

CITY OF LOVELAND, COLORADO

GENERAL AND NO-LITIGATION CERTIFICATE

The undersigned hereby certify that they are the Mayor and the City Attorney for the City of Loveland, Colorado (the "City") and hereby make the following certifications on behalf of the City in connection with: (i) the Cooperation Agreement dated March 7, 2019 (the "DDA Cooperation Agreement"), among the City, Foundry Loveland Metropolitan District (the "District") and the Loveland Downtown Development Authority; and (ii) the Second Amendment to District Pledge Agreement dated January 15, 2019 (the "Second Amendment" and, together with the DDA Cooperation Agreement, the "City Agreements"), between the City and the District, provided that the certifications provided in paragraph 8 below are made solely by the City Attorney, and are given in his limited capacity as legal counsel to the City for general matters. As of the date hereof, the District and Compass Bank d/b/a BBVA Compass (the "Bank"), have entered into a Loan Agreement (the "Loan Agreement") pursuant to which the Bank has agreed to make a loan to the District payable, in part, from revenues payable by the City to the District pursuant to the DDA Cooperation Agreement.

WE, THE UNDERSIGNED OFFICIALS OF THE CITY CERTIFY, TO THE BEST OF OUR KNOWLEDGE, THAT:

1. The City has been created and exists as a home rule municipal corporation under the laws of the State of Colorado (the "State") and its home rule charter (the "Charter"), and is a political subdivision of the State with full power and authority to adopt the City Resolutions (as hereinafter defined), and to enter into and perform its obligations under the City Agreements.

2. On January 15, 2019, the City Council for the City (the "City Council") adopted Resolution #R-11-2019, pertaining to the issuance of certain indebtedness by the District, a copy of which resolution is attached hereto as Exhibit A.

3. The Second Amendment was approved by the City Council pursuant to Resolution #R-12-2019, adopted on January 15, 2019, a copy of which resolution is attached hereto as Exhibit B.

4. The DDA Cooperation Agreement is being executed and delivered pursuant to the authority conferred by the City Council pursuant to Resolution #R-38-2017, adopted on April 25, 2017, a copy of which resolution is attached hereto as Exhibit C (such resolution, together with the resolutions referenced in paragraphs (2) and (3) above, being referred to collectively herein as the "City Resolutions").

5. The adoption by the City Council of the City Resolutions was conducted in accordance with all requirements of the Charter, Colorado law and all applicable procedural rules.

6. None of the City Resolutions has been supplemented, repealed, rescinded, revoked, modified, amended, changed or altered in any manner since its adoption by the City Council and each City Resolution is in full force and effect on the date hereof.

7. Each of the City Agreements has been duly authorized, executed and delivered on behalf of the City.

8. Assuming due authorization, execution and delivery by the other parties thereto, each of the City Agreements constitutes a valid and binding obligation of the City enforceable in accordance with its respective terms.

9. The DDA Cooperation Agreement is being executed and delivered pursuant to the authority conferred by eligible electors of the City pursuant to Ballot Issue No. 5C approved at an election held on November 7, 2017, which election was coordinated with the Larimer County Clerk and Recorder. A copy of the notices provided by the Larimer County Clerk and Recorder with respect to such election and certified election results is attached hereto as Exhibit D.

10. The City has not been and is not, as of the date hereof, in breach of or default under either of the City Agreements. The authorization, execution and delivery by the City of the City Agreements did not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under the Charter or any applicable law, rule, regulation, resolution, ordinance, judgment, order or decree to which the City is subject or under any indenture, commitment, agreement or other instrument to which the City is a party or by which it is or may be bound or to which any of its property or other assets is or may be subject.

11. There is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body which has been served on the City or, to the knowledge of the City, threatened in writing against or affecting the City: (i) to restrain or enjoin the City's participation in, or in any way contesting the existence of the City or the powers of the City with respect to the transactions contemplated by the City Agreements and the consummation of such transactions, or (ii) which, if successful, would materially and adversely affect the City's power to perform its obligations under the City Agreements.

12. All meetings of the City Council pertaining to the adoption of the City Resolutions have complied with the open meeting provisions of the Colorado Sunshine Act of 1972, Part 4 of Article 6 of Title 24, Colorado Revised Statutes, and advance public notice of the time and place of each of the meetings was duly given in accordance with the Charter and the applicable laws of the State.

By execution of this Certificate, the undersigned does not intend that any person other than the parties to the Loan Agreement shall rely upon this Certificate. This Certificate is not intended to induce reliance or induce any third party to enter into a transaction or transactions.

IN WITNESS WHEREOF, we have hereunto set our respective signatures as of this 10th day of April, 2019.

CITY OF LOVELAND, COLORADO

City Attorney: Maria Garcia

Mayor: John M. ...

EXHIBIT A

City Resolution Pertaining to District Indebtedness

RESOLUTION #R-11-2019

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING
THE ISSUANCE OF DEBT BY FOUNDRY LOVELAND
METROPOLITAN DISTRICT**

WHEREAS, pursuant to Section 32-1-204.5, C.R.S., the City Council (the "City Council") of the City of Loveland, Colorado (the "City") approved the Service Plan (the "Service Plan") for Foundry Loveland Metropolitan District (the "District") on September 20, 2016; and

WHEREAS, capitalized terms and phrases not otherwise defined herein have the meaning assigned them in the Service Plan; and

WHEREAS, Service Plan Section III.B.3 and Section VI.A, provide that the District is not authorized to issue any Debt, other than the City IGA, without the prior written approval of the City Council; and

WHEREAS, the City and the District entered into the City IGA, as contemplated by the Service Plan, on April 26, 2017, and a first amendment thereto, on November 1, 2017; and

WHEREAS, the District desires to issue Debt, in one or more series, as more fully described in **Exhibit "A"** attached hereto and incorporated herein by reference, to provide the District with additional funds to construct Public Improvements and to reimburse the Developer for the costs of construction of Public Improvements, and to provide the District with operating funds for the benefit of the District's residents and public at large as contemplated in the Service Plan; and

WHEREAS, the District has requested that the City Council approve the District's issuance of Debt, in one or more series, as more fully described in **Exhibit "A"**, to permit the District to defray the costs of installing Public Improvements, the costs of forming the District, and to provide funds related to the operation and maintenance of Public Improvements (the "Debt Request"); and

WHEREAS, the City Council has considered the Debt Request and all other testimony and evidence presented at a public meeting of the City Council, held on January 15, 2019.

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

Section 1. That the City Council meeting at which the Debt Request was discussed was open to the public; that all interested parties were heard or had the opportunity to be heard; and that all relevant testimony and evidence submitted to the City Council was considered.

Section 2. That evidence was presented that was satisfactory to the City Council for finding that the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Section 3. That the City Council hereby approves the District's Debt Request and approves the issuance of the Debt described on **Exhibit "A"** (the "2019 Authorized Debt"), in one or more series, to include but not be limited to obligations to reimburse advances from the Developer, bank loans, publicly or privately offered bonds, notes, and other instruments evidencing Debt, subject to the following conditions:

- a. The maximum mill levy the District may levy for repayment of the 2019 Authorized Debt shall not exceed the Maximum Mill Levy set forth in the Service Plan.
- b. The aggregate principal amount of the 2019 Authorized Debt shall not exceed \$2,000,000.
- c. Any portion of the 2019 Authorized Debt that consists of agreements to repay Developer advances shall bear simple interest at a fixed rate not to exceed the prime interest rate (as reported on the date of issuance by the *Wall Street Journal*) plus 3%, not to exceed 8.5%.
- d. Any portion of the 2019 Authorized Debt issued to refund previously issued 2019 Authorized Debt, shall not count against the \$2,000,000 maximum set forth in Section 3.b., so as to avoid the "double-counting" of issued debt.

Section 4. That all provisions of the Service Plan remain in full force and effect, and the District's actions taken in accordance with this Resolution are not a material departure from the Service Plan.

Section 5. That nothing herein limits the City's powers with respect to the District, the properties within the District, or the improvements to be constructed by the District.

Section 6. That the City's findings are based solely upon the evidence presented by the District and such other evidence presented at the public hearing, and the City has not conducted any independent investigation of the evidence. The City makes no guarantee as to the financial viability of the District or the achievability of results.

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

Adopted this 15th day of January, 2019.

CITY OF LOVELAND, COLORADO, a Colorado
municipal coporation

By: Jacki Marsh
Jacki Marsh, Mayor

ATTEST:

By: Patti S.
City Clerk



APPROVED AS TO FORM

Miss [Signature]
City Attorney

EXHIBIT A

2019 Authorized Financing

Sources		Uses	
Loan Proceeds		Payoff Outstanding Developer Loan	\$ 800,000
Tax-Exempt Loan	\$ 995,000	Capitalized Interest Thru/Including 12/1/19 (est)	
Taxable Loan	420,000	Tax-Exempt Loan	74,000
		Taxable Loan	39,000
		Debt Service Reserve Fund (MADS)	
		Tax-Exempt Loan	64,000
		Taxable Loan	31,000
		Deposit to Project Fund	350,000
		Cost of Issuance	51,000
		Contingency	6,000
Total Sources	\$1,415,000	Total Uses	\$ 1,415,000

****CONFIDENTIAL****

**FOUNDRY LOVELAND METROPOLITAN DISTRICT
FULL GROWTH MODEL (Developer Projections)**

Assessed Year →	2017		2018		2019		2020		2021		2022		2023		2024		2025		2026		2027		2028	
	2017*	2018**	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040

	Units	Comm.SF	Value/SF
Absorption Summary			
Cleveland Building			
Residential Apartments	99	91,031	\$195.00
Retail		7,362	\$100.00
Lincoln Building			
Residential Apartments	56	50,534	\$195.00
Retail		8,191	\$100.00
320 N. Cleveland Building		6,000	\$100.00
TownPlace Suites Hotel		62,910	\$123.00
Movie Theater		27,400	\$100.00

Market Value - New Construction	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Residential	-	-	-	-	-	-	-	-	-	-	-	-
Commercial	-	-	-	-	-	-	-	-	-	-	-	-
Market Value - Bi-Annual Reassessment												
Residential	-	-	-	-	-	-	-	-	-	-	-	-
Commercial	-	-	-	-	-	-	-	-	-	-	-	-

Cumulative Market Value	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Residential	\$ 88,406.90	\$ 3,418,860	\$ 27,605,175	\$ 28,157,279	\$ 28,157,279	\$ 28,720,424	\$ 28,720,424	\$ 29,294,833	\$ 29,294,833	\$ 29,880,729	\$ 30,466,625	\$ 31,052,521
Commercial	-	-	-	-	-	-	-	-	-	-	-	-
Total Cumulative Market Value	\$ 88,406.90	\$ 3,418,860	\$ 27,605,175	\$ 28,157,279	\$ 28,157,279	\$ 28,720,424	\$ 28,720,424	\$ 29,294,833	\$ 29,294,833	\$ 29,880,729	\$ 30,466,625	\$ 31,052,521

Cumulative Assessed Value	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Residential @ 7.20% RAR	-	-	-	-	-	-	-	-	-	-	-	-
Commercial @ 29%	25,638	441,541	1,987,573	2,027,324	2,027,324	2,067,871	2,067,871	2,109,228	2,109,228	2,151,413	2,193,600	2,235,787
Total Cumulative Assessed Value	\$ 25,638	\$ 441,541	\$ 1,987,573	\$ 2,027,324	\$ 2,027,324	\$ 2,067,871	\$ 2,067,871	\$ 2,109,228	\$ 2,109,228	\$ 2,151,413	\$ 2,193,600	\$ 2,235,787

Maximum Mill Levy Available for Debt Service	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Property Tax Available @ Max Mill Levy	\$ 513	\$ 8,831	\$ 48,772	\$ 113,024	\$ 115,285	\$ 117,585	\$ 117,585	\$ 119,942	\$ 119,942	\$ 122,341	\$ 124,740	\$ 127,139
Specific Ownership Taxes (est. @ 8.5% of Property Taxes)	44	751	4,146	9,607	9,799	9,995	9,995	10,195	10,195	10,395	10,595	10,795
Total Pledged Revenue	\$ 556	\$ 9,581	\$ 52,918	\$ 122,631	\$ 125,084	\$ 127,580	\$ 127,580	\$ 130,137	\$ 130,137	\$ 132,740	\$ 135,343	\$ 137,946

Total Debt Service 2018 Loan (see below)	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Excess Revenue (Available for any Lodgers Fee shortfall)	\$ 556	\$ 9,581	\$ 41,105	\$ 94,766	\$ 94,816	\$ 94,844	\$ 94,849	\$ 94,830	\$ 94,888	\$ 94,918	\$ 94,918	\$ 94,918
Debt Service Coverage @ Max Mill Levy	n/a	n/a	1.29x	1.29x	1.32x	1.32x	1.35x	1.35x	1.37x	1.37x	1.37x	1.40x
Actual Mill Levy Required for Debt Service (Net of SOT)	n/a	n/a	15.4	15.3	15.1	15.1	14.8	14.8	14.5	14.5	14.5	14.2

DEBT SERVICE DETAIL - 2018 LOAN:	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Tax-Exempt Loan												
Interest (4.68% thru Loan Term; 5.5% thereafter)	3,881	46,566	46,566	46,355	44,657	43,747	42,793	41,794	40,748	39,653	38,558	37,463
Less: Capitalized Interest	(3,881)	(46,406)	(23,203)	-	-	-	-	-	-	-	-	-
Principal	-	4,500	17,726	18,568	19,449	20,373	21,340	22,353	23,415	24,527	25,639	26,751
Reserve Fund Earnings	-	(160)	(160)	(160)	(160)	(160)	(160)	(160)	(160)	(160)	(160)	(160)
Taxable Loan												
Interest (5.92% thru Loan Term; 6.0% thereafter)	2,073	24,881	24,881	24,822	24,075	23,667	23,234	22,778	22,292	21,777	21,252	20,727
Less: Capitalized Interest	(2,073)	(24,804)	(12,402)	-	-	-	-	-	-	-	-	-
Principal	-	1,000	1,000	6,100	6,900	7,300	7,700	8,200	8,700	9,200	9,700	10,200
Reserve Fund Earnings	-	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(78)	(78)
Total Debt Service	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000

Unpaid Principal Balance	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Tax-Exempt Loan	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000	\$ 995,000
Taxable Loan	420,000	419,000	412,900	406,400	399,500	392,200	384,500	376,300	367,600	358,400	348,700	338,500
Total Unpaid Principal Balance	\$ 1,415,000	\$ 1,414,000	\$ 1,407,900	\$ 1,401,400	\$ 1,394,500	\$ 1,387,200	\$ 1,379,500	\$ 1,371,300	\$ 1,362,600	\$ 1,353,400	\$ 1,343,700	\$ 1,333,500

EXHIBIT B
CITY RESOLUTION AUTHORIZING SECOND AMENDMENT

RESOLUTION #R-12-2019

**A RESOLUTION APPROVING A SECOND AMENDMENT TO
DISTRICT PLEDGE AGREEMENT BETWEEN THE CITY OF
LOVELAND AND THE FOUNDRY LOVELAND METROPOLITAN
DISTRICT**

WHEREAS, the City of Loveland, Colorado (the "City") is a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to Article XX of the Constitution of the State; and

WHEREAS, the City and the District entered into that certain District Pledge Agreement, dated April 26, 2017, as amended by a First Amendment to District Pledge Agreement (collectively, the "Pledge Agreement"); and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the Pledge Agreement; and

WHEREAS, pursuant to the Pledge Agreement, the District agreed to impose the District Debt Service Mill Levy in accordance with the provisions of the DRA, and (a) pledge the District Pledged Revenue to the payment of the debt service requirements on the Bonds, or (b) at the written direction of the City, remit all or a portion of the District Pledged Revenue to the City or its designee; and

WHEREAS, the City and Developer entered into the Third Amendment to the DRA, dated June 23, 2017, to address, among other matters, additional funding from the District for the operation and maintenance of the Parking Facility; and

WHEREAS, the City and the District entered into the First Amendment to District Pledge Agreement, dated November 1, 2017 ("First Amendment"), to address, among other things, the District's obligation to impose the District Parking Operations Mill Levy (as defined in the First Amendment) in certain circumstances; and

