of the Subrecipient may participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. The Subrecipient agrees it will not use these Federal funds for lobbying any official or employee of any Federal agency, or member or employee of Congress, and will disclose any lobbying of any official or employee of any Federal agency, or member or employee of Congress in connection with this Federal assistance. The Subrecipient also agrees to comply with the applicable ethics provisions contained in the Master Agreement.

F. False or Fraudulent Statements or Claims. The Subrecipient acknowledges that it shall not make a false, fictitious, or fraudulent claim, statement, submission, or certification to the MPO in connection with the Project. The Subrecipient acknowledges and agrees that by signing this Subagreement it certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or may make pertaining to the statements contained in any documentation relating to this Subagreement.

G. Documentation of Project Costs. All allowable costs charged to the Project shall supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature of the charges. The Subrecipient also agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the Project shall be clearly identified, readily accessible, and to the extent feasible, kept separate from documents not pertaining to the Project.

H. Record Retention. During the course of the Project and for three years thereafter, the Subrecipient agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as the MPO may require. Upon request, the Subrecipient agrees to permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Subrecipient and its sub-subrecipients pertaining to the Project.

I. Ineligible Bidders. Unless otherwise permitted by the FTA or the State, the Subrecipient will refrain from awarding any third party contract to a party included in the US General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs.

J. Prohibition Against Discrimination in Federal Programs. The Subrecipient agrees to comply with, and assure the compliance by its third party contractors and subcontractors under the Project with all requirement of Title VI of the Civil Rights Act of 1964.

K. Equal Employment Opportunity. The Subrecipient agrees to comply with Federal Equal Employment Opportunity (EEO) requirements.

L. Access Requirements for Individuals with Disabilities. The Subrecipient agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA).

M. Drug and Alcohol Testing. The Subrecipient shall conform to the FTA's Drug and Alcohol Testing regulations. (These requirements are basically the same as those of the Federal Highway Administration - FHWA. There are some minor differences in the sanctions, and the Subrecipient must summarize and reports its testing results to the MPO.)

SECTION 3. RIGHT OF THE MPO TO TERMINATE.

A. Termination by Its Terms. This Subagreement will terminate by its own terms as set forth in Exhibit A.

B. For Convenience. The parties may rescind this Subagreement and terminate the Project if both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds.

C. For Cause. Upon written notice, the Subrecipient agrees that the MPO may suspend or terminate all or part of the financial assistance provided herein if the Subrecipient has violated the terms of this Subagreement, or if the MPO determines the purpose of the statute under which the Project was authorized would not be adequately

served by continuation of Federal financial assistance for the Project. Any failure to make reasonable progress of the Project or other violation of the Subagreement that significantly endangers substantial performance of the Project shall provide sufficient grounds for the MPO to terminate this Subagreement. In general, termination of any financial assistance under this Subagreement will not invalidate obligations properly incurred by the Subrecipient and concurred in by the MPO before the termination date; to the extent those obligations cannot be canceled. However, if the MPO determines that the Subrecipient has willfully misused Federal assistance funds by failing to make adequate progress, failing to adhere to the terms of this Subagreement, the MPO reserves the right to require the Subrecipient to refund the entire amount of Federal funds provided under this Subagreement or any lesser amount as may be determined by the MPO.

D. For Nonappropriation of Funds. The MPO may terminate this Subagreement if insufficient funds are appropriated or budgeted or funds are otherwise unavailable to the MPO for meeting all or any portion of the MPO's obligations.

SECTION 4. INDEMNIFICATION/BINDING EFFECT.

A. Indemnification. Except as prohibited or otherwise limited by law, the Subrecipient agrees to indemnify, save and hold harmless the MPO and its officer, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any negligent act or omission or resulting from any willful or intentional wrongful act of the Subrecipient in the performance of the Project.

B. Binding Effect. This Subagreement shall be binding upon the parties hereto, their agents, representatives and assigns, provided, however, that this Subagreement may not be assigned by either party without the written consent of the other.

IN WITNESS WHEREOF, the parties hereto have made and executed this Subagreement this _____ day of _____, 2011.

BY:_____

Cliff Davidson, Executive Director, North Front Range Transportation & Air Quality Planning Council

BY:_____

William D. Cahill, City Manager, City of Loveland

ATTEST:_____

City Clerk, City of Loveland

APPROVED AS TO FORM: _____

Assistant Attorney, City of Loveland

EXHIBIT A
SCOPE OF WORK AND CONDITIONS

CITY OF LOVELAND/COLT
COLT ROUTE 100

A. Project Budget.

1. The net Project cost is estimated to be and shall be shared as follows:

Section 5316 Share	***(50%)***	**$47,570**
Subrecipient Share	***(50%)***	**$47,570**
TOTAL		**$95,140**

The Subrecipient has agreed to provide the match for this grant with local funds.

2. The MPO will pay no more than 50% of the eligible, actual operating costs up to maximum amount of **$47,570** in Section 5316 funds. In the event the final, actual Project cost is less than the maximum allowable cost of **$95,140,** the MPO is not obligated to provide any more than 50% of the eligible, actual operating costs.

3. The MPO will administer federal funds for this Project under the terms of this Subagreement, provided that the federal share of FTA funds to be administered by the MPO are made available and remain available. In no event shall the MPO have any obligation to provide federal FTA funds for the Subrecipient Share of the Project.

4. No refund or reduction of the amount of the Subrecipient Share to be provided will be allowed unless there is at the same time a refund or reduction of the federal share of a proportionate amount.

5. Federal funds shall not be used to reimburse the Subrecipient for expenses not incurred in cash by the Subrecipient (e.g., donated or in-kind goods and services).

B. Reimbursement eligibility. Requests for reimbursement for project costs will be paid to the Subrecipient upon presentation of invoice(s) to the MPO. Bills shall include eligible costs to be reimbursed. Also a monthly Section 5316 Reimbursement Request will be submitted to the MPO by the Subrecipient. Invoices and Section 5316 Reimbursement Requests are due no later than the 21st of the month following the month of service. Late invoices and Reimbursement Requests will result in non-reimbursement for the month's expenses.

C. Contract expiration. This contract shall expire upon final reimbursement by the MPO.

D. Project Description. The Subrecipient shall perform all the Project activities generally described in the application for funding submitted to the MPO and as specifically described below. That application is incorporated herein by reference to the extent consistent with this Subagreement.

E. Services to be Provided.

As outlined in the application for funding submitted to the MPO, City of Loveland Transit/COLT agrees to provide the following services;

Operations funding for COLT Route 100 that serves as the direct connection from the downtown Loveland area to Orchards shopping center for a connection to the regional route between Loveland and Fort Collins. Route 100 is a hybrid of the former Orange and Blue routes. The route has been modified to offer a more direct service with greater convenience for passengers commuting to and from work in the downtown area, including those coming from Fort Collins. Route 100 also includes new service to the Justice Center and the Boys and Girls Club.

F. Reporting Requirements of Subrecipient.

In order to ensure that the project is proceeding in accordance with the project description provided in the application for funding, the Subrecipient agrees to report to the MPO Grants Administrator on the progress and milestones of the project. These reports will be in the form of meetings or conversations in which the MPO Grants Administrator is able to document the progress of the project. Written documentation may be requested of the Subrecipient in order to supplement the report on the projects progress. The reports shall occur no less than twice and no more than four times per year throughout the duration of the project.

The Subrecipient also agrees to provide a report to the MPO Planning Council within six months of project completion if requested.

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CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **7**
MEETING DATE: 12/20/2011
TO: City Council
FROM: Marcy Abreo, Public Works
PRESENTER: Marcy Abreo

TITLE:
Resolution approving an Intergovernmental Agreement between the City of Loveland, Colorado and the State of Colorado, acting by and through the Colorado Department of Transportation, Division of Transportation Development, for "Formula Grants For Other Than Urbanized Areas" Section 5311 Grant Funds

RECOMMENDED CITY COUNCIL ACTION:
Adopt a motion to approve the Resolution

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

DESCRIPTION:
An administrative action approving the IGA between the City of Loveland and Colorado Department of Transportation (CDOT) for the operation of rural transit services in 2012. The City of Loveland Transit (COLT) provides transit services for seniors and disabled residents who reside in Larimer County but are outside of the Transit Management Area (TMA) as defined by the 2000 Census.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible
The grant and local matching funds are included in the 2012 City of Loveland budget.

	Administrative Costs	*Operating Costs*
Federal Share	(80%) $22,900	(50%) $170,600
Local Share	(20%) $ 5,725	(50%) $170,600
TOTAL	$28,625	$341,200

SUMMARY:

The *Formula Grants For Other Than Urbanized Areas* is a Federal Transit Administration (FTA) program targeted at rural areas, is formula based, and provides funding to states for the purpose of supporting public transportation in rural areas with populations less than 50,000. The goal of the program is to provide the following services to communities with populations less than 50,000:

- Enhance the access of people in non-urbanized areas to health care, shopping, education, employment, public services, and recreation.
- Assist in the maintenance, development, improvement, and use of public transportation systems in non-urbanized areas.
- Encourage and facilitate the most efficient use of all transportation funds used to provide passenger transportation in non-urbanized areas through the coordination of programs and services.
- Assist in the development and support of intercity bus transportation.
- Provide for the participation of private transportation providers in non-urbanized transportation.

The results of the 2000 Census changed the landscape of transit operations in Larimer County by reclassifying the agencies in Fort Collins, Loveland, and Berthoud from rural to urbanized providers. The Census Bureau drew an arbitrary Transit Management Area (TMA) boundary around the communities that determined where rural and urbanized transportation would be provided. In Loveland, the boundary is very jagged with pockets of rural and urban service areas but generally speaking, everything east of Boyd Lake Road and west of Namaqua is considered rural, inside that boundary is urbanized. This distinction allows for funding eligibility under the Federal Transit Administration (FTA) Section 5311 funding for rural Larimer County outside of the TMA boundary.

In 2012 the City of Loveland will become the designated recipient to administer the grant on behalf of Berthoud and Larimer County. In previous years Larimer County was the designated recipient but due to administrative constraints the County is unable to administer the contract on Loveland and Berthoud's behalf. Should the City of Loveland elect to not be the designated recipient this funding source would not be available as Berthoud does not have the capacity to take on the responsibility.

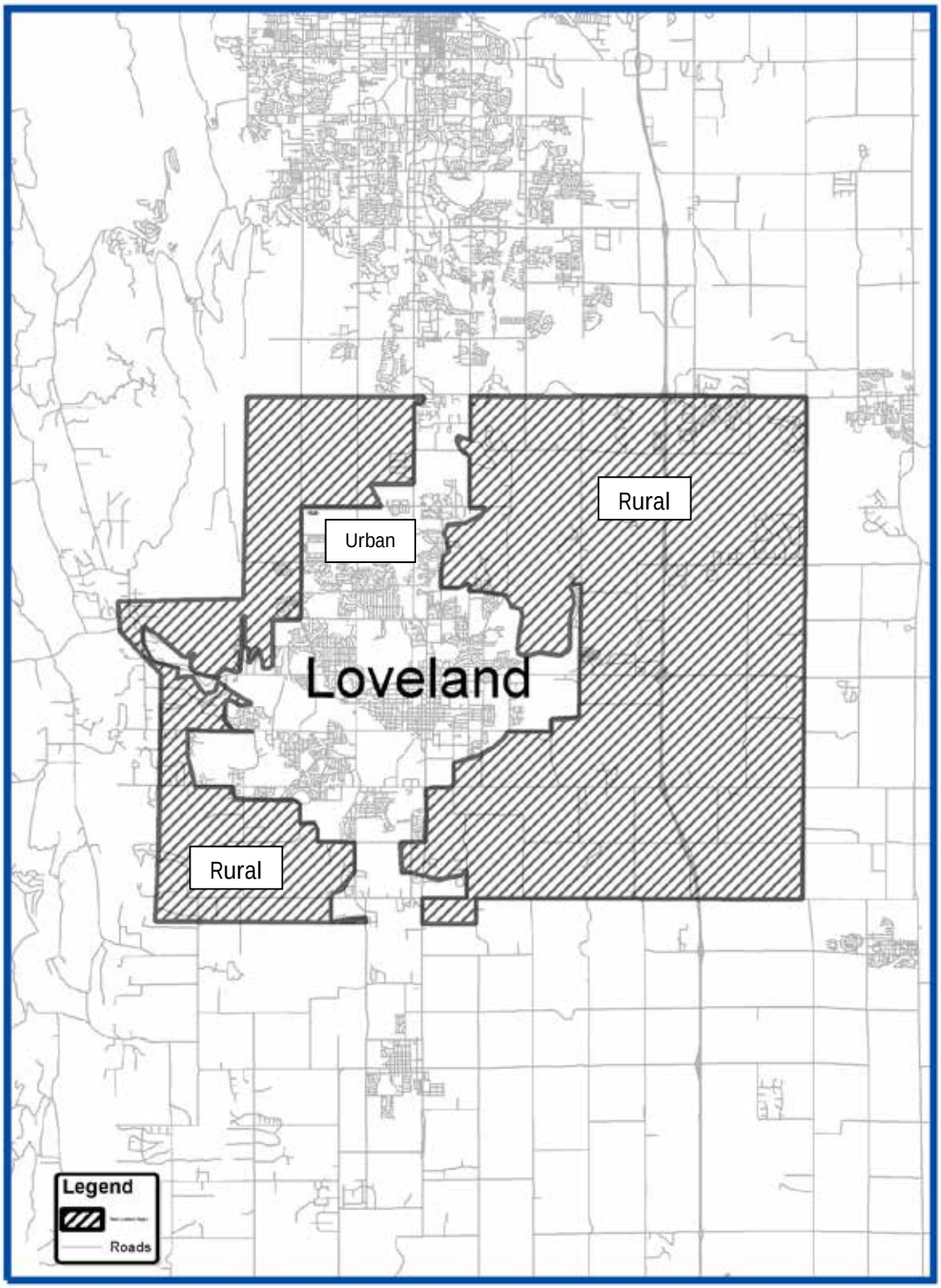
Section 5311 rural funds support Route 300 (Fixed Routes) which operates east of Boyd Lake Avenue and door-to-door Paratransit service for seniors and disabled persons residing in the rural areas outside of the urbanized TMA boundary area. The operating funds for this service are included in the annual operating and maintenance budget and are reimbursed on a monthly basis at a 50/50 match rate.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:

