

**SECOND AMENDMENT  
TO  
DISPOSITION AND REDEVELOPMENT AGREEMENT**

THIS SECOND AMENDMENT TO DISPOSITION AND REDEVELOPMENT AGREEMENT (this “Second Amendment”) is entered into to be effective as of April 26, 2017 (the “Effective Date”), between the CITY OF LOVELAND, COLORADO, a Colorado home rule municipality (the “City”) and The Foundry Loveland, LLC, a Colorado limited liability company (the “Developer”). The City and the Developer shall be collectively referred to hereafter as “Parties.”

**RECITALS:**

A. 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 “First Amendment” and collectively, the “DRA”);

B. Capitalized terms that are not defined herein shall have the meanings ascribed to such terms in the DRA;

C. 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, which Certificates of Participation constitute Bonds for purposes of 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

D. The Parties have determined that certain other amendments to the DRA will be mutually beneficial.

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

**AGREEMENT**

1. Incorporation of Recitals. The above stated recitals are hereby incorporated as substantive terms of this Second Amendment.

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

Covenant shall be revised as required by CDPHE. Exhibit 1 generally identifies the portion of the Developer Parcel that is expected to be subject to the Environmental Covenant (the "Proposed Covenant Area"). The City, in coordination with CDPHE, shall be responsible for drafting the Environmental Covenant and shall retain responsibility for drafting the final version of the Environmental Covenant after conveyance of the Developer Parcel to Developer; provided, however, that Developer shall be permitted to participate in the negotiation of the Environmental Covenant. Developer agrees to take no action inconsistent with the Environmental Covenant in the Proposed Covenant Area. Upon approval of the final version of the Environmental Covenant by CDPHE, the Developer agrees to record the Environmental Covenant with the Larimer County Clerk and Recorder's Office. In the event the Environmental Covenant materially affects Developer's ability to comply with its obligations under the Agreement including, without limitation, Developer's ability to develop any portion of the Site as contemplated by the Agreement in accordance with the Developer's budget, Developer and City shall enter into an amendment to the Agreement reasonably acceptable to both parties which will provide, in substance, that the Developer will not be in breach of the Agreement due to the Environmental Covenant and the restrictions set forth therein and addressing such other matters as may be reasonably necessary due to the Environmental Covenant.

c. Section 5.4. Section 5.4 is hereby deleted in its entirety and replaced with the following:

Section 5.4 Certificates of Participation, Series 2017. The City hereby certifies that the Certificates of Participation, Series 2017 have been executed and delivered and the net proceeds thereof in the amount of \$14,481,856.75 have been remitted to the City, and shall be applied by the City to the payment or reimbursement of Eligible Costs, subject to the terms and provisions of this Agreement.

d. Section 13.2. The last paragraph of Section 13.2 is hereby deleted and replaced with the following:

The District shall enter into the District Pledge Agreement on or prior to May 19, 2017, or the Cap Amount shall be reduced in accordance with Section 15 hereof.

e. Section 13.3. Section 13.3 is hereby amended by the addition of the following paragraphs at the end of such Section:

The Parties hereby acknowledge that the Certificates of Participation, Series 2017 have been executed and delivered and, for purposes of this Agreement, constitute "Bonds" hereunder.

The City hereby directs the Developer to remit, or cause to be remitted, the Developer Pledged Revenues to the City 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.

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

obligated to pledge and remit revenues from the District Debt Service Mill Levy in excess of twenty-five (25) mills.

g. Section 17.2. Section 17.2 is hereby deleted in its entirety and replaced with the following:

On or prior to the date of the Closing on the conveyance of the Developer Parcel, the Developer and the City shall enter into a lease agreement related to 320 North Cleveland Avenue in substantially the form attached hereto as Exhibit 2.

h. Section 19.1. Section 19.1 is hereby amended by including the following paragraph at the end of such Section:

A portion of the Parking Facility will be constructed on Lot 1, Block 2 of the Loveland Eleventh Subdivision (the "L1B2 Parcel") as further set forth in the Plat of the subdivision. The Parties hereby acknowledge that the L1B2 Parcel will include a portion of the Parking Facility located underground ("Unit 1") and that a mixed-use building will be located above Unit 1 ("Unit 2" and together with Unit 1, the "Units"). The Parties intend that Unit 1 will be owned by the City and that Unit 2 will be designated for separate ownership and initially owned by the Developer, or its designee. The Parties agree to act in good faith to negotiate and enter into an agreement that will effectuate the separate ownership of Unit 1 and Unit 2 in accordance with the provisions hereof. Unit 2 will be located on top of the cap of Unit 1 and will comprise the L1B2 surface and all improvements or rights to construct improvements above Unit 2 (including, without limitation, the air space above Unit 1). It is the Parties' intent that the horizontal boundary of the Units shall be the property lines of the L1B2 Parcel and the vertical boundary between the Units will be the top of the cap of Unit 1.

The City and the Developer shall act in good faith and use commercially reasonable efforts to agree on substantially final forms of the documents to be executed by the Parties to effectuate the separate ownership of the Units by May 31, 2017. In the event such agreement is not reached by May 31, 2017 the following dates and deadlines set forth in the Agreement shall be extended by one day for each day after May 31, 2017, until agreement on the substantially final forms of the documents is reached:

- (i) The City's right to require reconveyance of the Phase Two Parcel in the event that the Construction has not Commenced on a hotel or office building, or other improvement agreed to in writing by the City, on the Phase Two Parcel by December 31, 2018 as set forth in Section 12.8 hereof;
- (ii) The 45 day deadline relating to the Commencement of Construction set forth in Section 21.1 and 27(b) of the Agreement; and

- (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.

To the extent that the Parking Facility constitutes leased property under the Lease, for so long as the Certificates of Participation, Series 2017 are outstanding or the Site Lease remains in effect, the operation and maintenance fees to be imposed pursuant to this Section 19.12 shall not be reduced without the prior written consent of the Initial Purchaser and the Trustee.

k. Section 19.13. Section 19.13 (which was incorrectly designated in the DRA as Section 19.12 – Parking Facility Operations Plan) is hereby deleted in its entirety and replaced by the following:

Section 19.13. Parking Agreement. On or prior to the date of substantial completion of the Parking Facility, the City shall enter into a Parking Agreement substantially in accordance with this Section 19.13, which may be in the form of a parking covenant recorded in the real estate records. Except as hereinafter provided, the Parking Agreement shall allocate and designate spaces for use by the residents of the apartments in the Project in an amount equal to one space per constructed apartment unit, but in no event more than 155 allocated spaces. The Parking Agreement shall provide that the City shall not impose any fees or charges for the use of these parking spaces by the residents, provided that the Developer shall impose the operation and maintenance fees on such residents in accordance with the terms and provisions of Section 19.12 of this Agreement. The Parking Agreement shall further provide that to the extent that the Parking Facility is leased property under the Lease, and in the event that the Lease is terminated and the Site Lease remains in full force and effect, the Trustee or any purchaser, assignee or sublessee of the Trustee shall not be required to allocate one parking space per constructed apartment unit, but shall be required to allocate one parking space per occupied apartment unit (in an amount not exceeding 155 spaces), at no additional charge to the residents (other than the operation and maintenance fees imposed pursuant to Section 19.12 of this Agreement).

l. Section 21.4. Section 21.4 is hereby amended by including the following sentence at the end of such Section:

Notwithstanding the foregoing prohibitions, the parties recognize that Developer will engage in “pre-leasing” activities prior to issuance of any Certificate of Occupancy for each Phase of the Project and leasing of any part of the Site or the buildings or structures thereon in the ordinary course of business shall not require the City’s consent.

m. Section 28.6. The first two sentences of Section 28.6 are hereby deleted in their entirety and replaced by the following:

Notwithstanding anything to the contrary herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of City and Developer; provided, however, that except for assignments to Authorized Lenders and as hereafter

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.



IN WITNESS WHEREOF, the Parties have entered into this Second Amendment on the date set forth above.