WHEREAS, pursuant to the First Amendment, to the extent annual revenues from the imposition of 2% of the Lodger's Fee (as defined in the First Amendment) are less than \$78,000, the District is required to impose its District Parking Operations Mill Levy in an amount sufficient to make up any difference between \$78,000 and such amount generated from the imposition of 2% of the Lodger's Fee (the "Lodger's Fee Shortfall Amount"); and

WHEREAS, the City and Developer entered into the Fourth Amendment to the DRA, dated July 20, 2018, to address, among other matters, additional costs associated with the Project (as defined in the DRA) ("Fourth Amendment"); and

WHEREAS, the Fourth Amendment provides that the Pledge Agreement may be amended to provide that the District shall not be required to impose its District Parking Operations Mill Levy, to the extent the Developer provides a surety bond or other guarantee satisfactory to the City Manager that would fund the Lodger's Fee Shortfall Amount in any year; and

WHEREAS, the Fourth Amendment further provides that any such surety or guarantee shall be set forth in an amendment to the Pledge Agreement and approved by the City Council; and

WHEREAS, the Developer has agreed to provide a surety in the form set forth in **Exhibit "A"** to the Second Amendment (hereinafter defined) to fund any Lodger's Fee Shortfall Amount; and

WHEREAS, the form of such surety has been determined to be satisfactory by the City Manager; and

WHEREAS, on January 15, 2019 the City Council adopted a resolution authorizing the issuance of debt by the District, in one or more series, as described in and subject to, the provisions of such resolution; and

WHEREAS, the District intends to enter into a loan with Compass Bank (the "2019 Compass Loan") in accordance with the parameters described in **Exhibit "B"** attached to the Second Amendment; and

WHEREAS, as provided in Pledge Agreement Section 17.f., the Pledge Agreement may only be amended or supplemented in writing by an instrument executed by the Parties thereto, and to the extent that the Parking Facility constitutes Leased Property under the Site Lease, the Pledge Agreement shall not be subject to amendment without the prior written consent of the Trustee and the Initial Purchaser; and

WHEREAS, as of the date of the expected execution of the Second Amendment, the Parking Facility will not constitute Leased Property under the Site Lease; and

WHEREAS, the City and the District desire to amend the Pledge Agreement pursuant to the Second Amendment to provide that the District shall not be required to impose its District Parking Operations Mill Levy, based on the provision, by the Developer, of the surety attached hereto as **Exhibit "A"**, and to make additional amendments to the Pledge Agreement related to the Developer's provision of such surety and the 2019 Compass Loan; and

WHEREAS, the City Council has determined and hereby determines that it is necessary, desirable and in the best interests of the City to enter into an amendment to the Pledge Agreement in substantially the form of the Second Amendment to District Pledge Agreement (the "Second Amendment") attached hereto as **Exhibit "A"** and incorporated by reference.

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

Section 1. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. The Second Amendment is hereby approved in substantially the form on file with the City, and the City Council hereby specifically approves the form of the surety to be

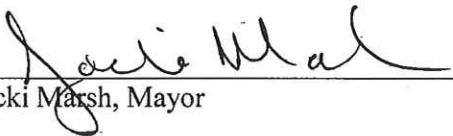
provided by the Developer, which is attached as **Exhibit "A"** to the Second Amendment. The City Manager is authorized, following consultation with the City Attorney, to modify the Second Amendment in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. The City Manager and the City Clerk are hereby authorized and directed to execute the Second Amendment on behalf of the City. The execution of the Second Amendment by the appropriate officers of the City herein authorized shall be conclusive evidence of the approval by the City of the Second Amendment in accordance with the terms hereof.

Section 4. The Mayor, the City Clerk, the City Manager, the Director of Finance, the Executive Fiscal Advisor, the City Attorney, and other officers and employees of the City are hereby independently authorized and directed to take all action necessary or appropriate to execute and deliver the Second Amendment, and to otherwise effect the provisions of this Resolution and the Pledge Agreement, as amended. The execution of any document or instrument by the appropriate officers of the City herein authorized shall be conclusive evidence of the approval by the City of such agreement, document or instrument in accordance with the terms hereof.

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

ADOPTED this 15th day of January, 2019.



Jacki Marsh, Mayor

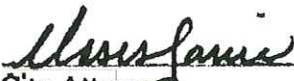
ATTEST:



City Clerk



APPROVED AS TO FORM:



City Attorney

SECOND AMENDMENT TO DISTRICT PLEDGE AGREEMENT

This SECOND AMENDMENT TO DISTRICT PLEDGE AGREEMENT (this "Second Amendment"), is made and entered into and dated as of January 15, 2019 between the CITY OF LOVELAND, COLORADO, a municipal corporation duly organized and existing as a home rule city under Article XX of the Constitution of the State of Colorado and under the Charter of the City (the "City") and the FOUNDRY LOVELAND METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District").

RECITALS

WHEREAS, the City and the District entered into that certain District Pledge Agreement, dated April 26, 2017, as amended by a First Amendment to District Pledge Agreement (collectively, the "Pledge Agreement"); and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the Pledge Agreement; and

WHEREAS, pursuant to the Pledge Agreement, the District agreed to impose the District Debt Service Mill Levy in accordance with the provisions of the DRA, and (a) pledge the District Pledged Revenue to the payment of the debt service requirements on the Bonds, or (b) at the written direction of the City, remit all or a portion of the District Pledged Revenue to the City or its designee; and

WHEREAS, the City and Developer entered into the Third Amendment to the DRA, dated June 23, 2017, to address, among other matters, additional funding from the District for the operation and maintenance of the Parking Facility; and

WHEREAS, the City and the District entered into the First Amendment to District Pledge Agreement, dated November 1, 2017 ("First Amendment"), to address, among other things, the District's obligation to impose the District Parking Operations Mill Levy (as defined in the First Amendment) in certain circumstances; and

WHEREAS, pursuant to the First Amendment, to the extent annual revenues from the imposition of 2% of the Lodger's Fee (as defined in the First Amendment) are less than \$78,000, the District is required to impose its District Parking Operations Mill Levy in an amount sufficient to make up any difference between \$78,000 and such amount generated from the imposition of 2% of the Lodger's Fee (the "Lodger's Fee Shortfall Amount"); and

WHEREAS, the City and Developer entered into the Fourth Amendment to the DRA, dated July 20, 2018, to address, among other matters, additional costs associated with the Project (as defined in the DRA) ("Fourth Amendment"); and

WHEREAS, the Fourth Amendment provides that the Pledge Agreement may be amended to provide that the District shall not be required to impose its District Parking

Operations Mill Levy, to the extent the Developer provides a surety bond or other guarantee satisfactory to the City Manager that would fund the Lodger's Fee Shortfall Amount in any year; and

WHEREAS, the Fourth Amendment further provides that any such surety or guarantee shall be set forth in an amendment to the Pledge Agreement and approved by the City Council; and

WHEREAS, the Developer has agreed to provide surety in the form set forth in **Exhibit "A"**, attached hereto and incorporated herein by this reference, to fund the Lodger's Fee Shortfall Amount in any year; and

WHEREAS, the form of surety attached as **Exhibit "A"** has been determined to be satisfactory by the City Manager; and

WHEREAS, on January 15, 2019 the City Council adopted a resolution authorizing the issuance of debt by the District, in one or more series, as described in and subject to, the provisions of such resolution; and

WHEREAS, the District intends to enter into a loan with Compass Bank (the "2019 Compass Loan") in accordance with the parameters described in **Exhibit "B"**, attached hereto and incorporated herein by this reference; and

WHEREAS, as provided in Pledge Agreement Section 17.f., the Pledge Agreement may only be amended or supplemented in writing by an instrument executed by the Parties thereto, and to the extent that the Parking Facility constitutes Leased Property under the Site Lease, this Pledge Agreement shall not be subject to amendment without the prior written consent of the Trustee and the Initial Purchaser; and

WHEREAS, as of the date of execution and delivery of this Second Amendment, the Parking Facility does not constitute Leased Property under the Site Lease; and

WHEREAS, the City and the District desire to amend the Pledge Agreement pursuant to this Second Amendment to provide that the District shall not be required to impose its District Parking Operations Mill Levy, based on the provision, by the Developer, of surety in the form attached hereto as **Exhibit "A"**, and to make additional amendments to the Pledge Agreement related to the Developer's provision of such surety and the 2019 Compass Loan.

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants and stipulations herein, the parties hereby amend the Pledge Agreement as follows:

1. The Pledge Agreement is hereby amended to add the following Section 3.5(k):

(k) Except as otherwise provided in Section 3.5(l) hereof, the District shall have no obligation to impose its District Parking Operations Mill Levy in any year so long as the Developer has provided surety that is enforceable in such year, in the form attached hereto as **Exhibit "A"**. The form of such surety has been determined to be satisfactory by the City Manager and has been approved by the City Council. Upon the occurrence of a Triggering Event, any amounts due pursuant to such surety shall be payable directly to the Trustee, or its designee.

2. The Pledge Agreement is hereby amended to add the following Section 3.5(l):

(l) In the event that the surety provided by the Developer is not in effect in any year, or a default has occurred thereunder, or such surety does not provide sufficient funds to cover the entire amount of the Lodger's Fee Shortfall Amount in any year, the District shall be obligated to impose its District Parking Operations Mill Levy to fund any such Lodgers Fee Shortfall Amount, provided that the District's obligation to impose such mill levy shall be subordinate to the obligation of the District to impose an ad valorem tax to meet its obligations pursuant to the 2019 Compass Loan.

3. The Pledge Agreement is hereby amended to replace the definition of District Debt Service Mill Levy with the following:

"District Debt Service Mill Levy" means a property tax imposed by the District in an amount equal to twenty-five (25) mills levied by the District on the taxable property within the District in accordance with the District Pledge Agreement. The District Debt Service Mill Levy rate shall be adjusted as set forth in the Service Plan to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the revenue produced by such District Debt Service Mill Levy is neither diminished nor enhanced as a result of such changes.

4. This Second Amendment shall be effective only upon the execution by the Developer and delivery to the City, of the surety in the form set forth in **Exhibit "A"** and the delivery of the letter of credit to the City in accordance therewith.

5. Except as otherwise provided herein, the provisions of the Pledge Agreement and First Amendment shall remain in full force and effect.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the City and the District have executed this Second Amendment to Pledge Agreement as of the day and year first above written.

FOUNDRY LOVELAND METROPOLITAN
DISTRICT

President

ATTEST:

Secretary

CITY OF LOVELAND, COLORADO

City Manager

(SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT A
TO SECOND AMENDMENT TO DISTRICT PLEDGE AGREEMENT**

**AGREEMENT REGARDING
LODGING FEE SHORTFALL
WITH IRREVOCABLE LETTER OF CREDIT**

THIS AGREEMENT, dated this ____ day of _____, 2019, between the City of Loveland, Colorado, a Municipal Corporation (hereinafter called "City") and The Foundry Loveland, LLC, a Colorado limited liability company (hereinafter called "Developer").

WITNESSETH:

WHEREAS, the City and Developer are parties to that certain Disposition and Redevelopment Agreement dated as of December 13, 2016, as amended by the First Amendment to Disposition and Redevelopment Agreement dated as of March 10, 2017, the Second Amendment to Disposition and Redevelopment Agreement dated as of April 26, 2017, the Third Amendment to Disposition and Redevelopment Agreement dated as of June 23, 2017 (the "Third Amendment"), and the Fourth Amendment to Disposition and Redevelopment Agreement dated as of July 20, 2018 ("Fourth Amendment," collectively, the "DRA"); and

WHEREAS, unless otherwise defined herein, capitalized terms shall have the meaning given to them in the DRA; and

WHEREAS, the Third Amendment provided, in part, that to the extent that the amount of revenues estimated by the Developer to be generated from the imposition of 2% of the Lodger's Fee is less than \$78,000 in any year, then the District Pledge Agreement entered into between the City and Foundry Loveland Metropolitan District (the "District") shall require the District to impose a mill levy in an amount sufficient to make up any difference between \$78,000 and such estimated amount ("Lodger's Fee Shortfall Amount"); and

WHEREAS, the City and the District entered into a First Amendment to District Pledge Agreement dated November 1, 2017, to address, among other things, the District's obligation to impose the "District Parking Operations Mill Levy" in an amount sufficient to generate revenues in a given year sufficient to make up the Lodger's Fee Shortfall Amount; and

WHEREAS, the Fourth Amendment provided, in part, that the City and the District may amend the District Pledge Agreement to provide that the District shall not be required to impose the District Parking Operations Mill Levy to the extent that the Developer provides a surety bond or other guarantee satisfactory to the City Manager that would fund any Lodger's Fee Shortfall Amount in any year, the form of such surety or guarantee shall be set forth in an amendment and approved by the City Council; and

WHEREAS, the Developer desires to provide an irrevocable letter of credit to the City as surety in lieu of the District imposing a District Parking Operations Mill Levy to make up any

Lodger's Fee Shortfall Amount, and to that end, the District and City have entered into a Second Amendment to the District Pledge Agreement to provide, in part, for the Developer to provide the City with an irrevocable letter of credit as set forth in the Fourth Amendment; and

WHEREAS, the City and the Developer are entering into this Agreement to set forth the terms and conditions for the irrevocable letter of credit to be provided by the Developer.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained, it is agreed as follows:

1. In the event the revenues generated from the imposition of the Lodger's Fee is less than \$78,000 in any given year, the Developer shall make up the Lodger's Fee Shortfall Amount in an amount not to exceed \$78,000 ("Maximum Lodger's Fee Shortfall Amount"). The Developer will furnish the City a letter of credit from a bank or other financial institution ("Issuer") acceptable to the City, similar in form as attached hereto as Exhibit "A" guaranteeing that funds in the amount of the Maximum Lodger's Fee Shortfall Amount are held by it for the account of the Developer for the purpose of securing Developer's promise to make up any Lodger's Fee Shortfall Amount in any given year. If a Lodger's Fee Shortfall Amount occurs in any given year, the City shall be entitled to draw down such funds under the letter of credit in an amount equal to the Lodger's Fee Shortfall Amount in said year. Upon the occurrence of a "Triggering Event" (as such term is defined in the First Amendment to the District Pledge Agreement), any amounts due under the letter of credit shall be payable directly to the Trustee, or its designee.

Notwithstanding the foregoing, in the event that there is no Lodger's Fee Shortfall Amount for three consecutive calendar years, the City Manager shall meet with a representative of the Developer to discuss reducing the required amount of the letter of credit to an amount less than the Maximum Lodger's Fee Shortfall Amount, and the City Manager shall thereupon be authorized, without further approval by the City Council, to reduce the required letter of credit to an amount deemed necessary by the City Manager to protect the interests of the City. If a Triggering Event has occurred, the City Manager shall not be authorized to reduce the required amount of the letter of credit without the prior written consent of the Trustee and the Initial Purchaser.

2. The Developer shall renew the letter of credit annually, unless the City Manager and the City Council approve a different form of surety or guarantee.
3. In the event that Developer breaches its obligations under this Agreement, the City shall be entitled to direct and consequential monetary damages, equitable relief, including specific performance, and such other remedies at law or in equity as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party whether plaintiff or defendant shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party.

(REMINDER OF PAGE INTENTIONALLY LEFT BLANK.)

ATTEST

CITY OF LOVELAND

By: _____

By: _____

Title: _____

Title: _____

APPROVED AS TO FORM

City Attorney

Exhibit "A"

INSERT FINANCIAL INSTITUTION NAME & LETTERHEAD

IRREVOCABLE LETTER OF CREDIT NO. insert financial institution LOC number

ISSUE DATE: _____, 2019

APPLICANT: The Foundry Loveland, LLC

BENEFICIARY: City of Loveland
500 East Third Street
Loveland, CO 80537

AMOUNT: \$78,000

MATURITY DATE: **Insert date one year from date of issue**

Dear Sir or Madam:

We hereby establish our irrevocable Letter of Credit in your favor in the amount of Seventy-Eight Thousand Dollars (\$78,000). The purpose of this Letter of Credit is to secure performance of an Agreement for Lodging Fee Shortfall ("Agreement") entered into between the City and the Applicant.

You are hereby authorized to draw on sight on **insert name of financial institution**, by drafts, up to the aggregate amount of Seventy-Eight Thousand Dollars (\$78,000). Such total amount to be drawn shall be equal to the Lodger's Fee Shortfall Amount, as defined in the Agreement.