Map
Resolution

City of Loveland



RESOLUTION #R-90-2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, ACTING BY AND THROUGH THE COLORADO DEPARTMENT OF TRANSPORTATION, DIVISION OF TRANSPORTATION DEVELOPMENT, FOR "FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS" SECTION 5311 GRANT FUNDS

WHEREAS, the Formula Grants for Other than Urbanized Areas Program ("Program"), administered by the Federal Transit Administration, provides funding to states for the purpose of supporting public transportation in rural areas with populations of less than 50,000; and

WHEREAS, the City of Loveland has been awarded Program funding ("Section 5311 Grant Funds") for operation of Route 300, which operates east of Boyd Lake Avenue and provides door-to-door paratransit service for seniors and disabled persons residing in the rural areas outside of the urbanized Transit Management Area, as defined by the 2000 Census; and

WHEREAS, the City desires to enter into an agreement with the State of Colorado, acting by and through the Colorado Department of Transportation, Division of Transportation Development ("State"), in order to receive the Section 5311 Grant Funds and to serve as the designated recipient to administer the Section 5311 Grant Funds on behalf of the Town of Berthoud and Larimer County; and

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

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

Section 1. That the "State of Colorado 5311 Grant Agreement (Administrative & Operating) with the City of Loveland," attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.

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

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

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

ADOPTED this 20th day of December, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CMS: 12-HTR-38298/SAP PO #: 291001079

STATE OF COLORADO
5311 GRANT AGREEMENT (Administrative & Operating)
with
CITY of LOVELAND

TABLE OF CONTENTS

1. PARTIES

This Grant ("Grant") is entered into by and between the City of Loveland ("Grantee"), and the STATE OF COLORADO acting by and through the Colorado Department of Transportation, Division of Transportation Development ("State" or "CDOT"). Grantee and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

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

3. RECITALS

A. Authority, Appropriation, And Approval

Authority to enter into this Agreement exists in C.R.S. 43-1-701, 43-1-702, and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

G/L Account: 4518000010		Funds Center: D9715-415		Company Code: 1000	Vendor Number: 2000033
Functional Area: 1510-Not Relevant		CO Area: 1000	Fund: 400	Catalog Federal Domestic Assistance Number (CFDA) 20.509	
SAP Line Item	**WBS***	**5311-Admin./Operating**		**Total Encumbered Amount:** $369,825	
10-FFY 2012-Ad	CO-18-5031.LOVE	Federal Amount Total: $22,900		Local Amount Total: $5,725	Total: $28,625
20-FFY 2012-Op	CO-18-4031.LOVE	Federal Amount Total: $170,600		Local Amount Total: $170,600	Total: $341,200
*The grants and line item WBS numbers may be replaced without changing the amount of the grant at CDOT's discretion.					

B. Consideration.

The Grantee has proposed a project in the form of an application for funding under Section 5311 of the Act, hereinafter referred to as the "Project"; and the Governor of the State of Colorado, in accordance with a request by the Federal Transit Administration, hereinafter referred to as "FTA," has designated the State to manage the Section 5311 program, including the responsibility to evaluate and select public transportation projects proposed by State agencies, local public bodies and agencies thereof (including Indian Tribes), and nonprofit operators of public transportation services in areas other than urbanized.

C. Purpose

The purpose of this Grant is to state the terms, conditions, and mutual understandings of the Parties as to the manner in which the Project will be undertaken and completed. Section 5311of 49 U.S.C. §§ 5301 et seq., as amended, hereinafter referred to as the "Act", institutes a program offering federal assistance for public transportation in rural and small urban areas (non-urbanized) by way of a formula grant program administered by the State. The terms and conditions of the Project and the Act are incorporated herein by reference to the extent consistent herewith.

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. Budget

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

B. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating based on criteria established in this Agreement.

C. Exhibits and other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Option Letter), **Exhibit C** (Guidance for Audit), **Exhibit D** (Security Agreement; if used), **Exhibit E** (Procurement Authorization; if used), **Exhibit F** (Notice of Acceptance/Non-Acceptance, if used), **Exhibit G** (Federal Funding Accountability and Transparency Act (FFATA)).

D. Grant
"Grant" means this Grant its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant and any future modifying grants, exhibits, attachments or references incorporated pursuant to Colorado State Fiscal Rules and Policies.

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

F. Party and Parties
"Party" means CDOT or Grantee and "Parties" means both CDOT and Grantee.

G. Project Period
Means the period for which the Work listed in **Exhibit A** is performed, which is from the Effective Date through the duration of the Grant.

H. Services
"Services" means the required services to be performed by Grantee pursuant to this Grant.

I. Subgrantee
"Subgrantee" means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

J. Subrecipient
"Subrecipient" means any entity that receives Federal assistance funds awarded by CDOT, rather than by FTA directly. The term "subrecipient" also includes the terms "subgrantee," but does not include "third party contractor," "third party subcontractor," or "lessee."

K. Work
"Work" means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit A**, including the performance of the Services and delivery of the Goods.

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

5. FEDERAL FUNDING

This Grant is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof. The Parties hereto expressly recognize that the Grantee is to be paid, reimbursed, or otherwise compensated with funds provide to the State by the United States Department of Transportation, Federal Transit Administration under the National Capital Transportation Act of 1969, as amended, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended, or other Federal laws that FTA administers, and therefore, the Grantee expressly understands and agrees that all it right, demands, and claims to compensation arising under this contact are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate this grant without liability, including liability for termination costs.

6. PROJECT IMPLEMENTATION

a. General. The Grantee agrees to carry out the Project as follows:
(1) Project Description. Because the "Project Description" in the Scope of Work (**Exhibit A**) section of the Grant provides a brief description of the Project or Projects to be funded, the Grantee agrees to perform the work as described in the "Project Description" in the Scope of Work (**Exhibit A**) and in its Application that is incorporated by reference in the approved Grant for the Project.

(2) Effective Date. The effective date of the Grant, Option Letter (**Exhibit B**), or amendments thereto is the date on which the State Controller or designee executes this Grant for Federal assistance as shown on the Grant, Option Letter (**Exhibit B**), or amendments thereto. The Grantee agrees to undertake Project work promptly after receiving notice that the State has executed the grant for Federal assistance for the Project.

(3) Grantee's Capacity. The Grantee agrees to maintain sufficient legal, financial, technical, and managerial capacity to: (a) plan, manage, and complete the Project and provide for the use of Project property; (b) carry out the safety and security aspects of the Project and (c) comply with the terms of its Grant providing Federal assistance for the Project, the Approved Project Budget, the Project schedules, the Grantee's annual Certifications and Assurances to the State, and applicable Federal, State and/or Local laws, regulations, and directives, except to the extent that FTA or the State determines otherwise in writing.

(4) Completion Dates. The Grantee agrees to complete the Project in a timely manner. Nevertheless, the time period to be covered by this Grant shall begin on January 1, 2012, or the date the State Controller, or designee, executes this grant, whichever is later, shall be undertaken and performed in the sequence and manner set forth herein, and shall end December 31, 2012. The State may require continued performance for a period not to exceed one year for any Services at the rates and terms specified in the Grant. The State may exercise the option by written notice to the Grantee within 30 days prior to the end of the current Grant term in accordance with Section 37 of this Grant. If the State exercises this option, the extended Grant will be considered to include this option provision. The total duration of this Grant, including the exercise of any options under this clause, shall not exceed two years.

b. U.S. DOT Administrative Requirements. The Grantee agrees to comply with the Federal administrative requirements that apply to the category in which it belongs:

(1) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18, apply to a Grantee that is a State, local, or Indian tribal government.

(2) U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19, apply to a Grantee that is an institution of higher education or a nonprofit organization.

(3) Except to the extent that FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19, apply to a Grantee that is a private for-profit organization.

c. Application of Federal, State, and Local Laws, Regulations, and Directives.

(1) Federal Laws, Regulations, and Directives. The Grantee agrees that Federal laws and regulations control Project award and implementation. The Grantee also agrees that Federal directives as defined in this Grant, provide Federal guidance applicable to the Project, except to the extent that FTA or the State determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Grantee understands and agrees that unless it requests FTA or State written approval, the Grantee may incur a violation of Federal laws or regulations, or the terms of its Grant if it implements an alternative procedure or course of action not approved by FTA or the State.

The Grantee understands and agrees that Federal and State laws, regulations, and directives applicable to the Project and to the Grantee on the date on which the State Controller or designee executes Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Grantee executes the Grant for the Project, and might apply to that Grant. The Grantee agrees that the most recent of such Federal laws, regulations, and directives will govern the administration of the Project at any particular time, except to the extent that FTA or the State determines otherwise in writing.

FTA's and the State's written determination may take the form of a Special Condition, Special Requirement, Special Provision (Federal and/or State), or Condition of Award within the Grant

for the Project, a change to an FTA directive, or a letter to the Grantee signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or otherwise conditions a specific provision of the Grant for the Project. To accommodate changing Federal requirements, the Grantee agrees to include in each agreement with each Subgrantee and each third party contract implementing the Project notice that Federal laws, regulations, and directives may change and that the changed requirements will apply to the Project, except to the extent that FTA or the State determines otherwise in writing. All standards or limits in the Grant for the Project are minimum requirements, unless modified by FTA or the State.

(2) State, Territorial, and Local Law. Should a Federal law preempt a State, territorial, or local law, regulation, or ordinance, the Grantee must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant for the Project requires the Grantee to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant for the Project violates or would require the Grantee to violate any State, territorial, or local law, regulation, or ordinance, the Grantee agrees to notify FTA or the State immediately in writing. Should this occur, FTA, the State and the Grantee agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

d. Grantee's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Grantee agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws and regulations, the Grant Agreement or Cooperative Agreement for the Project, and this Grant, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(1) Significant Participation by a Subgrantee. Although the Grantee may delegate any or almost all Project responsibilities to one or more Subgrantees, the Grantee agrees that it, rather than any Subgrantee, is ultimately responsible for compliance with all applicable Federal laws, and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(2) Significant Participation by a Lessee of a Grantee. Although the Grantee may lease Project property and delegate some or many Project responsibilities to one or more lessees, the Grantee agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(3) Significant Participation by a Third Party Contractor. Although the Grantee may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Grantee (such as in a turnkey contract), the Grantee agrees that it, rather than the third party contractor, is ultimately responsible to FTA for compliance with all applicable Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

(4) Exceptions. The Grantee, however, is relieved of the requirement to comply with Federal requirements in the following two circumstances:

(a) When the Designated Grantee of Urbanized Area Formula Program assistance as defined at 49 U.S.C. § 5307(a)(2) has entered into a Supplemental Agreement with FTA and a Grant Grantee or Grantee covering the Project, the Designated Grantee is not responsible for compliance with Federal requirements in connection with the Project, or

(b) When the Federal Government, through appropriate official action, relieves the Grantee of a portion of or all responsibility to the Federal Government

e. Grantee's Responsibility to Extend Federal Requirements to Other Entities.

(1) Entities Affected. Only entities that are signatories to this Grant for the Project are Parties to this Grant. To achieve compliance with certain Federal laws, regulations, or directives, however, other entities participating in the Project through their involvement with the Grantee (such as Subgrantees and third party grantees) will necessarily be affected. Accordingly, the Grantee agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal laws, regulations, and directives affecting Project implementation, except to the extent FTA or the State determines otherwise in writing. In addition, if any entity other than the Grantee is expected to fulfill responsibilities typically performed by the Grantee, the Grantee agrees to assure that the entity carries out the Grantee's responsibilities as set forth in the Grant.

(2) Documents Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which those provisions affect an entity (such as a Subgrantee, lessee, or other) participating in the Project through the Grantee. Thus, the Grantee agrees to use a written document to ensure that each entity participating in the Project complies with applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

(a) Third Party Contracts. Because Project activities performed by a third party grantee must comply with all applicable Federal laws, regulations, and directives, except to the extent FTA determines otherwise in writing, the Grantee agrees to include appropriate clauses in each third party contract stating the third party grantee's responsibilities under Federal laws, regulations, and directives, including any provisions directing the third party grantee to extend applicable requirements to its Subgrantees at the lowest tier necessary. When the third party contract requires the third party grantee to undertake responsibilities for the Project usually performed by the Grantee, the Grantee agrees to include in that third party contract those requirements applicable to the Grantee imposed by the Grant for the Project and extend those requirements throughout each tier except as FTA determines otherwise in writing. Additional guidance pertaining to third party contracting is contained in the FTA's "Best Practices Procurement Manual." FTA cautions, however, that its "Best Practices Procurement Manual" focuses mainly on third party procurement processes and may omit certain other Federal requirements applicable to the work to be performed.