CITY:

CITY OF LOVELAND,  
a Colorado home rule municipality

By: \_\_\_\_\_  
Stephen C. Adams, City Manager

ATTEST:

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

APPROVED AS TO FORM:

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

DEVELOPER:

The Foundry Loveland, LLC,  
a Colorado limited liability company

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

By:   
Kevin Brinkman, Manager

Exhibit 1

(Include Proposed Form of Environmental Covenant)

**This property is subject to an Environmental Covenant held by  
the Colorado Department of Public Health and Environment  
pursuant to section 25-15-321, C.R.S.**

**ENVIRONMENTAL  
COVENANT**

The Foundry Loveland, LLC ("Foundry") grants an Environmental Covenant ("Covenant") this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to section 25-15-321, C.R.S. of the Colorado Hazardous Waste Act, section 25-15-101, *et seq.*, C.R.S.

WHEREAS, Foundry is the owner of certain property commonly referred to as the former Leslie the Cleaner Site, located at 301 North Lincoln Avenue, Loveland, Colorado, 80537, more particularly described in Exhibits A, B, and C attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, the Department, which is located at 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530, is authorized to approve Environmental Covenants pursuant to section 25-15-320 of the Colorado Hazardous Waste Act, section 25-15-101, *et seq.* 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530; and

WHEREAS, for purposes of indexing in the County Clerk and Recorder's office Grantor-Grantee index only, Foundry shall be considered the **Grantor**, and the Department shall be considered the **Grantee**. Nothing in the preceding sentence shall be construed to create or transfer any right, title or interest in the Property; and

WHEREAS, pursuant to the Department's August 15, 2011 letter of approval of the City of Loveland, Colorado's ("City's") Voluntary Clean Up Plan for the Leslie the Cleaner Site, which is located at 301 North Lincoln Avenue, the Property is the subject of a voluntary cleanup effort pursuant to the Colorado Voluntary Cleanup and Redevelopment Act, section 25-16-301 to -311, C.R.S; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by restricting uses of the Property in limited areas which exhibit residual levels of contamination above regulatory standards that could, if engaged in, lead to adverse impact to human health or the environment; and

WHEREAS, Foundry desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and

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

Plan and any amendments thereto, and which are on file at the Department's Records Center and which an initial copy without amendments thereto is provided as Exhibit C to this covenant and incorporated herein by reference.

- D. Construction dewatering is permitted in accordance with a construction dewatering permit or in accordance with permissions that may be considered by the local Publically-Owned Treatment Works. Any person applying for a construction dewatering permit on the Property must notify the Water Quality Control Division of the Colorado Department of Public Health and Environment that the groundwater is contaminated, and an environmental covenant has been imposed.
- E. Any new construction of enclosed buildings to include uses at grade or below-grade level for residential, childcare, eldercare, or care of the infirm shall include vapor intrusion controls such as a vapor barrier, a sub-slab depressurization system, or passive venting system, as may be appropriate and determined by standard engineering practices.
- F. Any modification to enclosed buildings to include residential uses at grade or below grade level shall include vapor intrusion controls as may be appropriate and determined by standard engineering practices.

2) Modifications: This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. OWNER may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- A. a proposal to perform additional remedial work;
- B. new information regarding the risks posed by the residual contamination;
- C. information demonstrating that residual contamination has diminished;
- D. information demonstrating that an engineered feature or structure is no longer necessary;
- E. information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
- F. other appropriate supporting information.

3) Conveyances: OWNER shall notify the Department at least fifteen (15) days in advance of the closing on any proposed sale or other conveyance of any interest in any or all of the Property.

- 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

Civic Center  
500 E. 3rd St., Suite 330  
Loveland, CO 80537

The Foundry Loveland, LLC has caused this instrument to be executed this \_\_\_\_\_ day of  
\_2017

THE FOUNDRY LOVELAND, LLC

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

Title: \_\_\_\_\_

DRAFT

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ on behalf of THE FOUNDRY LOVELAND, LLC

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Address  
\_\_\_\_\_

My commission expires: \_\_\_\_\_

Accepted by the Colorado Department of Public Health and Environment this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ on behalf of the Colorado Department of Public Health and Environment.