The sole condition for payment of any draft drawn against this Letter of Credit is that the draft be accompanied by a letter, on the City's letterhead, signed by the City Manager or other City designee to the effect that a Lodger's Fee Shortfall has occurred and the amount drawn down is equal to the Lodger's Fee Shortfall Amount. In the event of wrongful dishonor, we will reimburse the City for all court costs, investigative costs and reasonable attorney fees incurred by the City in enforcing this letter of credit. We further agree that jurisdiction and venue for any legal action enforcing this letter of credit shall be in the District Court of Larimer County, Colorado.

We hereby agree with drawers and endorsers, and bona fide holders of drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

Multiple drafts may be presented.

This Letter of Credit will be automatically renewed annually without amendments as stated in the Agreement, for one year periods from the present, unless Issuer delivers written notice within ninety (90) days prior to any such expiration date to the City of Loveland of its intent not to renew this Letter of Credit. Any such notice shall be in writing and shall be delivered with an acknowledged receipt, either in hand or by certified mail. Prior to any renewal,

This Letter of Credit is not transferable, except that upon the occurrence of a Triggering Event, this Letter of Credit shall be payable directly to the Trustee, or its designee.

This Letter of Credit sets forth in full our understanding, and such undertaking shall not in anyway be modified, amended, amplified, or limited by reference to any document, instrument or agreement referred to herein, except for such certificate and draft(s) referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such certificate and draft(s).

Except so far as otherwise expressly stated herein, this Letter of Credit shall be subject to Article 5 of the State of Colorado Uniform Commercial Code (UCC) and the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (UCPDC). To the extent of any conflict between the UCC and the UCPDC, the UCC shall control.

Signed this ____ day of _____, 20__ on behalf of insert name of financial institution.

Name, Title
Name of financial institution

On behalf of The Foundry Loveland, LLC, I hereby authorize insert name of financial institution to pay the City of Loveland (or, upon the occurrence of a Triggering Event, to pay to the Trustee or its designee), all, or a portion of this Letter of Credit upon receipt by insert name of financial institution of the letter described in paragraph 3 above, and waive any claims or defenses which I may have to the payment to the City of Loveland by insert name of financial institution.

Name, Title
Authorized Agent of The Foundry Loveland, LLC

EXHIBIT B
TO SECOND AMENDMENT TO DISTRICT PLEDGE AGREEMENT

2019 Compass Loan Parameters

Sources		Uses	
Loan Proceeds		Payoff Outstanding Developer Loan	\$ 800,000
Tax-Exempt Loan	\$ 995,000	Capitalized Interest Thru/Including 12/1/19 (est)	
Taxable Loan	420,000	Tax-Exempt Loan	74,000
		Taxable Loan	39,000
		Debt Service Reserve Fund (MADS)	
		Tax-Exempt Loan	64,000
		Taxable Loan	31,000
		Deposit to Project Fund	350,000
		Cost of Issuance	51,000
		Contingency	6,000
Total Sources	\$1,415,000	Total Uses	\$ 1,415,000

**** CONFIDENTIAL ****

**FOUNDRY LOVELAND METROPOLITAN DISTRICT
FULL GROWTH MODEL (Developer Projections)**

Construction Year →	2038		2039		2040		2041		2042		2043		2044		2045		2046		2047		2048	
	Assessed Year →																					
	Collection Year →																					

Units	Comm SF	Value/SF
99	91,031	\$195.00
Residential Apartments	7,362	\$100.00
Retail		
Lincoln Building		
Residential Apartments	56	\$195.00
Retail	8,191	\$100.00
320 N. Cleveland Building		
TownPlace Suites Hotel	6,000	\$100.00
Movie Theater	102	\$123.00
	27,400	\$100.00

Market Value - New Construction

Residential																						
Commercial																						
Market Value - Bi-Annual Reassessment																						
Residential	659,815		673,011		686,471		700,201		714,205		728,209		742,214		756,219		770,224		784,229		798,234	
Commercial	301,958		307,997		314,157		320,440		326,849		333,258		339,667		346,076		352,485		358,894		365,303	

Cumulative Market Value

Residential	\$ 33,650,554	\$ 34,323,565	\$ 35,010,037	\$ 35,710,237	\$ 36,424,442
Commercial	15,399,837	15,707,834	16,021,990	16,342,430	16,669,279
Total Cumulative Market Value	\$ 49,050,391	\$ 50,031,399	\$ 51,032,027	\$ 52,052,668	\$ 53,093,721

Cumulative Assessed Value

Residential @ 7.20% RAR	2,422,840	2,471,297	2,520,723	2,571,137	2,622,560
Commercial @ 29%	4,465,953	4,555,272	4,646,377	4,739,305	4,834,091
Total Cumulative Assessed Value	\$ 6,888,793	\$ 7,026,568	\$ 7,167,100	\$ 7,310,442	\$ 7,456,651

Maximum Mill Levy Available for Debt Service

Property Tax Available @ Max Mill Levy	\$ 137,776	\$ 137,776	\$ 143,342	\$ 149,008	\$ 154,785
Specific Ownership Taxes (est. @ 8.5% of Property Taxes)	11,711	11,711	12,184	12,657	13,130
Total Pledged Revenue	\$ 149,487	\$ 149,487	\$ 155,526	\$ 161,665	\$ 167,915
Total Debt Service 2018 Loan (see below)	\$ 99,253	\$ 98,207	\$ 97,161	\$ 96,115	\$ 95,069

Excess Revenue (Available for any Lodgers Fee shortfall)

Debt Service Coverage @ Max Mill Levy	\$ 50,234	\$ 50,566	\$ 50,898	\$ 51,230	\$ 51,562
Actual Mill Levy Required for Debt Service (Net of SOT)	13.2	13.1	12.8	12.5	12.2

DEBT SERVICE DETAIL - 2018 LOAN:

Tax-Exempt Loan	\$ 995,000				
Interest (4.68% thru Loan Term; 5.5% thereafter)	4,68%	25,439	23,085	20,620	18,037
Less: Capitalized Interest		42,796	44,828	46,956	49,186
Principal		(160)	(160)	(160)	(160)
Reserve Fund Earnings					
Taxable Loan	\$ 420,000				
Interest (5.92% thru Loan Term; 6.0% thereafter)	5.92%	12,756	11,646	10,470	9,222
Less: Capitalized Interest		18,500	19,600	20,800	22,000
Principal		(78)	(78)	(78)	(78)
Reserve Fund Earnings					
Total Debt Service		\$ 99,253	\$ 98,921	\$ 98,608	\$ 98,297
Unpaid Principal Balance		\$ 419,729	\$ 374,901	\$ 327,945	\$ 278,759
Tax-Exempt Loan		194,100	174,500	153,700	131,700
Taxable Loan		\$ 613,829	\$ 549,401	\$ 481,645	\$ 410,459
Total Unpaid Principal Balance		\$ 613,829	\$ 549,401	\$ 481,645	\$ 410,459

EXHIBIT C
CITY RESOLUTION AUTHORIZING COOPERATION AGREEMENT

RESOLUTION #R-38-2017

**A RESOLUTION APPROVING A SECOND AMENDMENT TO
DISPOSITION AND REDEVELOPMENT AGREEMENT BETWEEN THE
CITY OF LOVELAND AND THE FOUNDRY LOVELAND, LLC
REGARDING DEVELOPMENT OF THE FOUNDRY PROJECT**

WHEREAS, the City is a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to Article XX of the Constitution of the State; and

WHEREAS, the City has entered into a Disposition and Redevelopment Agreement, dated December 13, 2016, as amended by the First Amendment to Disposition and Redevelopment Agreement dated as of March 10, 2017 (the "First Amendment" and collectively, the "DRA") with The Foundry Loveland, LLC (the "Developer") pursuant to which the Developer has agreed to acquire, develop, construct and install a project within the City that is known as the Foundry Project (the "Foundry Project"); and

WHEREAS, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the DRA; and

WHEREAS, as contemplated by Section 13.3 of the DRA, certain Certificates of Participation, Series 2017 have been executed and delivered by the City to finance Eligible Costs in accordance with the DRA, and the Parties now desire to amend the DRA to reflect certain terms and conditions related to the execution and delivery of such Certificates of Participation; and

WHEREAS, the City and the Developer have determined that certain other amendments to the DRA will be mutually beneficial; and

WHEREAS, in order to amend the DRA, the City Council has determined and hereby determines that it is necessary, desirable and in the best interests of the City to enter into an amendment to the DRA in substantially the form of the Second Amendment to Disposition and Redevelopment Agreement (the "Second Amendment") attached hereto as **Exhibit "A"** and incorporated by reference.

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

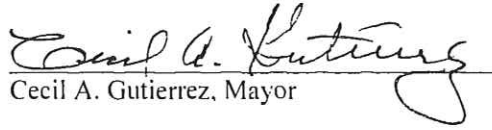
Section 1. **Recitals Incorporated.** The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the City Council.

Section 2. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the City Council and the officers, employees and agents of the City directed toward the redevelopment of the Site, the construction of the Foundry project, and the execution and delivery of the DRA, as amended by the First Amendment and the Second Amendment, are hereby ratified, approved and confirmed.

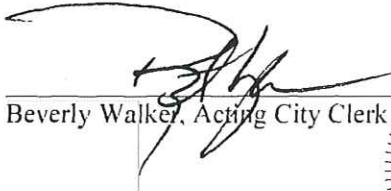
Section 3. The Second Amendment is hereby approved. The City Manager is authorized, following consultation with the City Attorney, to modify the Second Amendment in

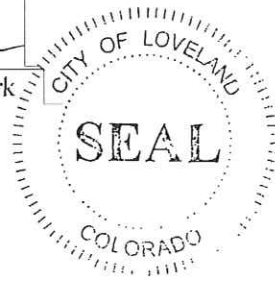
Section 6. This Resolution shall be effective as of the date of its adoption.

ADOPTED this 25th day of April, 2017.


Cecil A. Gutierrez, Mayor

ATTEST:


Beverly Walker, Acting City Clerk



APPROVED AS TO FORM:


Assistant City Attorney

2. Amendments to DRA.

a. Section 1. Definitions. The following definitions shall be added to Section 1:

“Certificates of Participation, Series 2017” means the “Certificates of Participation, Series 2017, Evidencing Proportionate Interests in the Base Rentals and other Revenues” under an annually renewable Lease Purchase Agreement dated as of March 14, 2017, between U.S. Bank National Association, solely in its capacity as trustee under the Indenture, as lessor, and the City of Loveland, Colorado, as lessee” dated as of March 14, 2017, and executed and delivered pursuant to the Indenture.

“Indenture” means the Indenture of Trust, dated as of March 14, 2017, entered into by the Trustee, as the same may be amended or supplemented.

“Initial Purchaser” means Compass Mortgage Corporation, an Alabama corporation, and its successors, as the initial purchaser of all the Certificates of Participation, Series 2017. All references to the Initial Purchaser hereunder shall be applicable for so long as, and only to the extent that, the Initial Purchaser is the sole owner of all outstanding Certificates of Participation, Series 2017. All references herein to the Initial Purchaser shall be of no force and effect in the event that the Initial Purchaser is not the sole owner of all outstanding Certificates of Participation, Series 2017.

“Lease Purchase Agreement” means the Lease Purchase Agreement, dated as of March 14, 2017, between U.S. Bank National Association, solely in its capacity of Trustee under the Indenture, as lessor, and the City, as lessee.

“Site Lease” means the Site and Improvement Lease Agreement, dated as of March 14, 2017, between the City, as lessor, and U.S. Bank National Association, solely in its capacity of Trustee under the Indenture, as lessee.

“Trustee” means U.S. Bank National Association, as trustee under the Indenture, or its successors or assigns.

b. Section 5.3. Section 5.3 is hereby amended by the addition of the following paragraph at the end of such Section:

The Developer acknowledges that certain property within the Site is subject a voluntary clean-up plan (“VCUP”) that must be approved by the Colorado Department of Public Health and Environment (“CDPHE”) and that, in connection with the VCUP, a portion of the Developer Parcel is expected to become subject to an environmental covenant that will contain certain use restrictions (the “Environmental Covenant”) in substantially the form attached hereto as Exhibit 1, provided that such Environmental

and effect, or for so long as any obligations issued to refund the Certificates of Participation, Series 2017, or any other Bonds issued by the City or the Authority remain outstanding.

The District Pledge Agreement shall provide, among other things, that: (a) the District shall impose the District Debt Service Mill Levy for so long as the Lease or Site Lease remain in effect or for so long as any obligations issued to refund the Certificates of Participation, Series 2017 or any other Bonds issued by the City or the Authority remain outstanding, (b) to the extent received by the District, the District shall remit the District Pledged Revenues to the City, or its designee, for so long as the Lease remains in full force and effect or for so long as any obligations issued to refund the Certificates of Participation, Series 2017 or any other Bonds issued by the City or the Authority remain outstanding, (c) to the extent that the Parking Facility constitutes leased property under the Site Lease and the Lease, and in the event that the Lease is terminated and the Site Lease remains in full force and effect, the District shall remit any District Property Tax Revenues received by the District directly to the Trustee, (d) to the extent that the Parking Facility constitutes leased property under the Site Lease, the Trustee and the Initial Purchaser shall be third party beneficiaries under the District Pledge Agreement, and (e) to the extent that the Parking Facility constitutes leased property under the Site Lease, the District Pledge Agreement shall not be subject to amendment without the prior written consent of the Trustee and the Initial Purchaser of the Certificates of Participation, Series 2017. Upon the execution and delivery of the District Pledge Agreement, the District shall cause to be delivered to the City and the Initial Purchaser an opinion from counsel to the District that (i) such agreement is enforceable in accordance with its terms and (ii) the obligation to remit such District Property Tax Revenues to the Trustee in accordance with such agreement has been authorized by the electors of the District and is not subject to annual appropriation by the District. Failure by the District to execute the District Pledge Agreement or deliver the required opinion by May 19, 2017 shall result in the Cap Amount being reduced in accordance with Section 13.2 and Section 15 hereof.

f. Section 14(e). Section 14(e) is hereby deleted and replaced with the following:

(e) The District shall have been organized and created, the Service Plan shall authorize the District to levy the District Debt Service Mill Levy and the District O&M Mill Levy, and the District shall have entered into the District Pledge Agreement with the City pursuant to which the District agrees to levy the District Debt Service Mill Levy and the District O&M Mill Levy, to remit all revenues generated from the District Debt Service Mill Levy that are not Property Tax Increment Revenues to the City or as otherwise directed by the City, and which agreement sets forth the additional provisions required by Section 13.3 hereof. Notwithstanding the foregoing, the District shall not be

- (iii) The 18 month deadline to complete construction of Phase One of the Project within 18 months of Commencing Construction, as set forth in Section 21.1.

The Parties further agree that the definition of "Developer Parcel" set forth in the Agreement is hereby amended to include Unit 2 and the definition of "City Parcel" is hereby amended to include Unit 1; provided, however, that the City shall retain ownership of the L1B2 Parcel at Closing until such time as the Units are created. Upon creation of the Units pursuant to the agreement between the Parties, Unit 2 shall be conveyed to the Developer or its designee, as further set forth in such agreement.

- i. Section 19.11. Section 19.11 is hereby amended by including the following paragraph at the end of such Section:

The City hereby represents that in connection with the execution and delivery of the Certificates of Participation, Series 2017, it provided the Initial Purchaser with the plans and specifications for the Parking Facility. The City and the Developer acknowledge that the Lease provides that in order for the City to substitute the Parking Facility as leased property under the Lease, that the Parking Facility shall have been built substantially in accordance with the provisions of this Agreement and the plans and specification provided to the Initial Purchaser, or as otherwise approved in writing by the Initial Purchaser. The Developer agrees that it shall construct the Parking Facility substantially in accordance with the provisions of this Agreement and such plans and specifications provided to the Initial Purchaser by the City, unless otherwise approved in writing by the City and the Initial Purchaser.