(b) Subcontracts. Because Project activities performed by a Subgrantee must comply with all applicable Federal laws, regulations, and directives except to the extent that the State determines otherwise in writing, the Grantee agrees as follows:

(1) Written Subcontract. The Grantee agrees to enter into a written agreement with each Subcontract (subcontract) stating the terms and conditions of assistance by which the Project will be undertaken and completed.

(2) Compliance with Federal Requirements. The Grantee agrees to implement the Project in a manner that will not compromise the Grantee's compliance with Federal laws, regulations, and directives applicable to the Project and the Grantee's obligations under this Grant for the Project. Therefore, the Grantee agrees to include in each subgrant appropriate clauses directing the Subgrantee to comply with those requirements applicable to the Grantee imposed by the Grant for the Project and extend those requirements as necessary to any lower level subgrant or any third party grantee at each tier, except as FTA or the State determines otherwise in writing.

e. No Federal Government Obligations to Third Parties. In connection with performance of the Project, the Grantee agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any Subgrantee, lessee, third party grantee, or other person or entity that is not a party to this Grant for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subgrant, lease, or third party contract at

any tier, the Federal Government has no obligations or liabilities to entity, other than the Grantee, lessee, or third party grantee at any tier.

f. Changes in Project Performance (*i.e.*, Disputes, Breaches, Defaults, or Litigation). The Grantee agrees to notify FTA and the State immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Grantee's ability to perform the Project in accordance with the terms of this Grant for the Project. The Grantee also agrees to notify the State and FTA immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations; and agrees to inform FTA, also in writing, before naming the Federal Government as a party to litigation for any reason, in any forum. At a minimum, the Grantee agrees to send each notice to FTA required by this subsection to the FTA Regional Counsel within whose Region the grantee operates its public transportation system or implements the Project.

7. ETHICS

a. Code of Ethics. The Grantee agrees to maintain a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of subcontracts, leases, or third party contracts supported with Federal assistance. The Grantee agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential Subgrantee, lessee, or third party grantee at any tier or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award. The Grantee may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Grantee agrees that its code or standards shall also prohibit the its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Grantee agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party grantees or Subgrantees or their agents.

(1) Personal Conflicts of Interest. The Grantee agrees that its code or standards of conduct shall prohibit the Grantee's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or subgrant supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.

(2) Organizational Conflicts of Interest. The Grantee agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subgrant may, without some restrictions on future activities, result in an unfair competitive advantage to the third party grantee or Subgrantee or impair its objectivity in performing the grant work.

b. Debarment and Suspension. The Grantee agrees that:

(1) It will not engage third party participants that are debarred or suspended except as authorized by:
(a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the following U.S. Office of Management and Budget (U.S. OMB) Guidelines and Executive Order,
(b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, and

(c) Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(2) It will review the "Excluded Parties Listing System" at http://epls.gov/, if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and

(3) It will include, and require its third party participants to include a similar condition in each lower tier covered transaction, assuring that the lower tier third party participant will comply with:
(a) Federal debarment and suspension requirements, and
(b) Review the "Excluded Parties Listing System" at http://epls.gov/, if needed for compliance with U.S. DOT regulations, 2 C.F.R. Part 1200.

c. Bonus or Commission. The Grantee affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.

d. Lobbying Restrictions. The Grantee agrees that:

(1) In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant;
(2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and
(3) It will comply, and will assure the compliance of each Subgrantee, lessee, or third party contractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

e. Employee Political Activity. To the extent applicable, the Grantee agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

f. False or Fraudulent Statements or Claims. The Grantee acknowledges and agrees that:

(1) Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq*. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to Grantee's activities in connection with the Project. By executing the Grant for the Project, the Grantee certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Grantee also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Grantee the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.
(2) Criminal Fraud. If the Grantee makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Grantee the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

g. Trafficking in Persons. To the extent applicable, the Grantee agrees to comply with, and assures the compliance of each Subgrantee with, the requirements of the subsection 106(g) of the Trafficking Victims

Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and the provisions of this Subsection 7.g of this Grant Agreement consistent with U.S. OMB guidance, "Trafficking in Persons: Grants and Cooperative Agreements," 2 C.F.R. Part 175:

(1) Definitions. For purposes of this Subsection 3.g, the Grantee agrees that:

(a) Employee means either:
1. An individual who is employed by the Grantee or a Subgrantee, and who is participating in the Grant Agreement or Cooperative Agreement for the Project; or
2. Another person who is participating in the Grant Agreement or Cooperative Agreement for the Project and who is not compensated by the Grantee including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements of the Grant Agreement or Cooperative Agreement and this Grant Agreement.

(b) Forced labor means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(c) Private entity:
1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.
2. Includes a for-profit organization, and also a nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(d) Severe forms of trafficking in persons has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(e) Commercial sex act has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(f) Coercion has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

(2) Provisions Applicable to Each Grantee. The Grantee agrees:

(a) To inform FTA immediately of any information it receives from any source alleging a violation of a prohibition in Subsection 7.g(3)(a) of this Grant Agreement below.

(b) That FTA may unilaterally terminate its Federal assistance for the Grant Agreement or Cooperative Agreement for the Project as provided in Subsection 7.g(3)(b) or (4) of this Grant Agreement. FTA's right to terminate unilaterally:
1. Implements subsection 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g), and
2. Is in addition to all other remedies for noncompliance that are available to the Federal Government under this Grant Agreement.

(c) To include the requirements of Subsection 7.g(3)(a) of this Grant Agreement in any subagreement it enters into with a private entity, as defined in Subsection 7.g(1)(c) of this Grant Agreement.

(3) Provisions Applicable to a Grantee that is a Private Entity. A Grantee that is a private entity as defined in Subsection 7.g(1)(c) of this Grant Agreement agrees that:

(a) It, its employees, its Subgrantees and its Subgrantees' employees that participate in the Grant Agreement or Cooperative Agreement for the Project, may not--

1. Engage in severe forms of trafficking in persons during the period of time that the Grant Agreement or Cooperative Agreement for the Project is in effect;
2. Procure a commercial sex act during the period of time that the Grant Agreement or Cooperative Agreement for the Project is in effect; or
3. Use forced labor in the performance of the Grant Agreement or Cooperative Agreement or subagreements for the Project.

(b) FTA may unilaterally terminate the Grant Agreement or Cooperative Agreement for the Project, without penalty to the Federal Government, if the Grantee or a Subgrantee that is a private entity--

1. Is determined to have violated a prohibition in Subsection 3.g(3)(a) of this Grant Agreement, or
2. Has an employee who is determined by an FTA official authorized to terminate the Grant Agreement or Cooperative Agreement for the Project to have violated a prohibition in Subsection 3.g(3)(a) of this Grant Agreement through conduct that is either--

a. Associated with his or her participation in the Grant Agreement or Cooperative Agreement for the Project; or

b. Imputed to the Grantee or the Subgrantee using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200.

(4) Provision Applicable to a Grantee Other Than a Private Entity. FTA may unilaterally terminate the Grant Agreement or Cooperative Agreement for the Project, without penalty to the Federal Government, if a Subgrantee that is a private entity--

(a) Is determined to have violated an applicable prohibition in Subsection 7.g(3)(a) of this Grant Agreement; or

(b) Has an employee who is determined by an FTA official authorized to terminate the Grant Agreement or Cooperative Agreement for the Project to have violated an applicable prohibition in Subsection 7.g(3)(a) of this Grant Agreement through conduct that is either--

1. Associated with his or her participation in the Grant Agreement or Cooperative Agreement for the Project, or
2. Imputed to the subgrantee using the standards and due process for imputing the conduct of an individual to an organization that are provided in the U.S. OMB "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180, as implemented by U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200.

8. FEDERAL ASSISTANCE

The Grantee agrees that the State will provide FTA Federal assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or regulations, (b) the "Maximum FTA Amount Approved," set forth in this Grant for the Project, or (c) the amount calculated in accordance with the "Maximum Percentage(s) of FTA Participation," as may be modified by the Conditions of Award or other Special Conditions, Special Requirements, or Special Provisions (Federal and/or State) of the Grant for the Project. The State's responsibility to make Federal assistance payments is limited to the amounts listed in the Approved Project Budget for the Project. The "Estimated Total Eligible Cost" in the Grant for the Project is the amount that forms the basis on which the State determines the "Maximum FTA Amount Awarded."

a. "Net Project Cost". For any Project required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Grantee for that portion of the Project that cannot reasonably be financed from the Grantee's revenues, *i.e.*, "Net Project Cost" of the Project. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant is the "Estimated Net Project Cost" and is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

b. Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Grantee for all or part of the total Project cost that is eligible for Federal assistance. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant for the Project is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

9. LOCAL SHARE

A Grantee that is required to provide a local share for the Project agrees as follows:

a. Restrictions on the Source of the Local Share. The Grantee agrees to provide sufficient funds or approved in-kind resources, together with the Federal assistance awarded, that will assure payment of the actual cost of each Project activity covered by the Grant for the Project. The Grantee agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the public transportation system in which such facilities or equipment are used, or other Federal funds, except as permitted by Federal law or regulation.

b. Duty to Obtain the Local Share. The Grantee agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs, except to the extent that the State or FTA determines otherwise in writing.

c. Prompt Payment of the Local Share. The Grantee agrees to provide the proportionate amount of the local share promptly as Project costs are incurred or become due, except to the extent that the Federal Government determines otherwise in writing.

d. Reduction of the Local Share. The Grantee agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal assistance provided is made to the Federal Government.

10. APPROVED PROJECT BUDGET

Except to the extent that the State determines otherwise in writing, the Grantee agrees as follows: The Grantee will prepare a Project Budget which, upon approval by the State is designated the "Approved Project Budget." The Grantee will incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget, which will be incorporated by reference and made part the underlying Grant for the Project. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the underlying Grant, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal assistance awarded for the Project may be made consistent with applicable Federal laws, regulations and directives. An award of additional Federal assistance will require a new Approved Project Budget. If the Grantee estimates that it will have unobligated funds remaining after the end of the performance period of the Project, the Grantee agrees to report this to the State at the earliest possible time and ask for disposition instructions.

11. ACCOUNTING RECORDS

In compliance with applicable Federal laws, regulations, and directives, and except to the extent that the State or FTA determines otherwise in writing, the Grantee agrees as follows:

a. Project Accounts. The Grantee agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Grantee also agrees to maintain all checks, payrolls, invoices, grants, vouchers, orders, or other accounting documents related in whole or part to the Project so that they may be clearly identified, readily accessible, and available to the State upon request and, to the extent feasible, kept separate from documents not related to the Project.

b. Funds Received or Made Available for the Project. The Grantee agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and to record in the Project Account all amounts provided by the Federal Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in compliance with Federal laws and regulations, in accordance with applicable Federal directives, except to the extent that the State or FTA determines otherwise in writing. Use of financial institutions owned at least fifty (50) percent by minority group members is encouraged.

c. Documentation of Project Costs and Program Income. The Grantee agrees to support all costs charged to the Project, including any approved services or property contributed by the Grantee or others, with properly executed payrolls, time records, invoices, grants, or vouchers describing in detail the nature and propriety of the charges. The Grantee also agrees to maintain accurate records of all program income derived from Project implementation, except certain income the State or FTA determines to be exempt from the Federal program income requirements.

12. REPORTING, RECORD RETENTION, AND ACCESS

The Grantee shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the operation of programs or the delivery of services under this grant, and shall maintain such records for a period of three (3) years after the date of termination of this grant or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. All such records, documents, communications and other materials shall be the property of the State, and shall be maintained by the Grantee in a central location and the Grantee shall be custodian on behalf of the State.

a. Types of Reports. The Grantee agrees to submit to the State all reports required by Federal laws and regulations, and directives, the Grant for the Project, and any other reports FTA may specify, except to the extent that the State determines otherwise in writing.

b. Report Formats. The Grantee agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to the State must be prepared and submitted in electronic and or typewritten hard copy formats as the State may specify. The State reserves the right to require records to be submitted in other formats.

c. Record Retention. During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Grantee agrees to maintain intact and readily accessible all data, documents, reports, records, grants, and supporting materials relating to the Project as the Federal Government may require.

d. Access to Records of Grantees and Subgrantees. The Grantee agrees to permit, and require its Subgrantees to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Grantee and its Subgrantees pertaining to the Project, as required by 49 U.S.C. § 5325(g).

e. Project Closeout. The Grantee agrees that Project closeout does not alter the reporting and record retention requirements of this Section 12 of the Grant.

13. PAYMENTS

The Grantee agrees that it will not seek payment from the State for Project costs until it has executed the Grant for the Project.

a. Grantee's Request for Payment. Except to the extent that the State determines otherwise in writing, to obtain a payment for Project expenses from the State, the Grantee agrees to:

(1) Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Except to the extent that the Federal Government determines in writing that the Grantee may defer its local share for the Project, a Grantee required under the terms of federal law, regulation, or Grant to provide a local share for the Project agrees that it will not:

(a) Request or obtain Federal funds exceeding the amount justified by the local share provided, and
(b) Take any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized by the Grant for the Project,

(2) Submit to the State all financial and progress reports required to date by the Grant for the Project, and
(3) Identify the source(s) of Federal assistance provided for the Project from which the payment is to be derived.

b. Payment by the State

Costs Reimbursed. The Grantee agrees that Project costs eligible for Federal participation must comply with all the following requirements. Except to the extent that the State or FTA determines otherwise in writing, to be eligible for reimbursement, Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, and other provisions of the Grant for the Project,
(2) Necessary in order to accomplish the Project,
(3) Reasonable for the goods or services purchased,
(4) Actual net costs to the Grantee (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred, excluding program income),
(5) Incurred for work performed after the Effective Date of the Grant for the Project, except to the extent that the Federal Government determines otherwise in writing,
(6) Satisfactorily documented,
(7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Grantee, and with accounting principles and procedures approved by the Grantee for its third party grantees and Subgrantees,
(8) Eligible for Federal participation under Federal law, regulations, or directives, and
(9) In compliance with U.S. DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22(b) or 49 C.F.R. § 19.27, which regulations specify the applicability of U.S. Office of Management and Budget (U.S. OMB) circulars and Federal Acquisition Regulation (FAR) provisions as follows:

(a) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, applies to Project costs incurred by a Grantee that is a State, local, or Indian tribal government.