\_\_\_\_\_  
Notary Public

Address

---

My commission expires: \_\_\_\_\_

DRAFT

**EXHIBIT A**

(Legal Description)

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

DRAFT

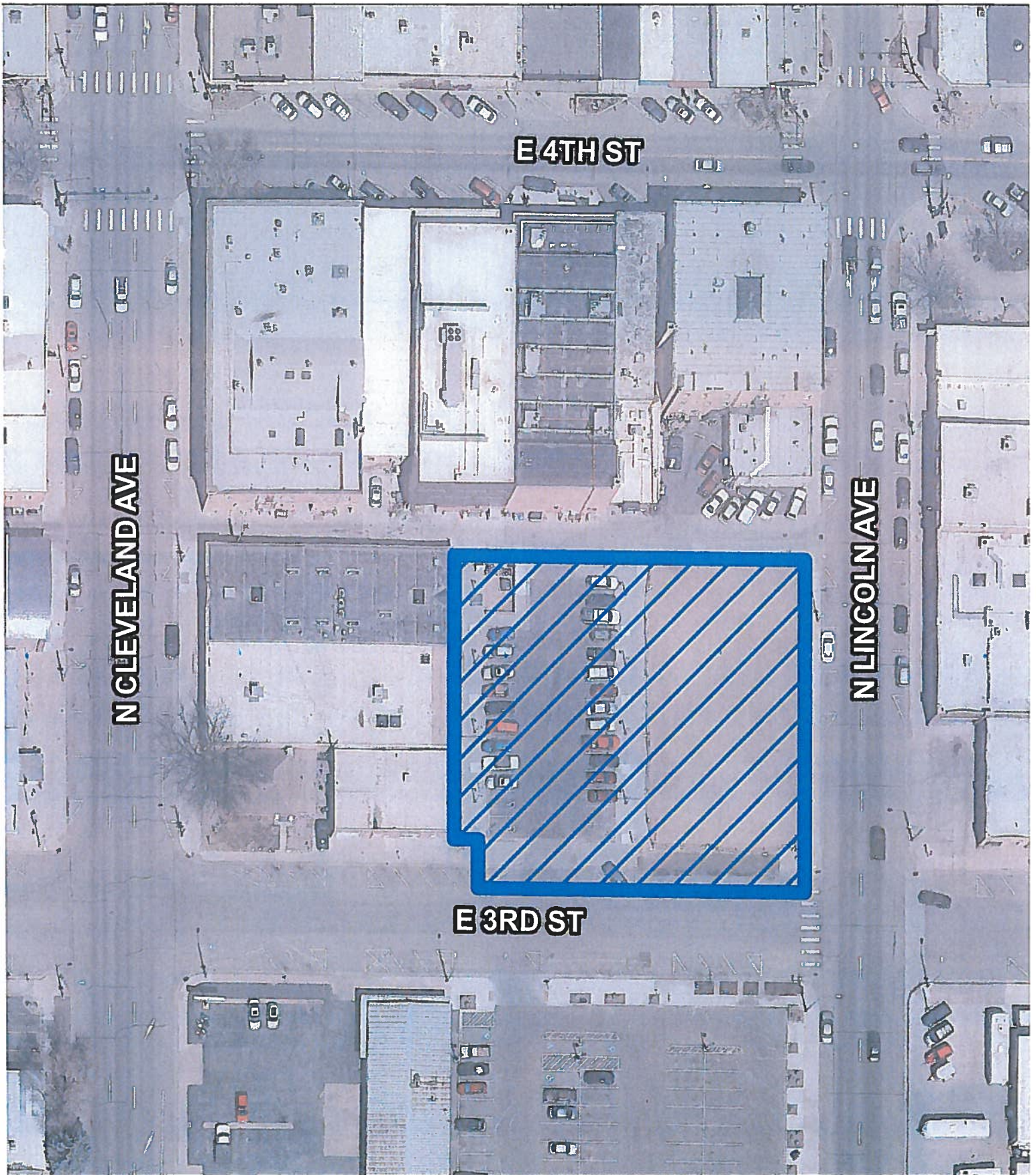
**EXHIBIT B**

Covenant Area Map

*[SEE ATTACHED DRAFT – SPECIFIC AREA WILL DEPEND ON CDPHE APPROVAL OF VCUP AMENDMENT]*

DRAFT

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



**Legend**

 Leslie The Cleaner- Environmental Covenants Boundary



April 11, 2017

**EXHIBIT C**

Materials Management Plan

*[See attachment]*

DRAFT



Corporate Headquarters  
9100 West Jewell Avenue, Suite 200 Lakewood, CO 80232  
TEL 303 980 5200 FAX 303 980 0089  
www.pinyon-env.com