- j. Section 19.12. Section 19.12 is hereby amended by including the following paragraph at the end of such Section:

The Parties hereby acknowledge that, to the extent that the Parking Facility constitutes leased property under the Lease, the Lease requires that in the event that the Lease is terminated and the Site Lease remains in effect, that all operation and maintenance fees imposed pursuant to this Section 19.12 shall become payable to the Trustee, without further action by the Parties, for so long as the Site Lease remains in effect. Any agreements entered into pursuant to this 19.12 to facilitate the imposition, collection and remittance of the operation and maintenance fees shall include provisions requiring such fees to be remitted directly to the Trustee in the event that (a) the Parking Facility constitutes leased property under the Lease, (b) the Lease is terminated and (c) the Site Lease remains in full force and effect. Such agreements shall provide for the automatic assignment of such fees to the Trustee in such event, and shall also provide that such automatic assignment of the fees to the Trustee may not be revoked without the prior written consent of the Trustee and the Initial Purchaser.

provided, Developer shall not, prior to the issuance of the first Certificate of Occupancy for any portion of the Project, assign Developer's rights, benefits and/or obligations pursuant to this Agreement to any party or transfer a controlling interest in Developer without the prior written consent of the City Manager, who shall consult with the City Attorney in determining whether to grant such approval. Any such assignment without the City Manager's prior written consent shall be deemed null and void and without any affect and shall be considered a material default of this Agreement.

3. Conveyance of Phase One Parcel. The Parties agree that Closing on that portion of the Developer Parcel on which Phase One will be constructed (the "Phase One Developer Parcel") may be separated into two or more closings. The Parties agree that the Conditions to Closing on Conveyance of Developer Parcel set forth in Section 8 of this Agreement will be separated so that the conditions in Section 8 of this Agreement will be applicable only to the portions of the Phase One Developer Parcel being conveyed at the applicable Closing.

4. Condition of Phase One Developer Parcel. The Parties agree that any portion of the Phase One Developer Parcel retained by the City after the first conveyance of any portion of the Phase One Developer Parcel to Developer shall be maintained by the City in the same condition (including condition of title) as of such first closing, ordinary wear and tear accepted and subject to the improvements to be constructed thereon pursuant to the Agreement.

5. Amendment to First Amendment. The Parties hereby agree that Section 3 of the First Amendment is hereby deleted in its entirety. The Developer agrees that the Developer Objections set forth in Section 3 of the First Amendment have been resolved to the satisfaction of the Developer pursuant to the provisions set forth in this Second Amendment.

6. Ratification of DRA. The City hereby ratifies, approves and confirms the execution, delivery and due performance of the DRA, as amended by the First Amendment and this Second Amendment.

7. No Further Amendments and Agreements. Except as modified as set forth in the First Amendment and in this Second Amendment, the DRA shall remain in full force and effect.

8. Exhibits. All exhibits attached to this Second Amendment shall be incorporated by reference as it set out herein in full.

9. Counterparts. This Second Amendment may be executed in separate counterparts (including by means of facsimile or electronic mail delivery of a ".pdf" format data file), each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

Exhibit 1

(Include Proposed Form of Environmental Covenant)

restrictions shall burden the Property and bind Foundry and all parties now or subsequently having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Department, Foundry, and the City as a third-party beneficiary.

NOW, THEREFORE, Foundry hereby grants this Environmental Covenant to the Department, with the City as a third-party beneficiary, and declares that the Property as described in Exhibit A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraph Nos. 1 through 10, below, which shall run with the Property in perpetuity and be binding on Foundry and all parties now or subsequently having any right, title, or interest in the Property, or any part thereof, their heirs, successors, and assigns, and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means the then-current record owner of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

- 1) [DRAFT] Use restrictions The following restrictions shall apply to those parcels shaded in blue within Exhibit B:
 - A. No excavation, drilling, grading, digging, tilling or any other soil-disturbing activity is permitted on the Property unless conducted in accordance with the attached Department-approved Materials Management Plan and any amendments thereto, or a remedial decision document. The Materials Management Plan and any amendments thereto are on file at the Department's Records Center.
 - B. Groundwater shall not be removed from the Property by well or other means for domestic, agricultural, commercial, or other beneficial use. For the purposes of this restriction, "domestic use" means household or family use, including, but not limited to: drinking, bathing, and gardening. For the purposes of this restriction, "groundwater" means subsurface water in a zone of saturation that is or can be brought to the surface of the ground or to surface waters through wells, springs, seeps, or other means of discharge. This limitation shall not apply to the existing monitoring wells located on the Property and to potential installation of monitoring wells in the future for use solely to obtain groundwater samples for analysis. Actions that may damage or impair the proper functioning of any authorized remedial wells are prohibited. Any person or entity, whether specifically bound to this covenant as an OWNER or third party beneficiary, or any person or entity not specifically bound to this covenant, must comply with the requirements set forth herein, including the requirement to notify the Department and receive approval in writing for any planned or unanticipated actions which may damage or impair the proper functioning of any authorized remedial well associated with this covenant.
 - C. Any excavation, grading, or construction activity that may expose groundwater shall be conducted pursuant to the groundwater provisions of the Materials Management

- 4) Notice to Lessees: OWNER agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.
- 5) Notification for proposed construction and land use: OWNER shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
- 6) Inspections: The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant.
- 7) Third Party Beneficiary: The City is a third party beneficiary with the right to enforce the provisions of this Covenant as provided in section 25-15-322, C.R.S.
- 8) No Liability: The Department does not acquire any liability under State law by virtue of accepting this Covenant, nor does any other named beneficiary of this Covenant acquire any liability under State law by virtue of being such a beneficiary.
- 9) Enforcement: The Department may enforce the terms of this Covenant pursuant to section 25-15-322, C.R.S. The OWNER and any named beneficiaries of this Covenant may file suit in district court to enjoin actual or threatened violations of this Covenant.
- 10) OWNER'S Compliance Certification OWNER shall execute and return a certification form provided by the Department, on an annual basis, detailing Owner's compliance, and any lack of compliance, with the terms of this Covenant.
- 12) Severability. If any part of this Covenant shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- 12) Notices Any document or communication required under this Covenant shall be sent or directed to:

Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

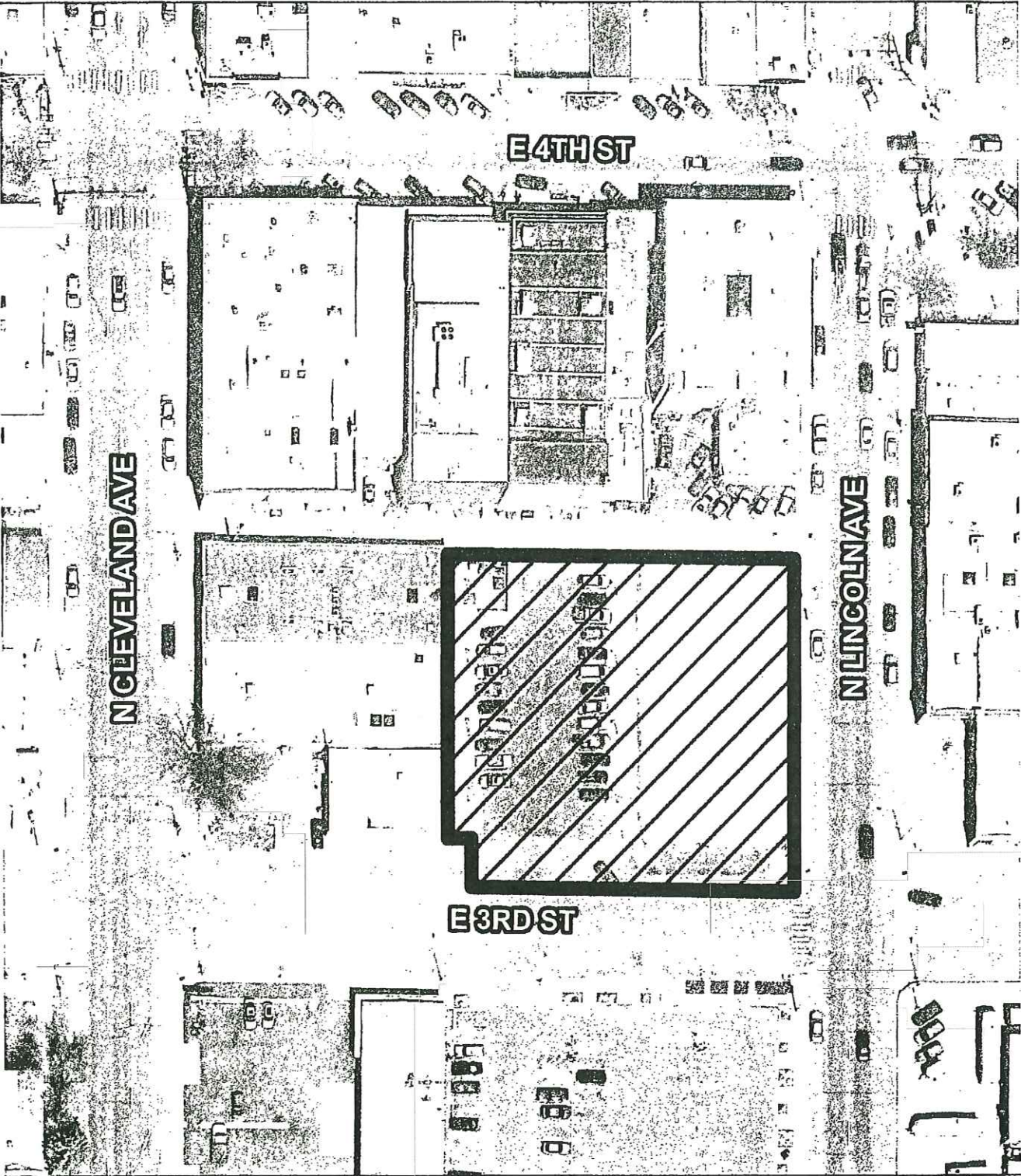
City of Loveland
City Attorney's Office

EXHIBIT A

(Legal Description)

*[SEE ATTACHED DRAFT EXHIBIT B MAP- SPECIFIC AREA WILL DEPEND ON CDPHE
APPROVAL OF VCUP AMENDMENT]*

Exhibit B to Environmental Covenant - Leslie The Cleaner Environmental Covenants Boundary



Legend

 Leslie The Cleaner- Environmental Covenants Boundary

N

April 11, 2017



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February 18, 2016
Updated February 23, 2016

Materials Management Plan

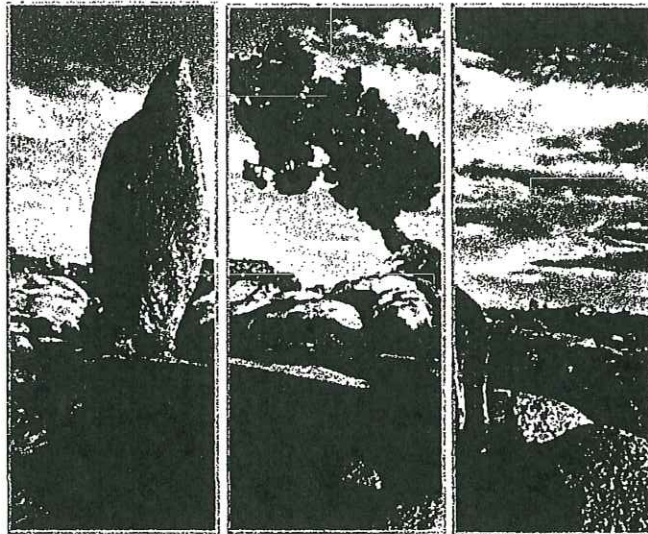
South Catalyst Project
Loveland, Colorado

Prepared For:

City of Loveland
500 East 3rd Street, Suite 300
Loveland, Colorado 80537

Pinyon Project No.:

I/15-1073-01.8000



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Acronyms

Acronym	Definition
ACM	Asbestos Containing Materials
APEN	Air Pollution Emissions Notice
AQCC	Air Quality Control Commission
CABI	Colorado Asbestos Building Inspector
CDOT	Colorado Department of Transportation
CDPHE	Colorado Department of Public Health and Environment
CDPS	Colorado Discharge Permit System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CGI	Combustible Gas Indicator
CHMM	Certified Hazardous Materials Manager
CIH	Certified Industrial Hygienist
CSP	Certified Safety Professional
DMR	Daily Monitoring Report
EPA	Environmental Protection Agency
ESA	Environmental Site Assessment
HASP	Health and Safety Plan
HSO	Health and Safety Officer
LST	Leaking Storage Tank
LUST	Leaking Underground Storage Tank
MMP	Materials Management Plan
NPDES	National Pollutant Discharge Elimination System
OPS	Colorado Department of Oil and Public Safety
OSHA	Occupational Safety and Health Administration

I. Introduction

Pinyon Environmental, Inc. (Pinyon), was retained by the City of Loveland (the "City"), to prepare this Materials Management Plan (MMP) for the South Catalyst Project located between North Cleveland and North Lincoln Avenue, and between East 1st and 4th Street in Loveland, Colorado (the "Site"; Figure 1). The Site encompasses approximately 15 properties which the City has acquired for redevelopment as part of the South Catalyst Project. This MMP has been developed to define how the contractor(s) and/or developer(s), hereafter referred to as the "Contractor," will manage regulated materials at or below the ground surface in the event they are encountered during construction or other development activities.

Regulated materials are defined as the presence or suspected presence of substances which may require management and/or special disposal. These substances may be hazardous as defined by Resource Conservation and Recovery Act (RCRA) regulations or regulated by other laws that would restrict reuse of the substance on site, discharge to groundwater or surface water, and/or require special disposal. Regulated materials may exist on the surface or subsurface, in groundwater or surface water, or on or in structures to be demolished or modified as part of the project activities, and may be mixed with soil, water, building matrices, and/or other waste materials. This MMP does not discuss the management of regulated materials that may be in or on a structure/building.

It is the responsibility of the Contractor to manage all regulated materials, including but not limited to soils, groundwater, surface water, asbestos containing building materials, asbestos in soils, and lead-based paint to prevent exposure to the environment, project personnel and the public, and to prevent impacts of non-impacted areas. This MMP has been prepared to guide work activities to accomplish the above while adhering to the project schedule during construction. Further, this MMP has been prepared to minimize potential delays, and to develop approved standard procedures that will be implemented as needed in the event that regulated materials are encountered during construction. It is the responsibility of the Contractor to follow all appropriate regulations, obtain the proper permits, and utilize field personnel trained to identify potential impacts.

I.1 Purpose of this MMP

When implemented properly, this MMP is intended to provide the Contractor the means and methods to allow work activities to be completed in such a way as to minimize worker exposure to potential regulated materials (RMs), prevent releases to the environment, and provide proper protocol for disposal or appropriate management of impacted materials. Further, this MMP has been prepared to minimize potential delays, and to develop approved standard procedures that will be implemented as needed in the event that potential RMs are encountered during construction. It is the responsibility of the contractor to adhere to the MMP, follow all appropriate regulations, obtain the proper permits and have the trained field personnel to identify potential impacts. The Contractor will analyze and classify waste according to one of the following categories identified in the list below. Soils disturbed during construction must be handled in accordance to the procedures detailed in Section 4. Groundwater, if encountered, must be handled in accordance to the procedures detailed in Section 5.

- Hazardous waste as defined under the RCRA requiring off-site disposal and/or treatment
- Contaminated soils requiring off-site disposal
- Soils to be stockpiled for further characterization
- Soils with concentrations of waste constituents below regulatory concern that can be reused without restriction
- Wastewater requiring off-site disposal and/or treatment
- Impacted surface or groundwater to be held for further characterization

Organization	Role/Responsibility	Contact Information
Stephen DiNardo Consulting	Manager Representative/Project Manager	Stephen DiNardo Phone: 303-478-6203 Email: spdinardo@comcast.net
Contractor	Construction	TBD
Environmental Consultant	Environmental oversight quality assurance to identify potentially contaminated soil and potential asbestos	Karlene Thomas (or TBD) Pinyon Environmental, Inc. 9100 West Jewell Avenue Phone: 303-980-5200 Email: Thomas@pinyon-env.com

1.4 Previous Environmental Concerns and Documentation

Historical documents, including several Phase I Environmental Site Assessments (ESA's) completed by CTL Thompson (CTL, 2009; CTL, 2014a; CTL, 2014b; CTL, 2015a; CTL, 2015b), a Phase II ESA completed by Pinyon (Pinyon, 2016a), and a Colorado Department of Public Health and Environment (CDPHE) Voluntary Cleanup Program (VCUP) application completed by Walsh Environmental Scientists and Engineers, LLC (Walsh, 2011), were reviewed as part of this MMP.