(b) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, applies to Project costs incurred by a Grantee that is an institution of higher education.

(c) U.S. OMB Guidance for Grants and Agreements “Cost Principles for Non-profit Organizations (OMB Circular A-122),” 2 C.F.R. Part 230, applies to Project costs incurred by a Grantee that is a private nonprofit organization.

(d) FAR, at 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" applies to Project costs incurred by a Grantee that is a for-profit organization.

c. Excluded Costs. The Grantee understands and agrees that, except to the extent FTA or the State determines otherwise in writing, ineligible costs will be treated as follows:

(1) In determining the amount of Federal assistance the State will provide for the Project, the State will exclude:

(a) Any Project cost incurred by the Grantee before the Effective Date of the Grant, Option Letter (**Exhibit B**), or amendment, unless otherwise permitted by Federal or State law, regulation, or directive, or unless an authorized State official states in writing to the contrary;
(b) Any cost that is not included in the latest Approved Project Budget;
(c) Any cost for Project property or services received in connection with a subgrant, lease, third party contract or other arrangement that is required to be, but has not been, concurred in or approved in writing by the State;
(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h); and
(e) Any cost ineligible for FTA participation as provided by applicable Federal laws, regulations, or directives, except to the extent the Federal Government determines otherwise in writing.

(2) The Grantee understands and agrees that payment to the Grantee for any Project cost does not constitute the State's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Grantee of the terms of the Grant for the Project. The Grantee acknowledges that the State will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the State determines that the Grantee is not entitled to receive any portion of the Federal assistance requested or provided, the State will notify the Grantee in writing, stating its reasons. The Grantee agrees that Project closeout will not alter the Grantee's responsibility to return any funds due to the State as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the State's right to disallow costs and recover Federal assistance provided for the project on the basis of a later audit or other review. Unless prohibited by Federal or State law or regulation, the State may recover any Federal financial assistance made available for the Project as necessary to satisfy any outstanding monetary claims that the State may have against the Grantee.

d. Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Grantee's Responsibility to Pay. Upon notification to the Grantee that specific amounts are owed to the State, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Grantee agrees to remit to the State promptly the amounts owed, including applicable interest, penalties and administrative charges.

(2) Amount of Interest. The Grantee agrees that whether the amount due the State is treated as a claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Grantee agrees to remit interest to the State in accordance with the following:

(a) Claims against the Grantee. For claims pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Grantee agrees that the amount of interest owed to the State will be determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9 (i), whichever is applicable.

(b) Excess Payments or Disallowed Costs. For excess payments or disallowed cost payments made by the Federal Government to the Recipient for which claims procedures have not been initiated under the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq*. and implementing regulations, the Recipient agrees that common law interest owed to the Federal Government will be determined in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the

Administrative Collection of Claims," at 31 C.F.R. § 901.9(i), or otherwise as FTA may determine.

e. De-obligation of Funds. The Grantee agrees that the State may de-obligate unexpended Federal funds before Project closeout.

14. PROJECT COMPLETION, AUDIT, SETTLEMENT, AND CLOSEOUT

a. Project Completion. Within ninety (90) calendar days following Project completion date or termination by the State, the Grantee agrees to submit a final certification of Project expenses, and third party audit reports, as applicable.

b. Audit of Grantees. Except to the extent the State determines otherwise in writing, the Grantee acknowledges and agrees as follows:

(1) Audit Requirements. The Grantee agrees to have financial and compliance audits performed as required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq*. As provided by 49 C.F.R. § 19.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The Grantee also agrees to obtain any other audits required by the State. Such audits shall test compliance with the items specified in Guidance for Audit of Grantee Compliance with FTA Requirements (**Exhibit C**) and shall be completed by the Grantee if it is a State or local government, Indian Tribal government or private nonprofit organization. The Grantee agrees that these audits will be conducted in accordance with U.S. Government Accountability Office, (U.S. GAO) "Government Auditing Standards." The Grantee agrees that Project closeout will not alter the Grantee's audit responsibilities.

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by OMB Circular A-87, OMB Circular A-21, OMB Circular A-122, or the FAR at 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

c. Funds Owed to the State. The Grantee agrees to remit to the State any excess payments made to the Grantee, any costs disallowed by the State, and any amounts recovered by the Grantee from third parties or from other sources, as well as any penalties and any interest required by Subsection 9.d(2) of this Grant.

d. Project Closeout. Project closeout occurs when the State notifies the Grantee that the State has closed the Project, and either forwards the final Federal assistance payment or acknowledges that the Grantee has remitted the proper refund. The Grantee agrees that Project closeout by the State does not invalidate any continuing requirements imposed by the Grant for the Project, or any unmet requirements set forth in the Federal Government's final notification or acknowledgment.

15. RIGHT OF THE STATE TO TERMINATE

a. **Breach**

(1) Defined:

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

(2) 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 **§14(c)**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15(b)**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

b. **Remedies**

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in **§15(a)(2)**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

(1) Termination for Cause and/Breach

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

i. Obligations and Rights

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

ii. Payments

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

iii. Damages and Witholding

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

(2) Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part.

Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by **§15** or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with **§15**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

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

iii. Payments

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

(3) Remedies Not Involving Termination

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

i. Suspend Performance

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

ii. Withold Payment

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

iii. Deny Payment

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

iv. Removal

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

v. Intellectual Property

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

c. 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.

(1) State:

Andrew O'Connor
Colorado Department of Transportation
4201 E. Arkansas Ave.
Shumate Building
Denver, CO 80222
Andrew.OConnor@dot.state.co.us

(2) Grantee:

Marcy Abreo
General Manager
410 E. 5th Street
Loveland, CO 80537
970-962-2743

16. CIVIL RIGHTS

The Grantee agrees to comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

a. Nondiscrimination in Federal Public Transportation Programs. The Grantee agrees to comply, and assures the compliance of each third party grantee at any tier and each Subgrantee at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination – Title VI of the Civil Rights Act. The Grantee agrees to comply, and assures the compliance of each third party grantee at any tier and each Subgrantee or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq*., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Grantee also agrees to comply with any applicable implementing Federal directives that may be issued.

c. Equal Employment Opportunity. The Grantee agrees to comply, and assures the compliance of each third party grantee at any tier of the Project and each Subgrantee at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any later amendments thereto. Except to the extent FTA determines otherwise in writing, the Grantee also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:

(1) General: The Grantee agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Grantee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or

transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each Subgrantee, lessee, or third party contractor, or other participant, at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws, and regulations, and in accordance with applicable Federal directives affecting construction undertaken as part of the Project.

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Grantee agrees to facilitate participation by Disadvantaged Business Enterprises (DBE) in the Project and assures that each third party grantee at any tier of the Project and each Subgrantee at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

(1) The Grantee agrees and assures that it will comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) The Grantee agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party contract, or subgrant supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Grantee agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subgrants supported with Federal assistance derived from U.S.DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Grantee's DBE program, if any, is incorporated by reference and made part of the Grant for the Project. The Grantee agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant for the Project. Upon notification by U.S. DOT to the Grantee of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq*., or both.

e. Nondiscrimination on the Basis of Sex. The Grantee agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

f. Nondiscrimination on the Basis of Age. The Grantee agrees to comply with all applicable requirements of:

(1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq*., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90 which prohibit discrimination against individuals on the basis of age.

(2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.

g. Access for Individuals with Disabilities. The Grantee agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for

elderly individuals and individuals with disabilities. The Grantee also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq*., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq*., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Grantee agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal directives except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
(3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
(6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
(7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
(9) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. Part 1194;
(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
(11) Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Grantee agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq*., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq*., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq.*, and any amendments thereto.

i. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Grantee agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, “DOT Policy Guidance Concerning Recipient’s (Grantee’s) to Limited English Proficiency (LEP) Persons,” 70 *Fed. Reg*. 74087, December 14, 2005.

j. Environmental Justice. The Grantee agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

k. Other Nondiscrimination Laws. The Grantee agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

17. PREFERENCE FOR UNITED STATES PRODUCTS AND SERVICES

To the extent applicable, the Grantee agrees to comply with the following U.S. domestic preference requirements:

Buy America. The Grantee agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and any later amendments thereto.

18. PROCUREMENT

To the extent applicable, the Grantee agrees to comply with the following third party procurement provisions:

a. Federal Standards. The Grantee agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other procurement requirements of Federal laws in effect now or as amended to the extent applicable; with U.S. DOT third party procurement regulations of 49 C.F.R. § 18.36 or at 49 C.F.R. §§ 19.40 through 19.48 and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Grantee also agrees to follow the provisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," November 1, 2008, and any later revisions thereto, except to the extent FTA determines otherwise in writing. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Grantee understands and agrees that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed.

b. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Grantee agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

c. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Grantee agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not using any Federal assistance awarded by FTA to support a procurement using exclusionary or discriminatory specifications.

d. Geographic Restrictions. The Grantee agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by FTA. For example, in procuring architectural, engineering, or related services, the grantee's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.

e. In-State Bus Dealer Restrictions. In accordance with 49 U.S.C. § 5325(i), the Grantee agrees that any State law requiring buses to be purchased through in-State dealers will not apply to acquisitions of vehicles financed with Federal assistance authorized under 49 U.S.C. chapter 53.

f. Neutrality in Labor Relations. To the extent permitted by law, the Grantee agrees to follow Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Grantees' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order No. 13208, 41 U.S.C. § 251 note, which among other things provides that the Grantee may neither impose requirements for nor prohibit affiliations with a labor organization (such as project labor agreements) as a condition for award of any third party contract or subgrant for construction or construction management services, except to the extent that the Federal Government determines otherwise in writing.

g. Federal Supply Schedules. State, local, or nonprofit Grantees may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, FTA, or other Federal laws or regulations in accordance with applicable Federal directives or determinations.

h. Force Account. The Grantee agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

i. FTA Technical Review. The Grantee agrees to permit FTA to review and approve the Grantee's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.

j. Project Approval/Third Party Contract Approval. Except to the extent the State determines otherwise in writing, the Grantee agrees that the State's award of Federal assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.

k. Preference for Recycled Products. To the extent applicable, the Grantee agrees to comply with U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Accordingly, the Grantee agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

l. Clean Air and Clean Water. The Grantee agrees to include in each third party contract or each subgrant exceeding $100,000 adequate provisions to ensure that each Project participant will agree to
(1) Report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities,"
(2) Refrain from using any violating facilities,
(3) Report violations to FTA and the Regional U.S. EPA Office, and
(4) Comply with the inspection and other applicable requirements of:
(a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and
(b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

m. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Grantee agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

n. Rolling Stock. In acquiring rolling stock, the Grantee agrees as follows:

(1) Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Grantee agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
(2) Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), a Grantee procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multi-year grant with options, exceeding five (5) years after the date of the original grant, to purchase additional rolling stock and replacement parts.
(3) Pre-Award and Post-Delivery Requirements. The Grantee agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and, when promulgated, any amendments to those regulations. The Grantee agrees to verify and complete the Post Delivery Certification Form once verification of Buy America (if applicable), Purchaser's Requirements, and Federal Motor Vehicle Safety Standards (FMVSS) have been provided by vendor. In addition, the Grantee agrees to submit Procurement Authorization (**Exhibit E**) prior to procuring capital equipment and to complete Notice of Acceptance/Non-Acceptance (**Exhibit F**) after delivery of capital equipment.
(4) Bus Testing. To the extent applicable, the Grantee agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

o. Bonding. Except to the extent that FTA determines otherwise in writing, the Grantee agrees to comply with the following bonding provisions, as applicable:

(1) Construction Activities. The Grantee agrees to provide bid guarantee, Grant performance, and payment bonds to the extent determined adequate by FTA in writing, and follow any other construction bonding provisions in FTA directives except to the extent that FTA determines otherwise in writing.
(2) Other Activities. The Grantee agrees to follow FTA guidance on bonding restrictions for projects not involving construction, except to the extent that FTA determines otherwise in writing.

p. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Grantee may award a third party contract to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53, and any implementing Federal regulations or directives that FTA may issue, except to the extent FTA determines otherwise in writing.

q. Award to Responsible Grantees. In compliance with 49 U.S.C. § 5325(j), the Grantee agrees to award third party contracts only to those grantees possessing the ability to successfully perform under the terms of the proposed procurement, and before awarding a third party contract, the Grantee agrees to consider:

(1) The the third party grantee's integrity,
(2) The third party grantee's compliance with public policy,
(3) The third party grantee's past performance, including the performance reported in Grantee Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), if any, and
(4) The third party grantee's financial and technical resources.

r. Access to Third Party Contract Records. The Grantee agrees to require its third party grantees and third party subgrantees, at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records to the extent required by 49 U.S.C. § 5325(g). The Grantee further agrees to require its third party grantees and third party subgrantees, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA.

s. Electronic and Information Technology. When using Federal assistance to procure reports or information for distribution to the State, among others, the Grantee agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that the reports or information, when provided to the State, will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

t. Procurement Using State Price Agreement. The State may establish price agreements with vendors for the purchase of certain vehicle types. If the Grantee is procuring a vehicle for which the State has executed a price agreement, as set forth in **Exhibit A**, the Grantee agrees it will procure the vehicle from the vendor with whom the State has executed the appropriate price agreement, unless otherwise exempted by the State in writing to the Grantee. When such price agreements are used, the State shall be responsible for ensuring compliance with provisions A through S above.