Figure 3 depicts the areas of environmental concern in relation to the previous documents and field investigations. Additional information concerning the December 2015 and January 2016 field investigations and results can be found in the Phase II ESA report dated February 5, 2016 and the Phase II ESA Additional Work report dated February 23, 2016.

It should be noted that all previous and current observations and sampling were conducted at limited locations; therefore, there is a potential that other areas not directly investigated could result in the Contractor encountering contaminated soils. This MMP is prepared to assist the Contractor in addressing unexpected subsurface impacts.

Property Address/Location	Potential Environmental Concerns
	<p>Discussion: The property at 270 East 3rd Street (formerly Carrol's Conoco and Keck Auto, 233 North Lincoln Avenue) was listed on the Colorado Department of Oil and Public Safety (OPS) database as closed for having a LST and six USTs. The six USTs included three gasoline tanks, one diesel tank, and two waste oil tanks (Spaine, 1998). In November 1998, the six USTs were removed with approximately 261 cubic yards of petroleum impacted soil. In 1999, additional investigative work was completed to determine the extent of petroleum impacted soils. Based on the 1998 and 1999 sampling results, limited residual petroleum impacted soils were present in the vicinity of the tank grave which was located in the northern central portion of the property and fueling islands which was located in the central portion along the western property boundary. In January 2006, the property was given a No Further Action determination by OPS pertaining to the LST and petroleum impacted soils and groundwater (OPS, 2006).</p> <p>During the 2015 Phase II ESA field activities, five soil and groundwater samples were collected and analyzed from Zone B (Figure 3). Various metals were detected in the soil samples, but are considered to be naturally occurring concentrations. Arsenic and selenium were detected above the drinking water standards (again, likely naturally occurring), and chloroform was detected above the organic chemical standard. PCE was detected in two groundwater samples above the laboratory detection limit, but below the groundwater organic chemical standard.</p> <p>In January 2016, a soil gas survey was completed to determine the extent and source of the PCE detections from the December 2015 field results. The findings of the 2016 soil gas survey did not indicate a source area for PCE with respect to the Site building.</p>
Zone C	
201 North Lincoln Avenue	Auto repair and filling station. Potential residual contaminants in soil and groundwater could include VOCs, petroleum hydrocarbons, and metals.
	<p>Discussion: The property at 201 North Lincoln Avenue (Figure 3) operated as an auto repair and filling station from 1937 to 2005. The 2015 Phase I report indicated that five USTs were present on-site; however, no records or permits are available on the USTs. It is not known if the USTs were closed in-place.</p> <p>During the 2015 Phase II ESA field activities, a total of four soil and groundwater samples were collected and analyzed from Zone C (Figure 3). Soils exceeding the EPA RSLs for residential and/or industrial soils were not identified. PCE was detected in one groundwater sample above the Colorado groundwater standards.</p> <p>A geophysical survey was completed on the property to evaluate the presence of the USTs. Two anomalies consistent with the presence of USTs were identified at the Site; located on the north side of the 201 North Lincoln Avenue property (Figure 4).</p> <p>In January 2016, a soil gas survey and additional temporary wells were completed to evaluate the extent and source of the PCE detections from the December 2015 field results. The findings of the soil gas survey did not indicate a source area for PCE. However, a small VOC "hot spot" was identified in the vicinity of front of the property building. Three temporary wells were installed in the vicinity of the small "hot spot" in order to collect additional soil and groundwater data. Based on the findings of the temporary well installation field activities, PCE was not detected above the soil or groundwater standards in the three soil borings. However, a detection of 1,2,4-trimethylbenze in soil at a concentration above the residential soil standard, and a detection of naphthalene in groundwater at a concentration above the groundwater standard, were noted in the soil boring located along the property boundary and North Lincoln Avenue.</p>

2. Health and Safety

There is a potential for increased risk to the health of workers during excavation at the Site. Awareness by site personnel of these hazards is of the highest priority. Therefore, a Health and Safety Plan (HASP) must be developed by the Contractor. The Contractor's field personnel must conduct work in Level D attire at a minimum, unless the Contractor's Health and Safety Officer (HSO) determines that additional protection is required.

If it is determined that additional protection is required, personal protection equipment (PPE) will be provided by the Contractor to continue the work while providing a safe working environment for all personnel. The appropriate PPE will be determined by the Contractor's HSO. Site personnel must be provided with a copy of the HASP for review, and must be aware of and agree to the requirements of the HASP. The Contractor will be required to employ the proper personnel, monitoring equipment, and PPE to provide a safe working environment for its employees, consultants and sub-contractors. The provisions of this MMP are summarized below, and will be incorporated into the HASP. However, in no way shall the HASP be limited to these provisions.

- All work will be performed in accordance with the requirements of the Occupational Health and Safety Administration (OSHA), 29 Code of Federal Regulations (CFR) 1910.
- When implementing this MMP, it is the Contractor's responsibility to employ workers with the appropriate level of training. The site has not been classified as an "uncontrolled hazardous waste site" per OSHA, thus 1910.120 (a)(1)(i)(iii) are not applicable. As such, all employees working on the site shall be informed of and trained on any/all risks that have been identified per 1910.1200, and the applicable requirements detailed in this document and the HASP. If personnel are working in areas where unknown hazardous materials have been identified during construction, they are required to have training in accordance with 1910.120 (i.e., OSHA 40-hour certified). All other employees, project personnel, or visitors arriving on site with the intent of observing excavation activities must obtain a site-specific health and safety briefing and wear the appropriate PPE for the task at hand in accordance with OSHA 1910.120(c)(7). The health and safety briefing will be provided by the Project Safety Manager.
- Site personnel should complete, at minimum, OSHA 2-hour asbestos awareness training so that workers are trained sufficiently to understand and avoid asbestos hazards, if they are encountered during the project. When debris, household waste or asbestos is encountered, work in that area will stop immediately, and workers will contact a Colorado Asbestos Building Inspector (CABI) to inspect materials during excavation.
- If required, personal monitoring will be performed under the supervision of the HSO.
- No personnel shall enter an excavation unless standard procedures have been followed and hazards have been eliminated or properly mitigated.

- Complete work as directed by the MMP Supervisor, and in accordance with this MMP.
- Complete work in accordance with the requirements of the Occupational Health and Safety Administration (OSHA), 29 CFR 1910.120. The level or training in accordance with CFR 1910.120 shall be determined and confirmed by the HSO.
- Complete, at minimum, OSHA 2-hour asbestos awareness training to better understand and identify asbestos hazards, and to understand the proper protocols if asbestos in soil is encountered.

3.3 Tier 2 – Excavation Workers

Tier 2 employees include all personnel that could possibly discover hazardous materials during the course of work, but will not be responsible for management of these wastes. These employees include, but are not limited to, front-line equipment operators, foremen and operators that will complete typical excavation activities during the project, but will not complete handling of these materials after discovery.

These personnel will be responsible for the following:

- Be trained on identification of hazardous materials by the MMP Supervisor.
- In the event that suspected materials are identified, immediately stop work, and contact the MMP Supervisor of the discovery.
- Complete work in accordance with the requirements of the OSHA, 29 CFR 1910.120. The level or training in accordance with CFR 1910.120 shall be determined and confirmed by the HSO.
- Complete, at minimum, OSHA 2-hour asbestos awareness training to better understand and identify asbestos hazards, and to understand the proper protocols if asbestos in soil is encountered.

3.4 Tier 3 – Other Workers

Tier-3 workers include all workers that would not complete sub-surface work activities. As the possibility for "other workers" to encounter hazardous materials on this project is low, training requirements do not apply.

4.3 Asbestos Containing Material

If buried building materials, municipal trash or other materials which may contain asbestos, including buried utilities are encountered, work in the area must stop immediately and workers must comply with Section 5.5 of the Solid Waste Regulations, or Regulation No. 8 of the Air Quality Control Commission Regulations (see Section 8.4). This would include notification to the MMP Supervisor immediately. A CABI must be called onto the project to sample and analyze the suspect material to determine if it is asbestos-containing. Any asbestos-containing material must then be handled under the appropriate regulations and a licensed contractor should be contracted to oversee the work.

4.4 Process Flow

The following process-flow chart presents a general flow of procedures that will be followed in the event that suspected contaminated soils are identified.

4.5 Predetermined Action Levels for Soil Management

Predetermined Action Levels (PALs) will be used to determine if the soil generated at this project is acceptable for reuse, or requires transport off-site for disposal at an appropriate landfill. The PALs are based on the CDPHE use of the EPA RSLs for Industrial Soils (EPA, 2015) (Appendix A). RSLs assign numerical contaminant concentrations as preliminary cleanup goals. In addition, CDPHE has provided Risk Management Guidance for Evaluating Arsenic Concentrations in Soil (CDPHE, 2011a). This document in part states that "If arsenic concentrations are lower than 11 mg/kg (the average of the 95% upper confidence limit of the mean (UCLM) of background concentrations found by the EPA in Colorado), and releases of arsenic could not have occurred at the Site, based on historical data or process knowledge, the Division will require no further action to address arsenic in soil."

4.5.1 Exposure Scenarios

CDPHE Groundwater Projection values in conjunction with EPA RSL guidance will be used for comparison to soil data. The following guidance is applicable for evaluating soil concentrations for varying exposure scenarios:

- **CDPHE Groundwater Protection** – Guidance values were developed by CDPHE to protect groundwater from potentially leachable constituents in soil. For volatile constituents, the CDPHE-Hazardous Materials and Waste Management Division Groundwater Protection Values Soil Cleanup Table (CDPHE, 2014) values will be used for comparison to soil data.
- **EPA RSL Residential Protection** – Soil concentration values that are considered appropriate for residential areas.
- **EPA RSL Worker Protection** – Soil concentration values that are considered appropriate for commercial and industrial properties.

The application of these values for making material handling decisions is discussed in the following sections.

4.5.2 Non-Impacted/Unrestricted Reuse

Soils with chemical concentrations below the guidelines for their respective RSLs for residential or industrial properties and CDPHE groundwater protection values may be reused at on- or off-site locations, assuming the receiving facility has agreed to accept this material. This material must be free from any construction/demolition debris, and free of ACMs.

The majority of the soil sampled by Pinyon in December 2015 would be classified in the non-impacted/unrestricted reuse category. The exception to this is the sample collected from the northern portion of Zone A, which would be classified as impacted-restricted reuse, which is further explained in Section 4.6.3. Note that a limited number of samples were collected and the heterogeneous nature of the soil can lead to vastly different soil conditions over small distances.

Detailed documentation of the on- or off-site disposition will be maintained by the MMP Supervisor. Documentation should include:

- Analytical data
- How and where the soils are used on the project
- A reference to the proximity to groundwater

- Have chemical concentrations that exceed the CDPHE RSLs for Industrial Use
- Are not characteristically hazardous

Limited soils exceeding the industrial RSLs were identified the former Conoco at 233 North Lincoln Avenue, however it is possible that soils categorized as a health risk may be encountered during construction at other locations at the Site (Figure 3 and 4). The MMP Supervisor will specify how the work is completed in these areas.

4.5.5 Hazardous Waste

If sample analysis indicates that the soil is designated as hazardous waste, the soil will be containerized immediately in a lined roll-off box, labeled, and transported to a designated storage area on-site or off-site pending off-site disposal at a hazardous waste disposal facility. These wastes will be manifested and transported to the disposal facility in accordance with state and federal regulations. Once identified as hazardous waste, this material may not be stored on-site longer than 90 days.

The disposal facility chosen to accept the hazardous waste will be decided based on the location of the materials and the location of an appropriate disposal facility. The Clean Harbors LLC, Deer Trail Landfill is the only facility within Colorado licensed to accept hazardous waste. Facilities in Utah and Texas are the closest other licensed hazardous waste disposal facilities. Transportation and manifestation of these waste materials on public highways, streets, or roadways will be in accordance with 49 CFR and any applicable CDOT regulations.

Note: Certain waste streams are specifically excluded in the Solid Waste Regulations (CDPHE, 2011b). The MMP Supervisor (and as approved by the City Project Manager) will be responsible for ultimate classification for disposal.

Monitoring Well	Depth to Water (feet below ground surface)
ZB-SB-05	15.89
ZB-SB-06	15.28
ZB-SB-07	15.34
ZB-SB-08	14.63
Zone C	
ZC-SB-09	14.33
ZC-SB-10	12.85
ZC-SB-11	12.26
ZC-SB-12	12.40
Zone D	
ZD-SB-13	12.88
ZD-SB-14	12.59
ZD-SB-15	12.26

The Contractor may manage groundwater using the methods below. Regardless of the methodology used to manage groundwater, the Contractor will minimize dewatering wherever practicable.

1. Avoid dewatering (through construction methods that preclude the need to dewater, as approved by the engineer), thus avoiding the need to treat, haul, or otherwise manage the groundwater.
2. Land infiltration – If documented analytical results indicate that contaminants of concern in groundwater encountered in a specific area during construction activities (i.e. caisson drilling), are less than the Colorado Groundwater Standards, then the water may be bermed within the vicinity of the drill hole and be allowed to naturally percolate into the soil and re-enter the groundwater table. In addition, this water may be used for dust suppression on the project area, as specifically allowed under the stormwater permit, provided that no water leaves the project boundaries as surface runoff. If there is no analytical data for groundwater in a specific construction area, then the groundwater will be containerized and analyzed prior to infiltration to verify that there are no contaminants of concern above groundwater standards.
3. Pump, contain, treat, and discharge groundwater to surface water in accordance with regulatory requirements.
 - This method will likely require additional groundwater sampling. Based on the currently available groundwater results, a CDPHE-WQCD Remediation Activities Discharging to Surface Water permit (COG315000) application will likely need to be submitted.
 - After permit approval, analytical sampling will be required prior to discharge to comply with the surface water discharge limits.
 - The Contractor must adhere to the standards set forth in the permit and must also prepare a Remediation Activities Management Plan (RAMP) prior to any discharge activities taking place. The RAMP must satisfy the requirements listed in the CDPS Permit. The requirements include, but are not limited to:

6. Special Wastes

Although not anticipated, other special wastes may be encountered and could include items such as drums, chemical or fuel containers, batteries, tar, sludge, petroleum-hydrocarbon impacted soil, materials that are hazardous waste, and potential polychlorinated biphenyls (PCBs) containing equipment (transformers, light ballasts, voltage regulators, capacitors and circuit breakers). These materials may be present in small quantities and can be difficult to characterize. Upon identification of special wastes, excavation at that location will cease until additional assessment by the MMP Supervisor can be completed, and the City is contacted. The MMP Supervisor will attempt to assess special wastes, including prudent and safe observation for the following:

- Markings and or labels on containers/drums, condition of the containers/drums (e.g., rust, holes, damage, corrosion) and other indications of contents
- Indications of unsafe conditions, including swelling drums, leaking, fumes, odors, etc.
- Conditions of materials associated with the special wastes
- Assessment for evidence of release, obtained by utilizing field instruments (i.e. Photoionization detector [PID], combustible gas indicator [CGI] and professional judgment)

Only under the direction of the MMP Supervisor, will handling of any special wastes be completed. When handling is required, the following precautions will be taken:

- Handling will be minimized whenever possible.
- When necessary, handling will be employed by mechanical means including the use of site excavation equipment.
- Pressurized/swelling drums, suspected explosives, potentially shock-sensitive materials or other potentially dangerous items will not be handled until a person with appropriate experience with these situations has been consulted.
- All special wastes will be placed on 6-mil plastic sheeting and covered, until additional assessment has been completed by the MMP Supervisor (the time frame will allow for laboratory testing and obtaining a profile and manifest for disposal).
- Sampling will be coordinated with the City Project Manager, by the MMP Supervisor.
- All stockpiles of special waste will be covered immediately or containerized, and will remain covered or containerized until final removal.
- Soil stockpiles of potentially contaminated soil or other materials will be limited to a maximum of 500 cubic yards each.
- Implementation of stormwater best-management practices (BMPs) for stockpiles of potentially contaminated material will be completed to prevent potentially contaminated stormwater runoff.
- Stockpile areas will be securely fenced to prevent contact with unauthorized personnel and the public.
- Suspicious materials will be further evaluated by the MMP Supervisor (Section 3.1). When additional assessment of this material indicates that the material does not meet applicable regulatory requirements

7. Additional Requirements

7.1 Dust

In accordance with 5 CCR 1001 – Air Quality Control Commission (AQCC) Regulations, the Contractor will obtain an Air Pollution Emissions Notice (APEN) and Application for Construction Permit. The Contractor will implement best management practices to minimize dust, such as the following:

- The Contractor shall conduct construction operations and take all necessary reasonable measures to eliminate or minimize raising dust resulting from any stored materials, equipment or operations used during completion of the work.
- Blowing dust and airborne particulates shall be controlled by wetting or other means, if approved by the Project Manager. Dust control agents shall be applied in accordance with manufacturer's recommendations.
- The Contractor shall provide and apply dust control at all times, including holidays and weekends, as required to abate dust nuisance on and about the Site that is a direct result of construction activities. The Contractor shall be required to provide sufficient quantities of equipment and personnel for dust control sufficient to prevent dust nuisance on and about the Site.

7.2 Decontamination of Heavy Equipment

Equipment that has come into contact with waste as identified by the MMP Supervisor will be decontaminated prior to leaving the project site to prevent potentially contaminated material from being spread off-site. Gross removal of material from equipment will be completed using hand tools such as shovels, brooms and brushes. If the MMP Supervisor finds it necessary, more thorough decontamination may be required such as pressure washing. Spent decontamination water will be collected in basins and pumped into water containers. The Contractor will be responsible for analyzing the waste-water and working with the City to determine final disposal options in accordance with all applicable federal, state and local regulations.

7.3 Site Security

The Contractor will be responsible for maintaining effective project access control.

Contaminant of Concern	Method of Identification	Identification Process	Analytical Methods	Applicable Regulatory Standards
Slag, Coal, Ash	Visual	If potentially impacted soils are encountered, work in that area must stop and the MMP Supervisor must be notified immediately.	VOCs by EPA Method 8260C	EPA RSLs for Industrial and Residential soil.
			PAHs by EPA Method 8270	EPA RSLs for Industrial and Residential soil.
			PCBs using EPA Method 8082	EPA RSLs for Industrial and Residential soil.
			RCRA 8 metals using EPA Method 6010/7471	EPA RSLs for Industrial and Residential soil, except for arsenic which will be compared with CDPHE Risk-Based Guidance value of 11 mg/kg.
Electrical Equipment (PCBs)	Visual	If potentially impacted soils are encountered, work in that area must stop and the MMP Supervisor must be notified immediately.	PCBs using EPA Method 8082	EPA RSLs for Industrial and Residential soil.

Notes:

After the analytical results have been compared to the appropriate regulatory standards, that information should be used to compare with the PALs listed in Section 4.6 to evaluate soil handling protocols.

EPA – Environmental Protection Agency

PCB – Polychlorinated Biphenyls

PAH – Polycyclic Aromatic Hydrocarbons

TPH – Total Petroleum Hydrocarbon

mg/kg – milligrams per kilogram

RSL – Regional Screening Level

VOC – Volatile Organic Compounds

RCRA – Resource Conservation and Recovery Act

TCLP – Toxicity Characteristic Leaching Procedure

8.1 Waste Identification

For the purpose of this MMP, soils generated during construction of the project will be assumed to meet the Non-Impacted/Unrestricted Reuse PAL (Section 4.6.2), if it meets **all the following conditions:**

- Soil consists of either natural soils, or engineered fills such as roadway fill
- There is no visual or olfactory indication of impacts (e.g., staining, streaking, odor), or if field screening results (PID) are less than 25 units above background conditions
- There is no indication of the presence of solid waste (e.g., foreign materials including demolition debris, municipal solid waste, coal ash, slag)

- PCBs using EPA Method 8082
- RCRA 8 metals using EPA Method 6010/7471

Based on the laboratory analytical results, the soils will be classified and handled based on the procedures presented in Section 4.

8.6 Electrical Equipment (PCBs)

If any potential electrical equipment suspected of containing PCBs is identified, it will be segregated, tested and, depending on PCB concentrations, delivered off-site for disposal at a PCB-permitted disposal facility, if necessary. Until testing is completed, any of this electrical equipment visually identified during excavation will be assumed to contain PCBs. Equipment not determined to contain PCBs may then be disposed as solid waste, or recycled. A licensed Subtitle D Landfill will accept materials where PCB concentrations are less than 50 parts per million. If this material will be disposed at a licensed Subtitle D landfill, the MMP Supervisor will work with the City submit copies of analytical reports confirming the PCB concentrations.

8.7 Cleanup Goals and Regulatory Standards

Recent field activities and analytical results indicated metal levels below the corresponding regional screening levels. However, if metals are detected above the RSLs, the concentrations of metals will be compared by the MMP Supervisor to the Industrial RSL, and the PALs as discussed in Section 4.6. If off-site disposal is required at a licensed Subtitle D landfill, the 20-Times Rule and the Hazardous Material Limit will be evaluated.

Regarding corrosivity, the limits in the samples collected will be between 2.0 and 12.6 pH units. The material must not be reactive, and the ignitability limit is 140°F.

If the material is, as evidenced through analytical testing, determined to be characteristically hazardous, the material should be transported to Deer Trail Landfill operated by Clean Harbors Environmental at 108555 East Highway 36 in Deer Trail, Colorado. Additional coordination with the City will be required in this event.

8.8 Groundwater

If groundwater will require discharge, the appropriate CDPHE-WQCD permit(s) must be obtained, and all the standards set forth in the permit must be followed. All reporting requirements (and other conditions), must also be met by the Contractor.

8.9 Other Solid Waste

Other types of waste are not anticipated to be discovered during construction of this project. However, if encountered, the MMP Supervisor will coordinate with the City Environmental Manager to select analytical methods appropriate for characterizing that material in accordance with the U.S. EPA Method SW846.



- RCRA eight metals using EPA Method 6010/7471

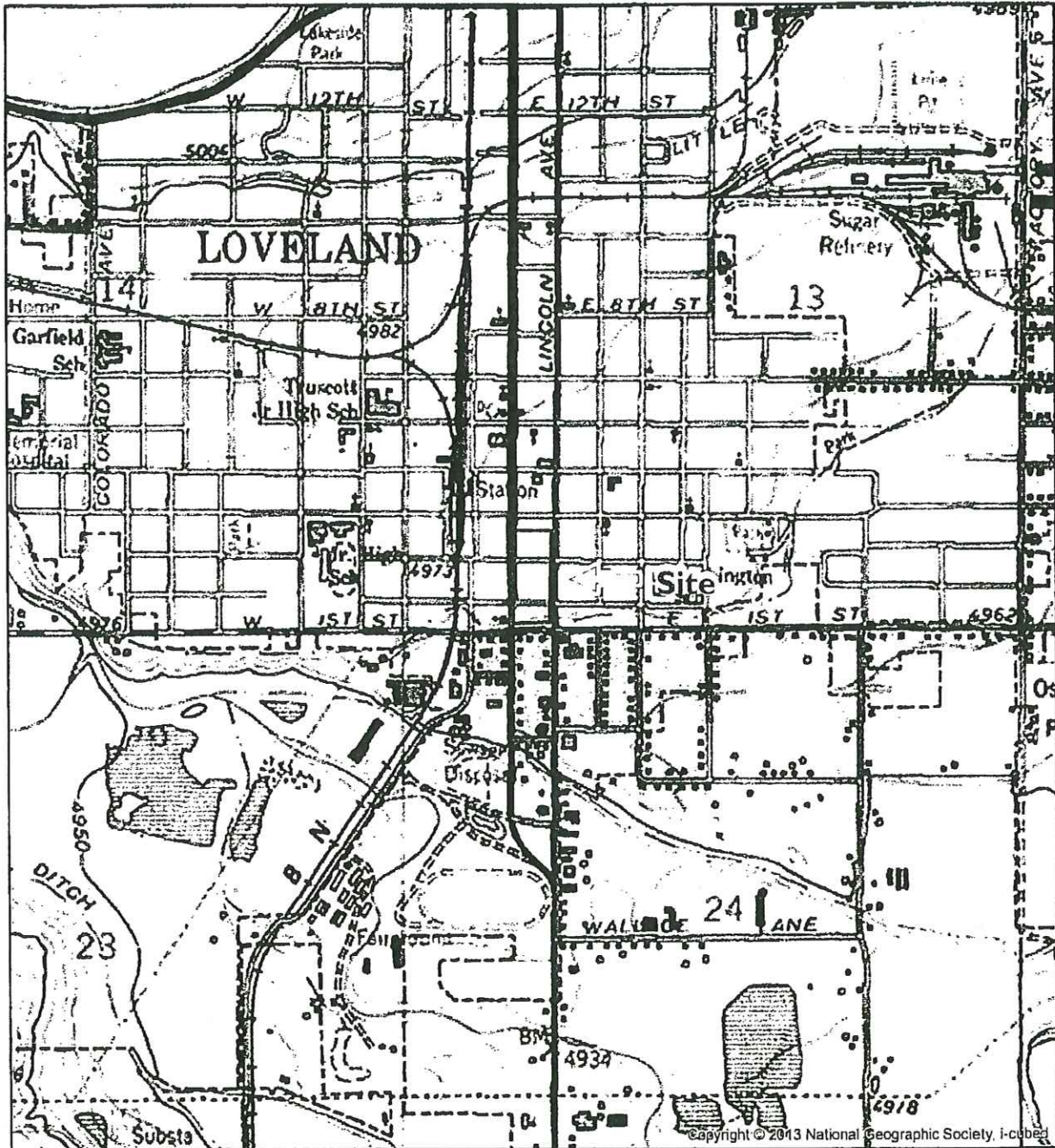
The City Project Manager may adjust the frequency of sample analysis, and analysis requirements.

9.2 Imported Fill Documentation

Certification documentation shall be provided to the City Project Manager for approval prior to being brought to the project site.

II. References

- CDPHE, 2011a. "Risk Management Guidance for Evaluating Arsenic Concentrations in Soil." Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, June 2011.
- CDPHE, 2011b. "Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 CCR 1007-2, Part 1." Prepared by the Colorado Department of Public Health and Environment, Hazardous Waste Unit, August 22, 2011.
- CDPHE, 2014. "Groundwater Protection Values Soil Cleanup Table." Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, March 2014.
- CTL, 2009. "City of Loveland, Risk Management Division, Phase I Environmental Site Assessment, Downtown Assemblage", Prepared by CTL Thompson Inc., December 10, 2009.
- CTL, 2014a. "Phase I Environmental Site Assessment, 216 East Third Street, Loveland, Colorado", Prepared by CTL Thompson Inc., October 21, 2014.
- CTL, 2014b. "Phase I Environmental Site Assessment, 123 North Lincoln, Loveland, Colorado", Prepared by CTL Thompson Inc., August 13, 2014.
- CTL, 2015a. "Phase I Environmental Site Assessment, 320 North Cleveland Avenue, Loveland, Colorado", Prepared by CTL Thompson Inc., February 17, 2015.
- CTL, 2015b. "Phase I Environmental Site Assessment, 201 North Lincoln Avenue, Loveland, Colorado", Prepared by CTL Thompson Inc., June 26, 2015.
- EPA, 2015. "Regional Screening Level Summary Table." United States Environmental Protection Agency, November, 2015.
- OPS, 2006. "Petroleum Storage Tanks (PST) at the Keck Auto aka Carroll's Conoco, 233 North Lincoln Avenue, Loveland, Larimer County, Colorado. (Event ID 7036), Colorado Department of Labor and Employment, Division of Oil and Public Safety, January 30, 2006.
- Pinyon, 2016a. "Phase II Environmental Site Assessment." Pinyon Environmental, Inc., February 5, 2016.
- Pinyon, 2016b. "Phase II Environmental Site Assessment – Additional Work." Pinyon Environmental, Inc., February 24, 2016.
- Spaine, 1998. "Tank Removals, Carroll's Conoco, 233 North Lincoln, Loveland, Colorado", Prepared by Spaine Environmental Group, Inc., December 21, 1998.
- Walsh, 2011. "Voluntary Clean-up Program Application, Leslie the Cleaner Property, 301 North Lincoln Avenue, Loveland, Colorado", Prepared by Walsh Environmental Scientists and Engineers, LLC, June 30, 2011.



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N Legend


 Site Boundary

USGS 7.5' Topographic Map
Loveland, Colorado 1962 (revised 1984)



Pinyon

SITE LOCATION

South Catalyst Project
Loveland, Colorado

Site Location: Section 13, T 5N, R 69W, 6th Principal Meridian

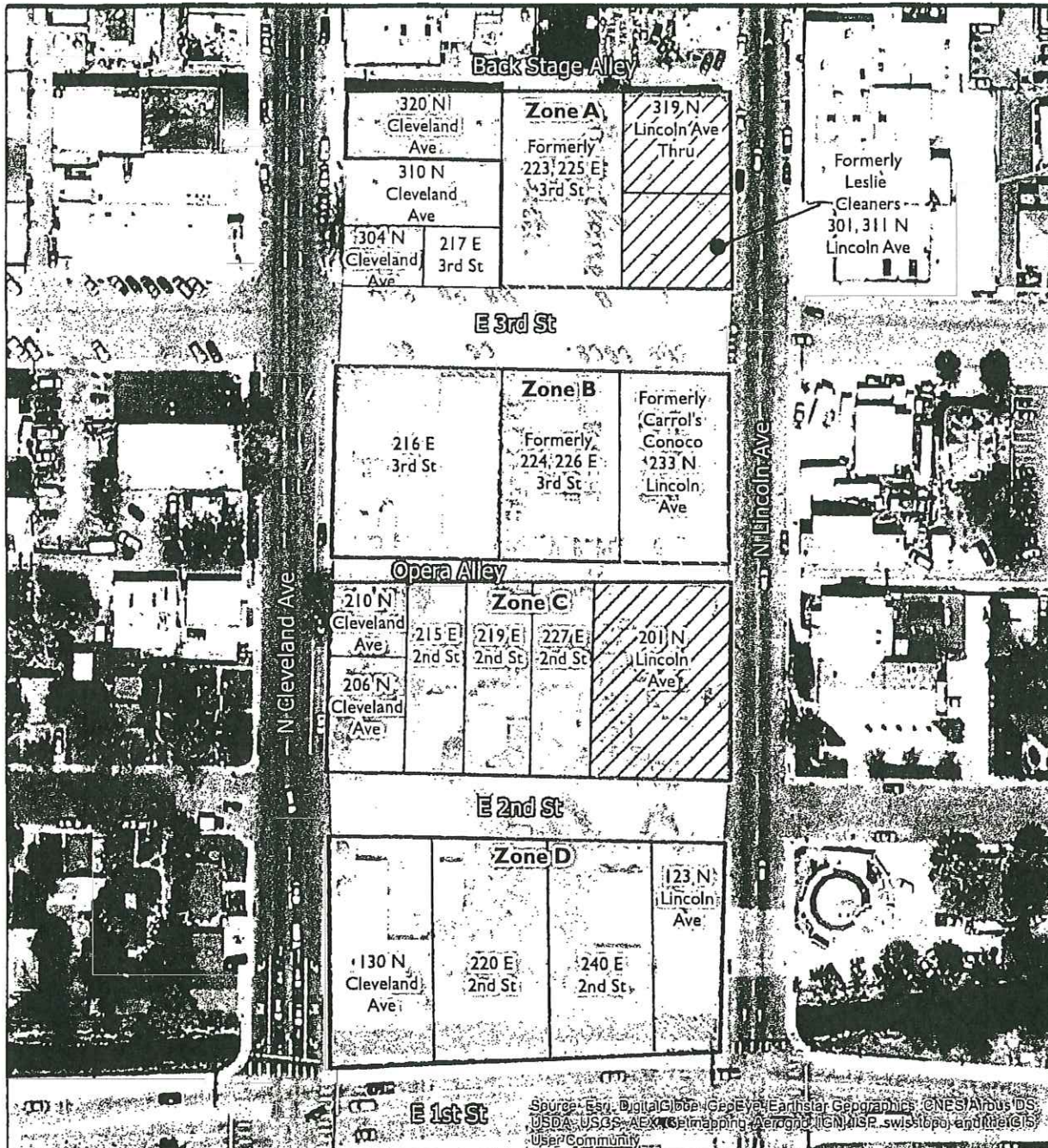
Pinyon Project Number: I/15-1073-01.8002