19. LEASES

a. Capital Leases. To the extent applicable, the Grantee agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

b. Leases Involving Certificates of Participation. The Grantee agrees to obtain FTA concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

20. PATENT RIGHTS

a. General. If any invention, improvement, or discovery of the Grantee or of any Subgrantee, any third party grantee or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Grantee agrees to notify FTA or the State immediately and provide a detailed report in a format satisfactory to FTA.

b. Federal Rights. The Grantee agrees that its rights and responsibilities, and those of each Subgrantee and each third party grantee at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Grantee agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that third party contract, third party subcontract, or subgrant as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 *et seq*.), irrespective of the status of the Grantee, Subgrantee, or third party grantee in the project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, *etc*.).

21. RIGHTS IN DATA AND COPYRIGHTS

a. Definition. The term "subject data," as used in this Section 21 of this Grant means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.

b. General. The following restrictions apply to all subject data first produced in the performance of the Grant for the Project:

(1) Except for its own internal use, the Grantee may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Grantee authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.
(2) The restrictions on publication of Subsection 21.b(1) of this Grant, however, do not apply to a Grant with an institution of higher learning.

c. Federal Rights in Data and Copyrights. The Grantee agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 21.c of this Grant. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

(1) Any subject data developed under the Grant for the Project, subgrant or third party contract supported with Federal assistance derived from the Grant for the Project, whether or not a copyright has been obtained; and
(2) Any rights of copyright to which a Grantee, Subgrantee, or a third party grantee at any tier of the Project purchases ownership with Federal assistance.

d. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Grantee agrees to indemnify, save, and hold harmless the Federal and State Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Grantee of proprietary rights,

copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Grantee shall not be required to indemnify the Federal or State Government for any such liability caused by the wrongful acts of Federal or State employees or agents.

e. Restrictions on Access to Patent Rights. Nothing in Section 21 of this Grant pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

f. Data Developed Without Federal Funding or Support. In connection with the Project, the Grantee may find it necessary to provide data to FTA/the State developed without any Federal funding or support by the Federal Government. The requirements of Subsections 21.b, 21.c, and 21.d of this Grant do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Grantee understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

g. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or subsequent Federal laws or regulations, the Grantee understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law providing access to such records).

22. USE OF REAL PROPERTY, EQUIPMENT, AND SUPPLIES

The Grantee understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest in that Project property. With respect to any Project property financed with Federal assistance under the Grant, the Grantee agrees to comply with the following provisions of this Grant except to the extent FTA determines otherwise in writing:

a. Use of Project Property. The Grantee agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA. The Grantee agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Grantee unreasonably delay or fail to use Project property during the useful life of that property, the Grantee agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Grantee further agrees to notify FTA or the State immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Grantee has made in its Application or in the Project Description for the Grant for the Project.

b. General. A Grantee that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and directives. A Grantee that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Grantee that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Grantee also agrees to comply with FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 22.g of this Grant.

c. Maintenance. The Grantee agrees to maintain Project property in good operating order, in compliance with any applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

d. Records. The Grantee agrees to keep satisfactory records pertaining to the use of Project property, and submit to the State upon request such information as may be required to assure compliance with this Section 22 of this Grant.

e. Incidental Use. The Grantee agrees that:

(1) General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws or regulations, in accordance with applicable Federal directives.
(2) Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if the:

(a) The incidental use does not interfere with the Grantee's Project or public transportation operations;
(b) The Grantee fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;
(c) The Grantee uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and
(d) Private entities pay all applicable excise taxes on fuel.

f. Encumbrance of Project Property. Unless FTA approves otherwise in writing, the Grantee agrees to maintain satisfactory continuing control of Project property as follows:

(1) Written Transactions. Absent the express consent of the Federal Government, the Grantee agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subgrant, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.
(2) Oral Transactions. Absent the express consent of the Federal Government, the Grantee agrees that it will not obligate itself to any third party with respect to Project property in any manner that would adversely affect the continuing Federal interest in any Project property.
(3) Other Actions. The Grantee agrees that it will not take any action that would either adversely affect the Federal interest or adversely impair the Grantee's continuing control of the use of Project property.

g. Transfer of Project Property. The Grantee understands and agrees as follows:

(1) Grantee Request. The Grantee may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local government authority to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).
(2) Federal Government Direction. The Grantee agrees that the Federal Government may direct the disposition of, and even require the Grantee to transfer, title to any Project property financed with Federal assistance awarded under the Grant.
(3) Leasing Project Property to Another Party. Unless FTA has determined or determines otherwise in writing, if the Grantee leases any Project property to another party, the Grantee agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Grantee and lessee, or another similar document. Upon request by FTA, the Grantee agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior FTA approval, the Grantee may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Grantee also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property. The Grantee shall comply with the provisions of the Security Agreement set forth in **Exhibit D**.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Grantee agrees to comply with FTA's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Grantee agrees as follows:

(a) Notification Requirement. The Grantee agrees to have the State notify FTA on behalf of the Grantee immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Grantee agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property. The Grantee agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by FTA, the Grantee agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.

2. Real Property. The Grantee agrees that the fair market value of real property financed under the Project shall be determined by FTA either on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24, by straight line depreciation of improvements to real property coupled with the value of the land as determined by FTA on the basis of appraisal, or other Federal law or regulations that may be applicable.

3. Exceptional Circumstances. The Grantee agrees that the Federal Government may require the use of another method to determine the fair market value of Project property. In unusual circumstances, the Grantee may request that another reasonable method including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Grantee pertaining to the preservation of Project property no longer used for appropriate purposes.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Grantee agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Grantee may fulfill its obligations to remit the Federal interest by either:

1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the property that has been prematurely withdrawn from use; or
2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

i. Insurance Proceeds. If the Grantee receives insurance proceeds as a result of damage or destruction to the Project property, the Grantee agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or
(2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

j. Transportation - Hazardous Materials. The Grantee agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Grantee's knowledge and consent, the Grantee agrees to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

l. Responsibilities After Project Closeout. The Grantee agrees that Project closeout will not change the Grantee's Project property management responsibilities as stated in Section 22 of this Grant, and as may be set forth in Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

23. INSURANCE

In addition to other insurance requirements that may apply, the Grantee agrees as follows:

a. Minimum Requirements. At a minimum, the Grantee agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

1. The Grantee shall obtain, and maintain at all times during the term of this Grant, and to require Subgrantees to carry, insurance in the following kinds and amounts:
   a) Standard Worker's Compensation and Employer Liability as required by State statute, including occupational disease, covering all employee on or off the work site, acting within the course of their employment.
   b) General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverage:
      i) Combined single limit of $1,000,000 if written on an occurrence basis.
      ii) Any aggregate limit will not be less than $1,000,000.
      iii) Combined single limit of $1,000,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends two years beyond the performance period of the grant.
      iv) If any aggregate limits are reduced below $1,000,000 because of the claims made or paid during the required policy period, the Grantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.

2. The State of Colorado shall be named as additional insured on all liability policies.
3. The insurance shall include provisions preventing cancellation without 60 days prior notice to the State by certified mail.
4. The Grantee shall provide certificates showing adequate insurance coverage to the State within seven working days of award or grant execution, unless otherwise provided.
5. If the Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq. ("Act"), the Grantee shall at all times during the term of this grant maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the Grantee shall show proof of such insurance.

6. Proof of insurance is also required where appropriate the Grantee agrees to comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. Section 4012(a), with respect to any Project activity involving construction or acquisition.

24. REAL PROPERTY

For real property acquired with Federal assistance, the Grantee agrees as follows:

a. Land Acquisition. The Grantee agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq*.; and with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in the cost of that real property.

b. Covenant Assuring Nondiscrimination. The Grantee agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.

c. Recording Title to Real Property. To the extent required by FTA, the Grantee agrees to record the Federal interest in title to real property used in connection with the Project.

d. FTA Approval of Changes in Real Property Ownership. The Grantee agrees that it will not dispose of, modify the use of, or change the terms of the real property title or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

25. EMPLOYEE PROTECTIONS

a. Construction Activities. The Grantee agrees to comply, and assures the compliance of each third party grantee and each Subgrantee at any tier of the Project, with the following laws and regulations providing protections for construction employees:

(1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq., pursuant to FTA enabling legislation requiring* compliance with the Davis-Bacon Act, 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

(2) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.,* specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

(3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874, and implementing U.S. DOL regulations, "Grantees and Subgrantees on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

b. Activities Not Involving Construction. The Grantee agrees to comply, and assures the compliance of each third party grantee and each Subgrantee at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.,* in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to

Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Grantee agrees that the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq*., applies to employees performing Project work involving commerce.

d. Public Transportation Employee Protective Arrangements. If the Grant for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Grantee agrees to comply with the applicable requirements for its Project as follows:

(1) Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Grantee agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant for the Project. The Grantee agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant for the Project. The requirements of this Subsection 21.d(1) of this Grant do not apply to Projects for elderly individuals or individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separator Projects for the over-the-road bus accessibility program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note. Separate requirements for those Projects are contained in Subsections 24.d(2) and), (3), respectively, of this Grant. [Amendments to U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, were published at 73 *Fed. Reg*. 47046 *et seq*., August 13, 2008.].

(2) Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority Subgrantee participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Grantee agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Grantee agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

(3) Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Grantee agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program that is most current as of the date of execution of the Grant Agreement or Cooperative Agreement for the Project, and any alternative comparable arrangements specified by U.S. DOL for application to the Recipient’s project, in accordance with U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, and any revisions thereto. [New amendments to U.S. DOL guidelines, “Section 5333(b), Federal Transit Law,” 29 C.F.R. Part 215, were published at 73 *Fed. Reg*. 47046 *et seq*., August 13, 2008.]

26. ENVIRONMENTAL PROTECTIONS

The Grantee recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Grantee also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Grantee agrees to comply, and assures the compliance of each Subgrantee and each third party grantee, with any applicable Federal laws, regulations and directives in effect now or become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA, the State and the Grantee. The Grantee understands and agrees that those laws and regulations, and directives may not constitute the Grantee's entire obligation to meet all Federal environmental and resource conservation requirements.

a. National Environmental Policy. Federal assistance is contingent upon the Grantee's facilitating FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and Federal environmental protection regulations that may be promulgated at a later date. The Grantee agrees to comply with 23 U.S.C. §§ 139 and 326 as applicable, and implement those requirements in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq*., November 15, 2006, and any subsequent applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

b. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Grantee agrees to comply with all applicable Federal laws and regulations in accordance with applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

(1) The Grantee agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and in accordance with any applicable Federal directives that may be issued at a later date; to comply with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 US.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Grantee agrees to implement each air quality mitigation or control measure incorporated in the Project. The Grantee further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Grantee agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) The Grantee agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Grantee agrees to comply with all applicable Federal laws and regulations accordance with applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

(1) The Grantee agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

(2) The Grantee agrees to comply with the notice of violating facility provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Wild and Scenic Rivers. The Grantee agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, with U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

e. Endangered Species and Fisheries Conservation. The Grantee agrees to comply with protections for endangered species the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq*.

f. Historic Preservation.

(1) The Grantee agrees that in implementing its Project, it will not use any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places, unless the Federal Government makes the findings required by 49 U.S.C. § 303.

(2) The Grantee agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:

(a) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Grantee agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of affected properties.

(b) The Grantee agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

g. Indian Sacred Sites. The Grantee agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, pursuant to the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

27. ENERGY CONSERVATION

The Grantee agrees to comply with any mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.* except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Grantee agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

28. CHARTER SERVICE OPERATIONS

The Grantee agrees that neither it nor any public transportation operator performing Work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant for the Project. The Grantee understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

29. SCHOOL TRANSPORTATION OPERATIONS

The Grantee agrees that neither it nor any public transportation operator performing Work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant for the Project. The Grantee understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount FTA considers appropriate.

30. METRIC SYSTEM

To the extent U.S. DOT or FTA directs, the Grantee agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and U.S. DOT or FTA regulations and directives. As practicable and feasible, the Grantee agrees to accept products and services with dimensions expressed in the metric system of measurement.

31. SUBSTANCE ABUSE

To the extent applicable, the Grantee agrees to comply with the following Federal regulations:

a. Drug-Free Workplace. U.S. DOT regulations, "Government wide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq*.

b. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

32. FEDERAL "$1 COIN" REQUIREMENTS

To the extent required by the Federal Government, the Grantee agrees to comply with the provisions of Section 104 of the Presidential $1 Coin Act of 2005, 31 U.S.C. § 5112(p), in that the Grantee's property requiring the use of coins or currency will be fully capable of accepting and dispensing $1 coins in connection with that use. The Grantee also agrees to display signs and notices denoting the capability of its equipment and facilities on the premises where coins or currency are accepted or dispensed, including on each vending machine.