Drawn By: JAF

Reviewed By: TRG

Figure: I

Date: 12/18/2015



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, SIP, swisstopo, and the GIS User Community

Legend

N
 Zone Boundary
 Parcels
 0 50 100 Feet
 Area of Potential Petroleum and Chlorinated Solvent Impacted Soil and Groundwater
 Area of Potential Petroleum Impacted Soil and Groundwater

Pinyon

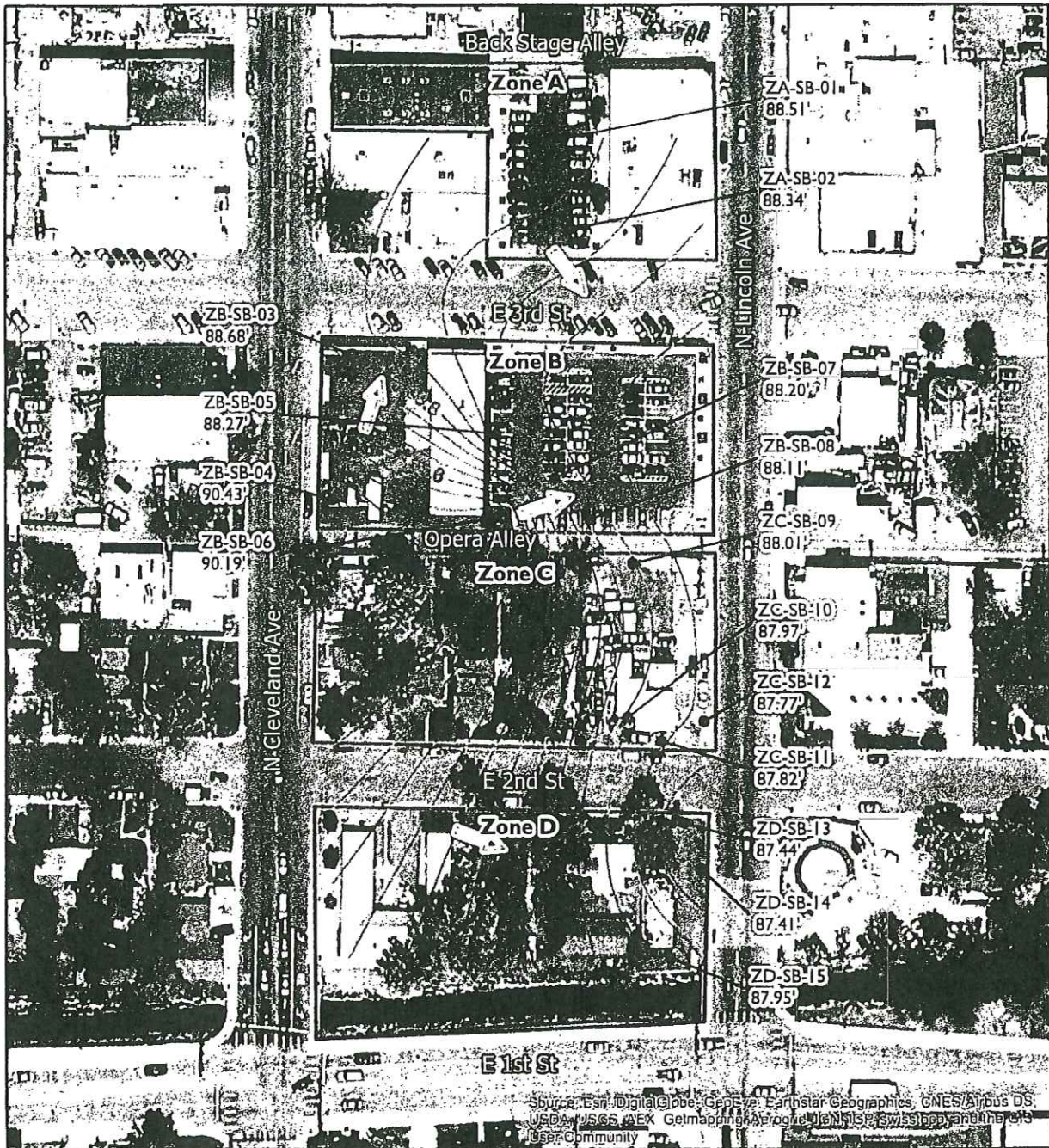
AREAS OF ENVIRONMENTAL CONCERN

South Catalyst Project
Loveland, Colorado

Site Location: Section 13, T 5N, R 69W, 6th Principal Meridian
 Pinyon Project Number: 1/15-1073-01.8002

Drawn By: SJA Figure: 3
 Reviewed By: PJM Date: 2/18/2016

Document Path: Z:\PROJECTS\2015\115107301 South Catalyst Project Loveland\Figures\Arch\Map\1X01\South Catalyst Project_Areas of Environmental Concern_Figure 3.mxd



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, S1P, Swisstopo, and others
 User Community

N Legend

- Soil Boring and Monitoring Well Locations with Relative Groundwater Elevations (ft)
- Relative Groundwater Elevation (ft)
- Approximate Groundwater Flow Direction
- Zone Boundary

0 50 100
Feet

Pinyon

RELATIVE GROUNDWATER ELEVATION ON 12/7/15
 South Catalyst Project
 Loveland, Colorado

Site Location: Section 13, T 5N, R 69W, 6th Principal Meridian
 Pinyon Project Number: 1/15-1073-01.8002

Drawn By: SJA Figure: 5
 Reviewed By: TRG Date: 2/18/2016

Toxicity Characteristic - Maximum Concentration of Contaminants
(Determine Levels using TCLP, Test Method 1311, EPA SW-846)
40CFR 261.24

USEPA Hazardous Waste Number	Constituent	CAS Number	Regulatory Level (mg/l)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D018 vol	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019 vol	Carbon Tetrachloride	56-23-5	0.5
D020 pest	Chlordane	57-74-9	0.03
D021 vol	Chlorobenzene	108-90-7	100.0
D022 vol	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0
D023 semivol	o-Cresol	95-48-7	200.0*
D024 semivol	m-Cresol	108-39-4	200.0*
D025 semivol	p-Cresol	106-44-5	200.0*
D026 semivol	Cresol	-----	200.0*
D016 herbicide	2,4-D	94-75-7	10.0
D027 vol	1,4-Dichlorobenzene	106-46-7	7.5
D028 vol	1,2-Dichloroethane	107-06-2	0.5
D029 vol	1,1-Dichloroethylene	75-35-4	0.7
D030 semivol	2,4-Dinitrotoluene	121-14-2	0.13
D012 pest	Endrin	72-20-8	0.02
D031 pest	Heptachlor, and its epoxide	76-44-8	0.008
D032 semivol	Hexachlorobenzene	118-74-1	0.13
D033 semivol	Hexachloro-1,3-butadiene	87-68-3	0.5
D034 semivol	Hexachloroethane	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013 pest	Lindane	58-89-9	0.4
D009	Mercury	7439-97-6	0.2
D014 pest	Methoxychlor	72-43-5	10.0
D035 vol	Methyl Ethyl Ketone (MEK) (2-Butanone)	78-93-3	200.0
D036 semivol	Nitrobenzene	98-95-3	2.0
D037 semivol	Pentachlorophenol	87-86-5	100.0
D038 semivol	Pyridine	110-86-1	5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039 vol	Tetrachloroethylene	127-18-4	0.7
D015 pest	Toxaphene	8001-35-2	0.5
D040 vol	Trichloroethylene	79-01-6	0.5
D041 semivol	2,4,5-Trichlorophenol	95-95-4	400.
D042 semivol	2,4,6-Trichlorophenol	88-06-2	2.0
D017 herbicide	2,4,5-TP (Silvex)	93-72-1	1.0
D043 vol	Vinyl Chloride	75-01-4	0.2

* If the o-, m-, and/or p-Cresol concentrations cannot be differentiated, then the total cresol (D026) concentration (200 ppm) is used.

Compounds presented in blue are the RCRA eight priority metals

Vol - Volatile organic compound

Semivol - Semi volatile organic compound

Pest - Pesticide

Exhibit 2 to Disposition and Redevelopment Agreement – Lease Agreement

LEASE AGREEMENT

This Lease Agreement (“Lease”) is entered into this ___ day of _____, 2017, by and between the **City of Loveland**, a Colorado municipal corporation (“City”), **The Foundry Theater, LLC**, a Colorado limited liability company (“Tenant”) and **The Foundry Loveland, LLC**, a Colorado limited liability company (“TFL”). The City and Tenant are individually referred to as a “Party” and collectively as the “Parties.”

RECITALS

Whereas, the City is the owner of that certain real property legally described as Lot 1, Morgan Subdivision, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 320 North Cleveland, Loveland, Colorado 80537 (“Property”); and

Whereas, the building structure (individually the “Building” and together with the Property, the “Premises”) located on the Property is owned by the City; and

Whereas, City and Tenant’s parent company, TFL, are parties to that certain Disposition and Redevelopment Agreement (“DRA”) dated on or about December 13, 2016, pursuant to which the City and TFL agreed upon the scope and nature of the redevelopment of certain real property located in the City generally between East 1st Street and East 4th Street, and between North Cleveland Avenue and North Lincoln Avenue (“Project”); and

Whereas, the Project includes a component which will consist of an approximately 625 seat, first run movie theater (“Movie Theater”), which the City believes will contribute to the Public Purpose (as defined in the DRA); and

Whereas, the projected lease revenue from the Movie Theater is not sufficient to meet Tenant’s required rate of return for the component of the Project consisting of the Movie Theater, and as such, pursuant to Section 17.2 of the DRA, the City is obligated to enter into an agreement related to the Property and the Building (collectively, the “Premises”) and to remit revenues generated by the Premises to TFL for a designated period of time as an additional incentive for TFL, as it relates to the Movie Theater; and

Whereas, the Parties agree that a long-term lease of the Premises to Tenant at a nominal rate is the most efficient and effective manner of complying with Section 17.2 of the DRA whereby Tenant will lease the Premises from the City, and retain any and all proceeds derived from its use or occupancy of the Premises, including any rental income generated from subleasing the Premises; and

Whereas, TFL would not otherwise enter into the DRA and agree to perform its obligations under the DRA, without the City entering into this Lease.

install additional heating and/or air conditioning or make such other changes or alterations as Tenant may desire. At the end of this Lease, all such fixtures, equipment, additions and/or alterations (except trade fixtures installed by Tenant) shall be and remain the property of the City; provided, however, the City shall have the option to require Tenant to remove any or all such fixtures, equipment, additions, and/or alterations and restore the Premises to the condition existing immediately prior to such change and/or installation, normal wear and tear excepted, at Tenant's sole cost and expense. All such work shall be done in a good and workmanlike manner and shall consist of new materials unless agreed to otherwise by the City. Any and all repairs, changes and/or modifications thereto shall be the responsibility and at the expense of Tenant and shall conform to all current building codes and requirements of the City of Loveland. To the extent City does not respond to Tenant's request to make alterations as set forth herein, within thirty (30) days of Tenant's request, the City shall be deemed to have approved such request.

8. Right to Inspect Premises. The City shall have the right at all reasonable times to enter the Premises for any and all purposes not inconsistent with this Lease, provided such action does not unreasonably interfere with Tenant's use, occupancy, or security requirements of the Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property as determined by the City, the City shall provide twenty-four (24) hours' prior written notice of its intent to inspect the Premises.

9. Maintenance and Repair of the Building.

a. The City shall keep and maintain the structural components of the Premises, including, without limitation, the roof, foundation, fire protection sprinkling systems, parking lots, walkways surrounding the Premises, and structural soundness of the exterior walls ("Structural Components") in good condition and repair. However, Tenant shall reimburse the City for costs associated with the maintenance and repair of the Structural Components due to damage caused by Tenant, its employees, or agents, normal wear and tear excepted. Invoices for any such maintenance or repair shall be paid by Tenant within thirty (30) days of invoice. In addition, the City shall be responsible for the replacement of plumbing, heating, air conditioning, and/or electric systems past their useful lives.

b. Subject to Landlord's obligations under subsection (a) above, Tenant, at its own cost, shall be responsible for maintaining the Premises in a neat and clean condition including, without limitation, regular removal of trash, painting of interior walls, replacement of light fixtures and ceiling tiles, plumbing, heating, air conditioning, and electric systems, in good condition and repair at Tenant's cost and expense. Tenant shall not allow any accumulation of trash or debris on the Premises. All receiving and delivery of goods and merchandise and all of the removal of garbage and refuse shall be made in a manner satisfactory to the City. No storage of any material outside of the Building shall be allowed. All window glass and doors in the Building shall be the responsibility of Tenant and any replacement or repair shall be promptly completed at the expense of Tenant.

by reason of negligence of Tenant, its officers, employees, agents, subcontractors, or business invitees. The general liability policy shall be written as a primary policy not contributing to and not in excess of coverage the City may carry.

c. Tenant shall procure and keep in force a policy of renter's insurance for all improvements, fixtures, and equipment, which are not part of the Premises but are required for access to, or use and enjoyment of the Premises, against loss or damage by fire or theft.

d. Policies required herein shall be with companies qualified to do business in Colorado with a general policyholder's financial rating reasonably acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days' prior written notice to the City. Tenant shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal Tenant changes to "occurrence," Tenant shall carry a one-year tail.

e. Certificates of insurance shall be completed by the Tenant's and/or sub-lessee's insurance agent as evidence that the policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the City.

f. The City and Tenant hereby grant to each other, on behalf of any insurer providing fire and extended coverage to either of them covering the Premises, Building, Property or other improvements thereon or contents thereof, a waiver of any right of subrogation any such insurer of one Party may acquire against the other or as against City or Tenant by virtue of payment of any loss under such insurance. Such a waiver shall be effective so long as City and Tenant are empowered to grant such waiver under the terms of their respective insurance policy or policies, and such waiver shall stand mutually terminated as of the date either City or Tenant gives notice to the other that the power to grant such waiver has been so terminated.

g. Tenant may procure and keep in force a policy of Business Income/Extra Expense coverage for any expenses that Tenant may incur in the event the Building, is uninhabitable or otherwise not useable for Tenant's purposes, in whole or in part, while this Lease remains in effect. In addition to any other limitation on City liability set forth in this Lease, the City shall not be liable for any expenses incurred by Tenant that would otherwise be covered by such coverage.

14. **Indemnity.** Tenant shall assume the risk of all personal injuries, including death resulting therefrom, to persons and damage to or destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in connection with or arising out of the acts or omissions of Tenant, its employees, agents, servants, subcontractors, or authorized volunteers, or by the conditions created thereby. Tenant shall indemnify and hold harmless the City, its officers, agents, and employees from and against any and all claims, liabilities, costs, expenses, penalties, attorney's fees, and defense costs arising from such injuries to persons or damages to property based upon or arising (i) out of the acts or omissions of Tenant, its employees, agents,

City shall be required to provide a replacement property reasonably acceptable to Tenant, for Tenant to lease from the City under substantially the same terms and conditions set forth in this Lease, that will provide the Tenant with replacement rental income in the amount substantially equal to the trailing twelve (12) month average for Net Proceeds or liquidated damages in the amount equal to the trailing twelve (12) month average for Net Proceeds multiplied by the remaining Term of the Lease including extensions thereof. Such obligation is subject to annual appropriation, provided however, any such submission to City Council will require an explanation to City Council as to the intent and purpose of this Lease as described in the above recitals. If the Lease is not terminated, then City agrees, at City's sole cost, to restore the Premises as soon as reasonable possible to a complete unit of like quality, character and utility for Tenant's purposes as existed prior to condemnation.

In either a total or partial condemnation, City shall have the exclusive right to any award made by the condemning authority except that the Tenant shall be entitled to claim from the condemning authority all damages for loss of business, damage to or loss of its fixtures and equipment, furniture and personal property, and the costs of removal, moving and reinstallation of any of the same, as well as the value of any leasehold improvements or Tenant's alterations to the Premises.

20. Default. Each of the following shall constitute a default under this Lease.

- a. Action or inaction by the City that materially affects Tenant's ability to generate revenue from the Premises in an amount substantially equal to the trailing twelve (12) month average for Net Proceeds; provided, however, that a failure to obtain City approvals for any change in zoning or use from the current zoning or use shall not qualify as a default; or
- b. Occurrence of an Event of Default (as defined in the DRA) under the DRA, and past any applicable cure period; or
- c. Failure to perform according to the provisions of this Lease.

21. Termination for Default. In the event of a default as set forth in Section 20 above, the defaulting Party may cure said default within thirty (30) days of written notice thereof by the non-defaulting Party, or if such default is of such a nature that it cannot be cured by diligent effort during such thirty (30) day period, such Party may cure its default by undertaking a course of performance within such grace period and diligently pursuing it thereafter. Otherwise, the non-defaulting Party may terminate this Lease immediately upon written notice of termination to the defaulting Party. In the event of default by Tenant and failure to cure such default by the specified date after notice as provided for herein, Tenant's right to possess the Premises shall cease, this Lease shall be terminated, and the Parties shall have no further rights, duties or obligations hereunder, except for those obligations which are expressly stated to survive termination. The City may then re-enter and take possession of the Premises or any part thereof, repossess the same, expel Tenant and those claiming through or under Tenant, and remove the effects of both or either (forcibly, if necessary) without being deemed guilty of any manner of trespass. In the event of default by City and failure to cure such default by the specified date after notice as provided for herein, Tenant at its election may choose from the following remedies: (i) be entitled to liquidated damages from City in the amount equal to the trailing twelve (12) month

and valid under applicable law. Venue for any judicial proceeding concerning this Lease shall be exclusively in the District Court for Larimer County, Colorado.

27. **Legal Construction.** In case any one or more of the provisions contained in this Lease shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease, and this Lease shall be constructed as if the invalid, illegal, or unenforceable provision had never been included in the Lease. Paragraph headings used in this Lease are for convenience of reference only and shall in no way define, control or affect the meaning or interpretation of any provision of this Lease.

28. **Relationship of Parties.** This Lease should not be construed to create an agency or employee relationship between the City and Tenant. Tenant shall exercise no supervision over any employee or official of the City and shall not represent that Tenant is an employee or agent of the City in any capacity. No employee or contractor of Tenant has any right to Worker's Compensation benefits from the City or its insurance carriers or funds. Tenant shall provide any workers' compensation insurance and all other insurance required by any applicable law for its employees.

29. **Beneficiaries.** This Lease is for the sole benefit of and binds the City and the Tenant, their successors and assigns. This Lease affords no claim, benefit, or right of action to any third party. Any party besides the City or Tenant receiving services or benefits under this Lease is only an incidental beneficiary.

30. **Financial Obligations of the City of Loveland.** Any financial obligation of the City under this Lease is contingent upon appropriation, budgeting and availability of specific funds to discharge those obligations. Nothing in this Lease constitutes a debt, a direct or indirect multiple fiscal year financial obligation, a pledge of the City's credit, or a payment guarantee by the City to Tenant.

31. **Amendment.** This Lease may only be altered or amended in writing, signed by duly authorized representatives of the City and Tenant, respectively.

32. **Mutual Cooperation.** The Parties each agree to use good faith efforts to cause satisfaction of all conditions to its obligations under this Lease, and to exercise good faith in fulfilling its obligations under this Lease and in cooperating with the other Party with respect to that Party's satisfaction and fulfillment of all that Party's conditions and obligations under this Lease.

33. **Operations Covenant.** Upon the Movie Theater opening for business to the public, in the event a movie theater is not operating on such real property for a period of more than twelve (12) consecutive months and Tenant has not secured a replacement tenant and/or use acceptable to the City, except in the event of damage or destruction and such Movie Theater has commenced reconstruction within such period of time, City, at its election, may require Tenant to assign back its interest in the Lease to City subject to existing sub-leases, and upon such assignment, the Parties shall be relieved of all further rights duties or obligations hereunder.

CITY:

City of Loveland, Colorado

By:

Stephen C. Adams, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

The Foundry Loveland, LLC, a Colorado limited liability company, hereby consents to and agrees to be bound by Section 4 hereof.

**The Foundry Loveland, LLC,
a Colorado limited liability company**

By: GP Foundry, LLC, a Colorado limited liability company, its
Manager

By: Brinkman Entity Management, LLC,
a Colorado limited liability company,
its Manager

By: _____
Kevin Brinkman, Manager

By: BBCP – GP Foundry, LLC,
a Colorado limited liability company,
its Manager

By: _____
Chad A. Brue, Manager

EXHIBIT D
2017 ELECTION NOTICE AND CERTIFIED RESULTS

ALL REGISTERED VOTERS

NOTICE OF ELECTION TO INCREASE DEBT

Election Date: November 7, 2017
Election Hours: 7:00 a.m. - 7:00 p.m.

Local Election Office: City Clerk's Office
500 E. 3rd St., Ste. 230
Loveland, CO 80537
(970) 962-2000

**CITY OF LOVELAND
REFERRED BALLOT ISSUE 5C
CITY- INITIATED MEASURES TO AUTHORIZE
THE ISSUANCE OF BONDS FOR
DOWNTOWN DEVELOPMENT AUTHORITY PROJECTS**

Ballot Title and Text:

Ballot Issue 5C

SHALL CITY OF LOVELAND DEBT BE INCREASED BY UP TO \$61,000,000, WITH A REPAYMENT COST OF NO MORE THAN \$135,000,000, WITHOUT RAISING TAXES, FOR THE PURPOSE OF FINANCING THE COSTS OF DEVELOPMENT PROJECTS TO BE UNDERTAKEN BY OR ON BEHALF OF THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PURSUANT TO THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT, WITH SUCH DEBT PAYABLE FROM AND SECURED BY A PLEDGE OF THE SPECIAL FUND OF THE CITY WHICH SHALL CONTAIN TAX INCREMENT REVENUES LEVIED AND COLLECTED WITHIN THE BOUNDARIES OF THE AUTHORITY.

WITHOUT RAISING TAXES, SHALL CITY OF LOVELAND DEBT BE INCREASED BY UP TO \$61,000,000, WITH A REPAYMENT COST OF NO MORE THAN \$135,000,000, FOR THE PURPOSE OF FINANCING THE COSTS OF DEVELOPMENT PROJECTS TO BE UNDERTAKEN BY OR ON BEHALF OF THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PURSUANT TO THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT, AS IT MAY BE AMENDED FROM TIME TO TIME, INCLUDING WITHOUT LIMITATION, PARKING, UTILITIES, STREETS, SIDEWALKS, ALLEYS AND BEAUTIFICATION, AND APPLICABLE PROVISIONS OF COLORADO LAW; SUCH DEBT AND THE INTEREST THEREON TO BE PAYABLE FROM AND SECURED BY A PLEDGE OF THE SPECIAL FUND OF THE CITY WHICH SHALL CONTAIN TAX INCREMENT REVENUES LEVIED AND COLLECTED WITHIN THE BOUNDARIES OF THE AUTHORITY; AND SHALL SUCH DEBT BE EVIDENCED BY BONDS, NOTES, CONTRACTS OR OTHER FINANCIAL OBLIGATIONS TO BE SOLD IN ONE SERIES OR MORE FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT THEREOF, ON TERMS AND CONDITIONS, AND WITH SUCH MATURITIES AS PERMITTED BY LAW AND AS THE CITY MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM OF NOT MORE THAN 3% OF THE PRINCIPAL AMOUNT SO REDEEMED; AND SHALL THE CITY AND THE AUTHORITY BE AUTHORIZED TO COLLECT, RETAIN AND SPEND THE TAX INCREMENT REVENUES, THE BOND PROCEEDS AND INVESTMENT INCOME THEREON AS A VOTER-APPROVED REVENUE CHANGE, AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

Total City Fiscal Year Spending:

<u>Fiscal Year</u>	
2017 (estimated)	\$ 86,605,197
2016 (actual)	\$ 86,267,675
2015 (actual)	\$ 94,792,684
2014 (actual)	\$ 93,133,319
2013 (actual)	\$ 82,281,166

Overall percentage change from 2013 through 2017	5.3%
Overall dollar change from 2013 through 2017	\$ 4,324,031

Information on City's Proposed Debt

BALLOT ISSUE 5C:

Principal Amount of Proposed Bonds:	Not to exceed \$ 61,000,000
Maximum Annual City Repayment Cost:	Not to exceed \$135,000,000
Total City Repayment Cost:	Not to exceed \$135,000,000

Information on City's Current Debt*

Principal Amount Outstanding Debt:	\$4,480,000
Maximum Annual Repayment Cost:	\$5,039,598
Remaining Total Repayment Cost:	\$5,297,850

*Excluded from debt are enterprise and annual appropriation obligations.

Summaries of written comments filed with the election officer:

Summary of Written Comments FOR Ballot Issue 5C:

The vote to approve the creation of Loveland's Downtown Development Authority, (DDA), was passed in 2015 by businesses, property owners and residents in the downtown area to address deteriorating property values, structures and infrastructure within the central business district and assist in downtown redevelopment efforts. The DDA serves the downtown community by managing and supporting the ongoing revitalization efforts.

This year 5C authorizes Loveland to incur debt for use on approved development and redevelopment projects. The DDA has worked with both City Council and the Planning Commission to adopt a Plan of Development, which includes projects for downtown that address the critical need for more parking, lighting and infrastructure.

Loveland has been making strides toward downtown revitalization. With the creation of the Downtown Development Authority and the Loveland Downtown Partnership, we are starting to see improvements like updated storefronts, new businesses, better lighting and additional parking. There is an exciting energy from those working, living, and visiting downtown. This will ensure the necessary funding for critical things like additional parking, street and sidewalk improvements, safety advancement and updated public utilities.

Passing 5C will mean we are investing in the future of downtown and creating a strong, functioning DDA with the necessary financing mechanisms to accomplish the long term vision. Loveland's DDA is as much about the economic reengineering of public spaces as it is about preserving a strong sense of community. Downtown is the heart and soul of Loveland, and 5C supports the critical funding initiatives needed to ensure it continues to thrive.

By supporting 5C, we, as downtown businesses, property owners, and residents are ensuring that we are investing in downtown and creating the funding needed to ensure our downtown continues to thrive for years to come. 5C supports an economically successful, vibrant and inviting downtown.

Summary of Written Comments AGAINST Ballot Issue 5C:

This ballot issue seeks voter approval for a \$61 million revolving line of credit for the City to be used by the City's Downtown Development Authority (DDA) to give subsidies to privately owned, commercial businesses in the downtown area. All of Loveland's residents (and others, too) are being committed to keeping this line of credit available for the next thirty years, and it can be continued for another twenty years without further voter approval.

The money to pay each subsidy is borrowed from the line of credit. Interest of approximately 6% per year is charged on the outstanding balance. The diverted excess sales tax collection on new properties is used to pay the debt. Meanwhile, the diverted property taxes are not just those paid to the City, but to the County, ambulance district, mosquito-control district, water district, and above all the School District.

The ballot language deceptively says that payments on this line of credit will be "without raising taxes". It can't help but raise taxes. In the case of schools, the loss of revenue causes an automatic rise in the mill levy for repaying school bonds. For everything else in the schools, counties, etc., not getting all of the revenue to which they are entitled from past voter decisions, planned services will have to be curtailed or voters will have to be asked to raise tax rates.

Additional language has been added into the ballot question that permits the DDA to continue the sales tax diversion even after the line of credit is paid off and closed; again without further voter approval. They can even use it to make additional subsidies if they go beyond their credit limit.

This ballot issue has importance and costs well beyond downtown. Only 1% of the registered voters of Loveland will get to vote on it. The corporations getting the subsidies will get to vote on it. Out-of-town landowners downtown will get to vote on it; however, 99% of Loveland's registered voters will not.

The few registered voters in the DDA might consider the interests of the rest of Loveland when returning their ballots on 5C.

ABSTRACT OF VOTES CAST AND STATEMENT OF CERTIFICATE OF DETERMINATION

Abstract of Votes Cast and Statement and Certificate of Determination of the Regular Municipal Election held in Loveland, Colorado, on Tuesday, November 7, 2017.

POSITION / MEASURE		Total No. of Votes Cast	Ward 1	Ward 2	Ward 3	Ward 4
Loveland - Mayor						
John H. Fogle		6,331				
Jacki Marsh		8,310				
Larry Heckel		3,164				
City Councilor Ward 1						
Lenard Larkin		1,703				
Jeremy Jersvig		2,563				
City Councilor Ward 2						
Gail Snyder		1,645				
Kathi Wright		2,066				
Gary Lindquist		1,022				
City Councilor Ward 3						
Steve Olson		2,113				
John Ryan Keil		919				
City Councilor Ward 4						
Dave Clark		3,143				
		Total No. of Votes Cast		337	180	157
				YES	NO	

POSITION / MEASURE

LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY. BALLOT ISSUE NO. 5C. SHALL CITY OF LOVELAND DEBT BE INCREASED BY UP TO \$61,000,000, WITH A REPAYMENT COST OF NO MORE THAN \$135,000,000, WITHOUT RAISING TAXES. FOR THE PURPOSE OF FINANCING THE COSTS OF DEVELOPMENT PROJECTS TO BE UNDERTAKEN BY OR ON BEHALF OF THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PURSUANT TO THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT, WITH SUCH DEBT PAYABLE FROM AND SECURED BY A PLEDGE OF THE SPECIAL FUND OF THE CITY WHICH SHALL CONTAIN TAX INCREMENT REVENUES LEVIED AND COLLECTED WITHIN THE BOUNDARIES OF THE AUTHORITY. WITHOUT RAISING TAXES, SHALL CITY OF LOVELAND DEBT BE INCREASED BY UP TO \$61,000,000, WITH A REPAYMENT COST OF NO MORE THAN \$135,000,000, FOR THE PURPOSE OF FINANCING THE COSTS OF DEVELOPMENT PROJECTS TO BE UNDERTAKEN BY OR ON BEHALF OF THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PURSUANT TO THE LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY PLAN OF DEVELOPMENT. AS IT MAY BE AMENDED FROM TIME TO TIME, INCLUDING WITHOUT LIMITATION, PARKING, UTILITIES, STREETS, SIDEWALKS, ALLEYS AND BEAUTIFICATION, AND APPLICABLE PROVISIONS OF COLORADO LAW, SUCH DEBT AND THE INTEREST THEREON TO BE PAYABLE FROM AND SECURED BY A PLEDGE OF THE SPECIAL FUND OF THE CITY WHICH SHALL CONTAIN TAX INCREMENT REVENUES LEVIED AND COLLECTED WITHIN THE BOUNDARIES OF THE AUTHORITY. AND SHALL SUCH DEBT BE EVIDENCED BY BONDS, NOTES, CONTRACTS OR OTHER FINANCIAL OBLIGATIONS TO BE SOLD IN ONE SERIES OR MORE FOR A PRICE ABOVE OR BELOW THE PRINCIPAL AMOUNT THEREOF, ON TERMS AND CONDITIONS, AND WITH SUCH MATURITIES AS PERMITTED BY LAW AND AS THE CITY MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF THE PREMIUM OF NOT MORE THAN 3% OF THE PRINCIPAL AMOUNT SO REDEEMED, AND SHALL THE CITY AND THE AUTHORITY BE AUTHORIZED TO COLLECT, RETAIN AND SPEND THE TAX INCREMENT REVENUES, THE BOND PROCEEDS AND INVESTMENT INCOME THEREON AS A VOTER-APPROVED REVENUE CHANGE, AND EXCEPTION TO THE LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

We, the undersigned, Designated Election Officials of an Election held in said City of Loveland, in the State of Colorado, on Tuesday, the 7th day of November, A.D. 2017, for the election for 4 Council Seats and Mayor and one TABOR ISSUE for the Loveland Downtown Development Authority, that the above and foregoing is a true and correct abstract of the votes cast at said election, as shown by the abstract provided by the Larmer County Clerk and Recorder for the voting precincts in said City of Loveland.

WITNESS our hands and seals this 27th day of November, A.D., 2017.


Beverly A. Walker, Acting City Clerk




Kristen Gjelde-Bennett, Acting Deputy City Clerk