33. SEAT BELT USE

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the Grantee is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any third party contracts, third party subcontracts, or subgrants involving the Project.

34. PROTECTION OF SENSITIVE SECURITY INFORMATION

To the extent applicable, the Grantee agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

35. DISPUTES, BREACHES, DEFAULTS, OR OTHER LITIGATION

The Grantee agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

a. Notification to FTA. The Grantee agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Grantee seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Grantee agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the grantee operates its public transportation system or implements the Project.

b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Grantee may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

c. Enforcement. The Grantee agrees to pursue all legal rights provided within any third party contract.

d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Grantee.

e. Alternative Dispute Resolution. FTA encourages the Grantee to use alternative dispute resolution procedures, as may be appropriate.

36. SPECIAL PROVISIONS FOR THE NONURBANIZED AREA FORMULA PROGRAM

The Grantee agrees that the following provisions apply to Nonurbanized Area Formula Program assistance administered by States and authorized under 49 U.S.C. § 5311(b), and agrees to comply with the requirements thereof, except to the extent FTA determines otherwise in writing:

a. Provisions Applicable to States.

(1) State Procedures. The Grantee agrees to administer each Project in accordance with 49 U.S.C. § 5311(b) and other applicable provisions of 49 U.S.C. § 5311. Except to the extent that FTA determines otherwise in writing, the Grantee agrees to follow the provisions of the most recent edition of FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," including any revisions thereto, and other applicable FTA comply with Federal laws, and regulations, and directives that apply to the Projects.

(2) Participation of Subgrantees. The Grantee agrees to enter into a written agreement with each Subgrantee participating in a Nonurbanized Area Formula Project, that sets forth the Subgrantee's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the Subgrantee will not compromise the Grantee's compliance with Federal requirements applicable to the Project and the Grantee's obligations under its Grant.

(3) Eligible Project Activities. Federal assistance provided for the Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas. Projects financed with Federal assistance transferred from other Federal programs must be eligible for Federal assistance authorized under 49 U.S.C. § 5311(b). Those Projects may include purchase of service agreements with private providers of public transportation service, as well as capital assistance, operating assistance, and meal delivery service, to the extent permitted by 49 U.S.C. § 5310(g).

(4) Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the Grantee to transfer Project facilities and equipment, 49 U.S.C. § 5311(h) also authorizes the Grantee to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5311 to any entity eligible to receive Federal assistance authorized under 49 U.S.C. chapter 53, provided that the Subgrantee currently in possession of the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5311.

(5) Intercity Transportation. The Grantee agrees to spend a minimum of at least fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. § 5311(f) each fiscal year for intercity transportation Projects, unless the chief executive officer of the State or his or her duly authorized designee has certified to FTA that the intercity bus service needs within the State are being adequately fulfilled.

(6) Reporting Requirements. As required by 49 U.S.C. §§ 5311(b)(4) and 5335(a), the Grantee agrees to conform to, and assures that any public transportation operator to which the Grantee provides Federal assistance authorized under 49 U.S.C. § 5311(b) will conform, to the reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database and will comply with the implementing FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any subsequent implementing regulations and directives FTA may issue.

b. Provisions Applicable to Indian Tribes. The Grantee agrees as follows:

(1) An Indian tribe that is a Subgrantee of Federal assistance authorized under 49 U.S.C. § 5311(b), agrees to comply with the requirements of Subsection 36.a of this Grant that are applicable to other Subgrantees of the State receiving funding derived from 49 U.S.C. § 5311(c)(2), except to the extent that FTA determines otherwise in writing.

(2) Subsections 36(a) and 36(b)(1) of this Grant do not apply to a Tribal Transit Project financed with Federal assistance authorized under 49 U.S.C. § 5311(c)(1).

37. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to GRANTEE under this Grant is $100,000 or greater, either on the Effective Date or at anytime thereafter, this **§37** applies.

GRANTEE agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state grants and inclusion of grant performance information in a statewide grant management system.

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

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

38. OPTION LETTER TO EXTEND PROVISIONS

i. Option to Extend

The State may unilaterally require continued performance for an additional one year period at the same rates and same terms specified in the Grant. If the State exercises this option, it shall provide written notice to Grantee at least 30 days prior to the end of the current Grant term in form substantially equivalent to **Exhibit B**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant. The total duration of this Grant, including the exercise of any options under this clause, shall not exceed two years.

ii. Option for Phased Performance

The State may unilaterally require the Grantee to begin performance on the next phase of the Project as outlined in Scope of Work in **Exhibit A** at the same rates and same terms specified in the Grant. If the State exercises this option, it shall provide written notice to Grantee in a form substantially equivalent to **Exhibit B**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

39. CONFLICTS OF INTEREST

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

40. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

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

B. Legal Authority – Grantee and Grantees Signatory

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

C. Licenses, Permits, Etc.

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

41. GOVERNMENTAL IMMUNITY

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

42. GENERAL PROVISIONS

A. Assignment and Subgrants

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

B. Binding Effect

Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification-General

To the extent authorized by law, Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdction and Venue

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

H. Modification

i. By the Parties

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

ii. By Operation of Law

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

I. Order of Precedence

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

i. Federal Laws and regulations,
ii. Colorado Special Provisions,
iii. The provisions of main body of this Grant,
iv. Exhibit A (Scope of Work),
v. Exhibit B (Option Letter)
vi. Other exhibits in descending order of their attachment.

J. Severability

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

K. Survival of Certain Grant Terms

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

L. Taxes

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

M. Third Party Beneficiaries

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

N. Waiver

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

O. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS § 24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS § 24-72-101, et seq.

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43. SPECIAL PROVISIONS

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

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

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

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 Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR

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

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

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

7. BINDING ARBITRATION PROHIBITED.

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

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

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

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

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

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 GRANTS FOR SERVICES. CRS §8-17.5-101.

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

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

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

SPs Effective 1/1/09

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44. SIGNATURE PAGE

CMS: 12-HTR-38298/SAP PO #: 291001079

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

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

THE GRANTEE **CITY of LOVELAND** By: _____ Name of Authorized Individual Title: _____ Official Title of Authorized Individual _____ *Signature Date: _____	**STATE OF COLORADO** Colorado Department of Transportation Donald E. Hunt – Executive Director _____ By: Donald E. Hunt, CDOT Executive Director Signatory avers to the State Controller or delegate that Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules Date: _____
2nd Grantee 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 GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. The Grantee 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 Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By:_____

Controller-Colorado Department of Transporation

Date:_____

EXHIBIT A-SCOPE OF WORK AND CONDITIONS

City of Loveland

Project Contact:

Marcy Abreo
General Manager
410 E. 5th Street
Loveland, CO 80537
970-962-2743
abreom@ci.loveland.co.us

A. Standards of Performance

1. The Grantee will provide a minimum of 24,110 one-way passenger trips per year, at a maximum fully-allocated cost (operating, and administrative cost) of $37.19 per one-way passenger trip, a maximum cost of $9.09 per mile and a maximum cost of $46.06 per vehicle hour. Standards of performance will be measured, reported and averaged at least quarterly. Measurement of these standards will commence with the presentation of the Grantee's first monthly report and request for reimbursement.

2. Performance will be reviewed quarterly. The State will begin its review no later than 30 calendar days after each performance quarter. If the State's review determines the Grantee's performance does not meet the standards of performance set forth above in paragraph A.1., the following steps will be taken:
   a. The State will notify the Grantee in writing that performance does not meet the requirements of this Grant.
   b. Thirty (30) calendar days after date of such notification, the Grantee will submit to the State a written explanation of the cause(s) of the substandard performance, which shall include a written plan for improving performance.
   c. The State will review the plan for improvement and notify the Grantee of its approval within 21 days.
   d. If the plan is approved by the Department, the Grantee will implement the plan immediately upon receipt of the State's notification. If the plan is not approved by the Department remedial measures will be determined on a case by case basis. Such remedial measures may include termination of this Grant and return of the grant funds or capital equipment purchased with such funds, in accordance with the terms of Section 8.

B. Project Budget

1. The net Project cost is estimated to be and shall be shared as follows:

Administrative Costs WBS Element (CO-18-5031.LOVE)			Operating Costs WBS Element (CO-18-4031.LOVE)	
Federal Share	(80%)	$22,900	(50%)	$170,600
Local Share	(20%)	$ 5,725	(50%)	$170,600
TOTAL		$28,625		$341,200

2. The Project Cost shall not exceed the maximum allowable cost of $369,825. The State will pay no more than 80% of the eligible, actual administrative costs up to the maximum federal amount of $22,900 and no more than 50% of the eligible, actual operating costs up to the maximum federal amount of $170,600. The Grantee shall be solely responsible for all costs incurred in the Project in excess of the amount paid by the State from federal funds for the federal share of eligible, actual costs. In the event the final, actual Project cost is less than the maximum allowable cost of $369,825, the State is not obligated to provide any more than 80% of the eligible, actual administrative nor any more than 50% of the eligible, actual operating costs and shall retain the remaining balance of the federal share.

3. Up to one half of the Grantee's share for administrative and operating expenses may be provided from unrestricted federal funds. At least one half must be from sources other than federal funds. The Grantee's Share, together with the Federal share, shall be in an amount sufficient to assure payment of the net Project cost. The State shall have no obligation to provide State funds for use on this Project. The State will administer federal funds for this Project under the terms of this Grant, provided that the federal share of FTA funds to be administered by the State are made available and remain available. In no event shall the State have any obligation to provide State funds or provide federal FTA funds for the Grantee's share of the Project. The Grantee shall initiate and prosecute to completion all actions necessary to enable the Grantee to provide its share of the Project costs at or prior to the time that such funds are needed to meet Project costs.

4. No refund or reduction of the amount of the Grantee's Share to be provided will be allowed unless there is at the same time a refund or reduction of the federal share of a proportionate amount.

5. Federal funds shall not reimburse the Grantee for expenses not incurred in cash (e.g., donated or in-kind goods and services), though such expenses may be used as the Grantee's share. No more than 20 percent of Project administrative expenses and no more than 50 percent of Project operating expenses may be attributed to non-cash, donated, or in-kind expenses.

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

7. As authorized by the FTA, such Grantee share (local match) may include costs or expenses incurred or performance by the Grantee prior to the Effective Date.

C. Reimbursement Eligibility

Requests for reimbursement for project costs will be paid to the Grantee upon presentation of invoice(s) to the State for eligible costs incurred through December 31, 2012 and within the limits of this Grant. The Grantee may request reimbursements no more than monthly, and will be reimbursed based on the ratio of Federal Share and Local Share set forth in Project Budget above. However, if the Grantee is designated by the State as a "High Risk Grantee," as set forth in its State Management Plan, the State reserves the right to limit its reimbursement to the Grantee in any given month to 10% of the total grant award in order to ensure that Project services could be provided throughout the year in the event the Grantee encounters financial instability. The final invoice shall be submitted no later than sixty (60) days after the above date.

D. Grant Expiration

The Grant shall expire according to the terms and conditions of the grant per Paragraph 6. Project Implementation, a. (4) Completion Dates.

E. Project Description

The Grantee shall perform all Project activities described in Section D, 4.1 and 4.2, in the application submitted to the State in June, 2011 and as specifically described below. The application is incorporated herein by reference to the extent consistent with this Grant.

Grant Recipients (Grantees)

Loveland COLT operates a fixed route service for the area outside the urbanized area on the east side of the City of Loveland (east of Boyd Lake Avenue). Route 300' provides rural residents east of the City access to Loveland via HWY 34 and north along HWY 287. Riders may also access Ft. Collins by transfering from Route 300 for free to FLEX, which connects to the Ft. Collins South Transit Center. Loveland COLT provides paratransit transportion from the rural area surrounding Loveland to destinations within Loveland (6:40 a.m.- 6:40 p.m., Mon.-Fri and 9:40 a.m. – 5:40 p.m on Sat.).

Berthoud Area Transportation Service serves the outlying rural areas of the Town with demand response services (M-F, 7:00 a.m.-5:00 p.m.).

Section 5311 Project

Section 5311 funding is provided in general as operating assistance to Larimer County for the provision of transit and paratransit services to areas lying outside the Transportation Management Area (TMA). TMA is defined by the FTA in 49CFR5305(a)(1)(2) and herein means an urbanized area with a population of more than 200,000 or any other area that has requested such designation by the chief executive officer and the metropolitan planning organization designated for the area.

Section 5311 administration assistance is provided to support Larimer County Health and Human Services Division staff in transit grant administration coordinated for the participants in this grant.

Transit services supported under this grant are:

South County Service
The South County Service provides demand responsive, general public transportation services within the Berthoud Fire Protection District. The South County Service is currently provided by the Berthoud Area Transportation Service (BATS) under contract with Larimer County. BATS serves the town center and outlying nonurbanized areas, from two miles west of Carter lake to one mile east of Interstate 25 (south of Highway 56), north to Highway 60 and south two miles into Boulder County. Service is provided from 7:00 AM. to approximately 4:00 PM Monday through Friday. Approximately 22 route one-way trips per day, five days a week are expected in 2012.

The Central County Service
The Central County Service provides fixed route and demand responsive transit services to the general public in central Larimer County outside the TMA. This service is currently provided by the City of Loveland Transit (COLT) under contract with Larimer County.

COLT's Route 300 provides fixed route transportation services outside the TMA. The rural section of the Blue Route is approximately 7.2 miles in length, beginning east of Boyd Lake Avenue. The rural portion of this fixed route transportation service is open to the general public, has six transit stops, and serves the Rocky Mountain Regional Medical Center, the Centera shopping area, several residential areas and low-income employment sectors. Service along the Blue Route is offered Monday through Friday from 6:40 AM to 6:40 PM and Saturday from 9:40 AM to 5:40 PM, 305 days per year. Approximately 83 rider trips per weekday are expected in 2012 on the rural fixed route.

COLT also provides door-to-door paratransit transportation services to the nonurbanized areas surrounding Loveland which lie outside the TMA under contract with Larimer County. Service will be available Monday through Friday from 6:40 a.m.- 6:40 p.m., Mon.-Fri and 9:40 a.m. – 5:40 p.m on Sat., except published holidays. Approximately 1.3 trips per weekday are expected in 2012. This service will be operated with COLT paratransit vehicles.

This grant is expected to support Larimer County offering approximately 7,736 annual service hours and 111,078 annual service miles for calendar year 2012 (January 1 – December 31), as proposed in the application.

F. Special Conditions of the Project

The Grantee will execute an agreement between itself and other entities participating in project activities, and shall comply with the requirements in Section 2 (d) of this grant to extend federal requirements to third parties involved in project activities of this requirement.

The Grantee will advertise its fixed route and/or rural based service as available to the general public and service will not be explicitly limited by trip purpose or client type.

The Grantee will provide comparable transportation services to persons with disabilities according to the Americans with Disabilities Act of 1990.

The Grantee will comply with the Federal Transit Administration Drug and Alcohol Regulations.

Any costs reimbursed to the Grantee from other grant programs funds may not be listed as a cost to be shared by FTA on a reimbursement request (i.e., no double billing).

The Grantee shall maintain and report annually through submission of an annual report all information required by the National Transit Database and any other financial, fleet, service data set forth by the State for the purpose of annual reporting required of the State.

If the Grantee is unable to perform the activities described under paragraph E., Project Description of this section or must significantly change its level of service described herein, the Grantee shall notify the State in writing.

The Grantee must have State approval if FTA funds are to be used for payment of a lease or third-party contracts.

The Grantee shall not purchase, issue a purchase order, or lease capital equipment before the grant with the State has been executed.

G. Safety Data

The Grantee shall maintain and submit, as requested, data related to bus safety. This may include, but not be limited to, the number of vehicle accidents within certain measurement parameters set forth by the State; the number and extent of passenger injuries or claims; and, the number and extent of employee accidents, injuries and incidents.

H. Training

In an effort to enhance transit safety, the grantee shall make a good faith effort to ensure that appropriate training of agency personnel is occurring and that personnel are update in appropriate certifications. In particular, the grantee shall ensure that driving personnel are provided professional training in defensive driving and training on the handling of mobility devices and elderly and disabled persons.

EXHIBIT B-OPTION LETTER

SAMPLE OPTION LETTER

NOTE: This option is limited to the specific scenarios listed below AND cannot be used in place of exercising a formal amendment.

SAP PO#	Origianl CMS	Option Letter No.	CMS #

Grantor / Grantee : _____

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

1. Option to renew (for an additional term); this renewal cannot be used to make any change to the original scope of work; and
2. Option to initiate next phase to include Design, Construction, Environmental, Utilities, ROW ONLY (does not apply to Acquisition/Relocation or Railroads);

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 Paragraph(s) _____ of grant routing number (insert *FY, Agency code, & CLIN routing* #), between the State of Colorado, Department of Transportation, and *(insert Grantees name)* the State hereby exercises the option for an additional term of *(insert performance period here)* at a cost/price specified in Paragraph/Section/Provision _____ of the original grant, AND/OR an increase in the amount of goods/services at the same rate(s) as specified in Paragraph _____ of the original grant.

(Insert the following language for use with Option #2): In accordance with the terms of the original grant (*insert FY, Agency code & CLIN routing #)* between the State of Colorado, Department of Transportation and *(insert Grantee's name here),* the State hereby exercises the option to initiate the 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 Grant remain the same (*indicate total dollars here*) as referenced in Paragraph/Section/Provision/Exhibit _____of the original grant.

(The following language must be included on all options): The amount of the current Fiscal Year grant value is (*increased/decreased*) by ($ *amount of change)* to a new Grant value of ($_____) to satisfy services/goods ordered under the grant for the current fiscal year *(indicate Fiscal Year).* The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly. The total grant value to include all previous amendments, option letters, etc. is ($_____). The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

State of Colorado:
John W. Hickenlooper, Governor
By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

A. STATE CONTROLLER
David J. McDermott, CPA

By:_____
Controller-Colorado Department of Transportation

Date:_____

EXHIBIT C–GUIDANCE FOR AUDIT OF GRANTEE COMPLIANCE
SECTION 5311
Page 1

GUIDANCE FOR AUDIT OF GRANTEE COMPLIANCE
WITH FTA REQUIREMENTS
Federal Domestic Assistance Catalog No. 20.509

I. PROGRAM OBJECTIVES

Grants made under the Section 5311 program are available through States to provide capital operating and administrative assistance to public transportation systems authorizing the formula assistance program for public transportation use in nonurbanized areas.

II. PROGRAM PROCEDURES

Annual formula apportionments are made to States who apply for funds on behalf of local Grantees, who in turn administer the program. The Colorado Department of Transportation is the state agency designated by the Governor to apply for and administer the funds. Funds are awarded to Grantees and Subgrantees on a competitive basis by the Department.

III. COMPLIANCE REQUIREMENTS AND SPECIAL AUDIT PROCEDURES

The Department will ensure that audits are performed pursuant to the requirements of OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

A. Matching Requirements

1. Compliance Requirements: The minimum local matching requirements for operating assistance (costs directly associated with operations) are 50 percent of the net operating deficit. The operating deficit is determined by subtracting operating revenue from total operating expenses. Operating revenue may include such items as rider fares and donations, and advertising revenue (e.g., "rolling billboards"). No capital equipment purchases can be charged to operating costs.

   Capital Cost/Capital Equipment: For capital equipment purchases, the minimum local match is 20 percent and must be in cash. Capital equipment purchases must be consistent with the equipment specified in the Grant's Scope of Work and Conditions (Exhibit A). Capital equipment is defined as any item costing over $5000 with a useful life of over one year.

   Mobility Management: Where mobility management and coordination programs among public transportation providers and other human service agencies providing transportation exist, mobility management is an eligible capital cost. Mobility management is intended to build coordination among existing public transportation providers and other transportation service providers with the result of expanding the availability of service.

   Administrative Expenses: For programs eligible as administrative expenses, the minimum local match is 20 percent. Administrative costs include the salaries of administrators and fiscal personnel, advertising, and overhead. However, no capital equipment purchases may be charged to administrative costs.

   The local match for operating and administrative assistance can be in the form of documented in-kind contributions. All local match must be expended for the Project, as described in Exhibit A. Local match cannot be used to match other programs. Up to 50 percent of the local match can be derived from unrestricted federal sources.

2. Suggested Audit Procedures:

   a. Examine the Scope of work and Conditions (Exhibit A).
   b. Ascertain the total Project cost.
   c. Ensure local matching funds were applied to the uses for which they were committed.
   d. Verify that payment of federal funds is accompanied by the appropriate share of local matching funds, that in-kind contributions are documented, that matching funds are not used to match other programs, and that federal funds used as match do not exceed the 50 percent threshold, and that no capital equipment purchases were charged as administrative or operating expenses.

B. Allowable Costs

1. Compliance Requirements: Expenditures made by the Grantee and charged to the Project must meet the requirements set forth in Section 7 of this Grant. In general, costs which are not allowable include entertainment, depreciation, interest, fines and penalties, fund raising expenses, and costs related to providing services in urbanized areas (areas with a population over 50,000, which include the metropolitan areas of Boulder, Colorado Springs, Denver-Aurora, Fort Collins, Grand Junction, Greeley, Longmont and Pueblo.) The Grantee shall determine the costs of serving urbanized areas based on that percentage of passenger trips provided in urbanized areas as compared to those provided in nonurbanized areas.

   Grantees serving resort areas and providing seasonal levels of service may only be reimbursed at that level of service provided year round, based on the average of the low quarter's monthly service hours applied to annual costs.

   Grantees submit monthly (or quarterly) reimbursement requests to the State. On that report Grantees indicate total transportation costs, which may include costs not related to the Project. The "Amount to be shared by FTA" columns represent the Project costs and may not include non-allowable costs.

   No more than 20 percent of the Project administrative expenses, nor more than 50 percent of the Project operating expenses may be attributed to non-cash, in-kind expenses.

   Administrative Costs:
   Allowable administrative costs may include, but are not limited to, general administrative and overhead costs, staff salaries, office supplies, and development of specifications for vehicles and equipment. Guidance on eligible costs is in Office of Management and Budget (OMB) Circular A–87 (codified at 2 CFR, Part 225), for recipients that are governmental authorities. OMB Circular A–122 (codified at 2 CFR, Part 230) provides comparable guidance for non-profit organizations. The program administration budget line item may also include technical assistance and planning activities, including allocations to Subgrantees to support the local coordinated planning process.

2. Suggested Audit Procedures:

   a. Review Section 7 of this Grant.
   b. Review reimbursement requests submitted by the Grantee to the State. Ascertain whether the Grantee included any non-allowable costs in the "Amount to be shared by FTA" columns.
   c. Ascertain whether sufficient controls and procedures are in place to ensure non-allowable costs are not charged to the Project.

C. Accounting Records

Grantees are expected to maintain accounting records in accordance with Section 5 of this Grant.

Suggested Audit Procedures:

a. Review Section 5 of this Grant.
b. Ascertain whether the Grantee's procedures and records are in compliance.

EXHIBIT D-SECURITY AGREEMENT

This Security Agreement is made by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, DIVISION OF TRANSPORTATION DEVELOPMENT, hereinafter referred to as "the State" and _____, a Colorado private nonprofit organization, hereinafter referred to as "the Grantee".

A. Purpose. This Security Agreement is made for the purpose of securing the federal interest for the State in transit vehicles or other project equipment ("Project Equipment") purchased with Federal Transit Administration (FTA) grant funds awarded to the Grantee pursuant to the Grant between the parties dated this _____day of _____, 20____ and identified as grant # _____.
The security interest granted to the State herein is to ensure that the State may access, protect and, if necessary, dispose of the federal interest in each item of Project Equipment and to ensure the proper use of the Project Equipment. The Grantee shall have no right in the federal interest in such Project Equipment.

B. Project Equipment. Not later than three days after the purchase and acceptance of Project Equipment, the Grantee shall complete and return to the State the "Certificate of Procurement and Acceptance" form, which then becomes Addendum I to this Security Agreement. In the case of vehicle procurement, this certificate must indicate the year, make, model, VIN, and any other information needed to register the vehicle.

C. Security Interest. In consideration of the value provided to the Grantee under the Grant dated this _____day of _____, 20____ and identified as grant # _____, the Grantee hereby gives and grants to the State a security interest in the Project Equipment described in Addendum I and /or described below as follows:

MAKE/MODEL/VIN or description of equipment:_____
_____.

This security interest shall apply to the Project Equipment acquired pursuant to the Grant dated this _____day of _____, 20___ and identified as grant # _____, whether purchased before or after the date this Security Agreement is executed. The Grantee hereby authorizes the State to describe in the space above the Project Equipment subject to this Security Agreement.

D. Lien. The State may place a lien on the title of each Project Equipment vehicle based upon this Security Agreement. The State shall retain physical possession of the titles of such Project Equipment vehicles and the Grantee agrees that the State shall be considered "in possession" of such vehicles for the purpose of any document required by State law to repossess such vehicles if necessary.

E. Disposition of Equipment. In addition to the security interest granted herein, the Grantee agrees to and acknowledges the right of the State to remove all Project Equipment from the Grantee's premises and to take possession of any of the Project Equipment, if the Grantee fails to satisfactorily perform the Project services as detailed in the Grant, or if the State determines for any other reason, including but not limited to termination of the Grant, that the disposition of the federal interest in such Project Equipment is in the best interest of the State. The Grantee agrees that it will in no way oppose the State's exercise of such right and that it will assist the State to obtain possession and to remove such vehicles.

F. Assignment. The Grantee agrees not to assert against any assignee of the State any defenses or claims the Grantee may have against the State.

ATTEST: _____ FOR THE GRANTEEBy:_____
Print Name:_____
Date: _____ Title: _____

EXHIBIT D Page 2

CERTIFICATION OF PROCUREMENT AND ACCEPTANCE
(Security Agreement Addendum I)

_____ (Grantee's Name) hereby acknowledges receipt of the following:

Vehicle Year/Make/Model or Description of Equipment
_____

Vehicle Identification Number (if applicable) _____

Grantee warrants its acceptance of vehicle(s) or equipment is in substantial compliance with the requirements contained in the bid package and agreement with _____(Vendor's Name), and waives any claim for changes for any variation from said requirements.

_____(Grantee's Name) hereby certifies that it has examined the specifications, bid procedures, award documents, and the proceedings followed and find that the procurement of the above equipment is consistent with and meets all the program requirements as outlined in its Grant Agreement with the State of Colorado, the Colorado Department of Transportation, Division of Transportation Development, dated this ____day of _____, 20_____ and identified as grant # _____.

_____(Grantee's Name) further certifies that it will comply with the terms of Exhibit C ("Security Agreement") of the grant named above and it hereby gives and grants to the State a security interest in this vehicle in the amount of $ _____.

Organization: _____

By: _____
Date: _____

Notary Public: _____
My Commission Expires: _____

EXHIBIT E-PROCUREMENT AUTHORIZATION

_____ ("the Grantee") has been awarded Federal funds by CDOT with which to purchase capital equipment.

The State has conducted a competitive procurement process and executed a Price Agreement with _____ (Vendor name), identified as Price Agreement # _____, for the purchase of certain vehicles. The Grantee is being awarded a vehicle(s) that fits under the scope of that Price Agreement.

The Grantee is hereby ordering a vehicle and options under the terms of that Price Agreement. The eligible vehicle, quantity, floor plan and options being ordered is described as follows:

It is agreed that the total price of the vehicle(s) to be procured based on the Price Agreement is $_____.

The Federal Share provided for this purchase is $_____. The Grantee shall pay the Grantee Share of $ _____ and shall separately pay for additional items outlined below, if applicable.

If the Grantee wishes to order any additional items not contained in the Price Agreement, they will be listed below and shall be purchased by the Grantee at its own expense upon delivery of the vehicle.

EXHIBIT E
Page 2

The Vendor will deliver the vehicle(s) to the Grantee at the following address at a time and date acceptable to both parties: _____

The Grantee shall obtain the approval of the CDOT Transit Unit before submitting this form to the Vendor.

This purchase is authorized for the Grantee by: _____
Print name

_____
Title

_____ _____
Signature Date

This Authorization has been reviewed and approved for content by CDOT by:

_____
Print name

_____
Title

_____ _____
Signature Date

EXHIBIT F-NOTICE OF ACCEPTANCE / NON-ACCEPTANCE

_____The Grantee accepts the vehicle (VIN # _____) on this ___ day of _____, 20___, as it has been delivered by the Vendor. The Grantee agrees that the Colorado Department of Transportation will be billed by the Grantee within five working days for reimbursement of the Federal Share and further agrees that it will pay the Federal Share to the Vendor within five working days of receipt of reimbursement from CDOT. The Grantee acknowledges it may be liable for interest charges if the Federal Share is not reimbursed to the vendor within 30 calendar days of acceptance of the vehicle.

_____The Grantee does NOT accept the vehicle (VIN # _____) as it has been delivered by the Vendor. The Grantee will not accept the vehicle until corrective action is taken on the following deficiencies:

Authorized for the Grantee by:

_____
Print name

_____
Title

_____ _____
Signature Date

cc: CDOT Transit Unit

EXHIBIT G- FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

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.

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

AGENDA ITEM: **8**
MEETING DATE: 12/20/2011
TO: City Council
FROM: Betsey Hale, Department of Economic Development
PRESENTER: Mike Scholl, Department of Economic Development

TITLE:
A Resolution authorizing the City Manager to amend the project development agreement for the Rialto Bridge project

RECOMMENDED CITY COUNCIL ACTION:
Approve the Resolution as recommended

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

DESCRIPTION:
This is an administrative action to consider a Resolution authorizing the City Manager to extend the deadline for the Certificate of Occupancy for the Rialto Bridge project from December 31, 2011 to March 31, 2012 and to extend the deadline for the Certificate of Occupancy for the private tenant finish permits from December 31, 2012 to March 31, 2013. Extension of these deadlines preserves availability of the $32,000 construction materials use tax waiver for the project.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
As part of the development agreement, the City offered a waiver of construction materials use tax not to exceed $32,000 for the private portion of the core and shell construction and for the

tenant finishes for the private space. The agreement set a deadline for completion of the core and shell at December 31, 2011 and completion of the tenant finishes at December 31, 2012. Because of delays on the front end of construction, the completion was pushed into January of 2012. We expect the construction to be completed on or around January 23, 2012. Staff is requesting this extension so that the use tax waiver will remain available.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
Resolution of the Loveland City Council

RESOLUTION #R-91-2011

A RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE PROJECT DEVELOPMENT AGREEMENT FOR THE RIALTO BRIDGE PROJECT

WHEREAS, the City owns that certain real property known as the Rialto Theater located 228 Fourth Street, Loveland, Colorado (the "Rialto") and the adjacent real property and building located at 224 Fourth Street, Loveland, Colorado (the "City Property"); and

WHEREAS, Rialto Bridge, LLC ("Developer") owns that certain real property and building located at 218 Fourth Street, Loveland, Colorado (the "Developer Property"), which is adjacent to the City Fourth Street Property; and

WHEREAS, the City and Developer are jointly developing the City Property and the Developer Property (sometimes referred to herein collectively as the "Properties") pursuant to the Development Agreement described below, as an integrated public-private project to complement and supplement the Rialto Theater, including certain public spaces to be owned by the City (the "Public Spaces"), and certain complementary private restaurant and commercial spaces to be owned by the Developer ("Private Spaces"). The Public Spaces and Private Spaces, as well as the common areas serving such spaces, will be located in a new building constructed on the Properties and physically connected to the Rialto Theater, are hereinafter referred to collectively as the "Project"; and

WHEREAS, on June 1, 2010, City Council adopted Resolution #R-21-2010 approving and authorizing the City Manager to execute the Project Design Agreement for the Project, which was executed and dated June 20, 2010 (the "Design Agreement"); and

WHEREAS, the City and Developer completed the Project Plans under the Design Agreement and on April 19, 2011 City Council adopted Resolution #R-26-2011 approving and authorizing the City Manager to execute the Project Development Agreement dated April 30, 2011 (the "Agreement") to construct the Project; and

WHEREAS, due to minor technical delays at the initial stages of the Project, the parties desire to extend certain timeframes set forth in Paragraph 23 of the Agreement.

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

Section 1. That the City Manager is authorized, following consultation with the City Attorney as to form, to approve and enter into an amendment to paragraph 23 of the Agreement (the "Amendment") to extend the time frame to obtain a letter of completion and/or temporary or permanent certificate of occupancy for the core and shell of the Project and the Public Spaces from December 31, 2011 to March 31, 2012 and the time frame to obtain a letter of completion

and/or temporary or permanent certificate of occupancy for the Private Spaces from December 31, 2012 to March 31, 2013.

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

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

ADOPTED this 20th day of December, 2011.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
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: **9**
MEETING DATE: 12/20/2011
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Karl Barton, Development Services

TITLE:
Public hearing to consider A RESOLUTION ADOPTING THE CITY OF LOVELAND, 2005 COMPREHENSIVE PLAN, 2011 IMPLEMENTATION PLAN

RECOMMENDED CITY COUNCIL ACTION:
City staff recommends the following motion:

Move to approve A RESOLUTION ADOPTING THE CITY OF LOVELAND, 2005 COMPREHENSIVE PLAN, 2011 IMPLEMENTATION PLAN

OPTIONS:
1. Adopt the action as recommended
2. Deny the resolution
3. Refer back to staff for further development and consideration
4. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:
This item is an administrative action to formally adopt the City of Loveland 2005 Comprehensive Plan, 2011 Implementation Plan. The 2011 Implementation Plan was prepared to satisfy the requirement that the 2005 Comprehensive Plan be updated every five years.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:
The 2011 Implementation Plan would be a stand-alone companion to the 2005 City of Loveland Comprehensive Plan. City staff from the Strategic Planning Division worked with other staff liaisons to boards and commissions and staff from various City divisions to critically assess the 435 objectives contained in the 2005 Comprehensive Plan. The goal was to develop a more manageable number of objectives and to make them more measurable and actionable. The new objectives are being recommended by City boards and commissions as priority projects and initiatives to be pursued between now and when a new comprehensive plan is to be

adopted in 2015. The 2011 Implementation Plan is intended to provide City Council with a tool to guide decision making and priority setting during the annual budget process. It's important to note that the objectives being recommended for inclusion in the 2011 Implementation Plan are special projects and do not represent the important tasks that are done on a day to day basis and form the core of the work performed by City departments. Those on-going tasks remain crucial, but the 2011 Implementation Plan focuses on special projects and initiatives.

REVIEWED BY CITY MANAGER: William D. Cahill

LIST OF ATTACHMENTS:
Resolution
2011 Implementation Plan
Staff Memo

RESOLUTION #R-92-2011

A RESOLUTION ADOPTING THE CITY OF LOVELAND 2005 COMPREHENSIVE PLAN, 2011 IMPLEMENTATION PLAN

WHEREAS, the Loveland, Colorado 1994 Comprehensive Master Plan was recommended for City Council approval by resolution of the Loveland Planning Commission in October, 1994, and approved and adopted by resolution of the Loveland City Council in October, 1994; and

WHEREAS, the City of Loveland 1994 Comprehensive Master Plan was renamed the "2005 Comprehensive Plan" and was recommended for City Council approval by the Loveland Planning Commission in February, 2007 and amended, approved and adopted by Resolution #21-2007 of the Loveland City Council on March 6, 2007; and,

WHEREAS, the City of Loveland 2005 Comprehensive Plan, 2011 Implementation Plan (the "2011 Implementation Plan") is the result of a five (5) year update process during which staff and board and commission members evaluated, consolidated, and edited the 435 objectives assigned to them in the 2005 Comprehensive Plan to create specific and actionable objectives that better align with the goals of the 2005 Comprehensive Plan and describe priorities for the City's efforts during the upcoming four (4) year period (2012 through 2015), after which a new comprehensive plan is scheduled to be adopted; and

WHEREAS, City staff and each board and commission has recommended to City Council the objectives assigned to them as set forth in 2011 Implementation Plan, as a tool to guide decision making and prioritize projects and initiatives for the next four (4) years.

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

Section 1. That the 2011 Implementation Plan, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, is hereby approved and adopted.

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

ADOPTED this 20th day of December, 2011.

_____

Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

<u>Exhibit A</u> to Resolution #R-92-2011 (Item 9) is available at the following address:

http://www.cityofloveland.org/modules/showdocument.aspx?documentid=8892

City of Loveland

Community & Strategic Planning
500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2607 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

Memorandum

To: Loveland City Council

From: Karl Barton, Development Services

Through: Greg George, Development Services Director

Date: December 20, 2011

RE: 2011 Implementation Plan

A. Background: In March 2007, City Council approved the Loveland Comprehensive Plan. The plan includes the future land use plan as well as 435 Plan Objectives designed to achieve a set of 108 Goals regarding every functional area city government.

In the years after its adoption, usage of the Comprehensive Plan as a document to guide decision making varied between boards, commissions and staff departments. Due perhaps to the sheer number and abstract nature of the objectives, potential users have found the objectives to be an inadequate tool for decision making and developing work plans. The 2011 Implementation Plan is intended to address this issue by creating specific and actionable objectives. The Vision Statements, Guiding Principles, and Goals set for in the 2005 Comprehensive Plan remain as adopted in 2005. The new objectives are designed to achieve those principal elements of the Comprehensive Plan. The 2011 Implementation Plan would not replace the 2005 Comprehensive Plan, which remains the guiding document for the City.

B. Purpose: The 2011 Implementation Plan is intended to be a tool to be used by decision makers, City boards and commissions, City staff and the general public to inform decision making. It is intended to assist City Council in the processes of setting priorities, directing staff, and establishing budgets. The 2011 Implementation Plan would inform Loveland citizens of the projects considered as priorities for City Council, City staff, and City boards and commissions for the period between now and the end of 2015.

It is recognized that the objectives in 2011 Implementation Plan would not include all special projects or initiatives that may be undertaken by the City between now and 2015 as new opportunities arise and priorities change.

C. Methodology: In 2010, City staff began the process of updating the 2005 Comprehensive Plan. The process focused on the 435 Plan Objectives. Community and Strategic Planning staff worked closely with the 25 boards and commissions and more than 25 staff liaisons and other staff members to critically assess the 435 plan objectives.

The methodology consisted of a three phase process:

1. **Phase One:** Individual staff liaisons were asked to review the Plan Objectives assigned to their respective board or commission and provide a status update on actions taken to achieve the objectives. It was reported back that some objectives had been achieved, but many were classified as either on-going or no action.

2. **Phase Two:** Staff liaisons worked with their board or commission to categorize their objectives into one of the following three categories:

   Category A. Objectives that have been achieved, are no longer relevant, or will not be achieved between 2012 and 2015 due to resource constraints;
   Category B. Objectives that are being achieved on an on-going basis through application of existing standards and regulations in the Municipal Code; and
   Category C. Objectives that to achieve require the development and implementation of special projects or initiatives.

   This categorization exercise was designed to provide a procedure for board and commission members to critically assess their current objectives and reduce the new objectives to a more manageable number.

   The objectives placed in Categories A and Category B were not carried forward for further consideration in the Comprehensive Plan update. However, many of the objectives placed in these two categories represent important functions that are carried out by staff and board and commissions. In fact, these objectives may represent the core activities of many City departments.

   The results of Phase Two are included as Appendix A to the 2011 Implementation Plan to inform the reader of the objectives placed in Categories A and B and that these objectives remain a critical element of the 2005 Comprehensive Plan.

3. **Phase Three:** This phase focused on the objectives placed in Category C. In order to be achieved, these objectives require the development and implementation of special projects or initiatives and/or new standards or regulations. Some objectives placed in

Category C were consolidated with others in those cases where multiple objectives addressed the same or similar topics.

Some boards, commissions or staff divisions developed new objectives to address current issues and priorities. These new objectives are aligned with the Goals, Guiding Principles, and Visions of the 2005 Comprehensive Plan.

The objectives developed in Phase Three are included in the 2011 Implementation Plan. These objectives are organized by boards, commissions, and in some cases, divisions in City departments.