February 18, 2016  
Updated February 23, 2016

## Materials Management Plan

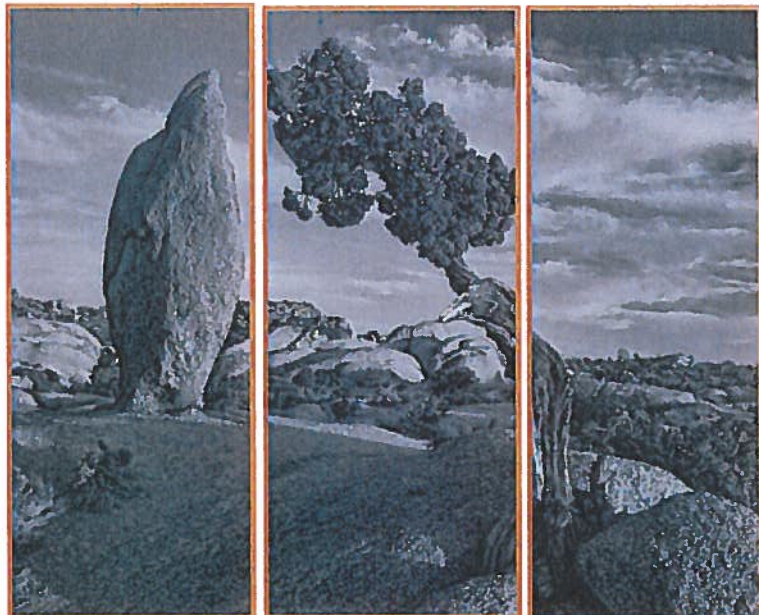
South Catalyst Project  
Loveland, Colorado

**Prepared For:**

City of Loveland  
500 East 3<sup>rd</sup> Street, Suite 300  
Loveland, Colorado 80537

**Pinyon Project No.:**

1/15-1073-01.8000





Corporate Headquarters  
9100 West Jewell Avenue, Suite 200 Lakewood, CO 80232  
TEL 303 980 5200 FAX 303 980 0089  
www.pinyon-env.com

February 18, 2016  
Updated February 23, 2016

## Materials Management Plan

South Catalyst Project  
Loveland, Colorado


**Prepared For:**

City of Loveland  
500 East 3<sup>rd</sup> Street, Suite 300  
Loveland, Colorado 80537

**Pinyon Project No.:**

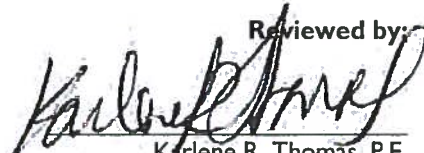
1/15-1073-01.8000

**Prepared by:**



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Environmental Engineer

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### Acronyms

<b>Acronym</b>	<b>Definition</b>
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

## Table of Contents (continued)

<b>Acronym</b>	<b>Definition</b>
PAH	Polycyclic Aromatic Hydrocarbons
PAL	Predetermined Action Levels
PCB	Polychlorinated biphenyls
PCE	Tetrachloroethene
PPE	Personal Protective Equipment
PID	Photoionization Detector
PPE	Personal Protection Equipment
PST	Petroleum Storage Tanks
QA	Quality Assurance
RAMP	Remediation Activities Management Plan
RCRA	Resource Conservation and Recovery Act
RSL	Regional Screening Level
SWMP	Stormwater Management Plan
TCLP	Toxicity Characteristic Leaching Procedure
TPH	Total Petroleum Hydrocarbon
UCLM	Upper confidence limit of the mean
UST	Underground Storage Tank
VCUP	Voluntary Clean Up Plan
VOC	Volatile Organic Compounds
WQCC	Water Quality Control Commission
WQCD	Water Quality Control Division

## **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 1<sup>st</sup> and 4<sup>th</sup> 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.

### **1.1 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

- Asbestos containing material (ACM) discovered during construction or demolition
- Lead-based paint associated with structures, signage, light posts, etc.
- Waste material to be contained for further characterization
- Contaminated groundwater requiring on-site treatment or off-site disposal

## 1.2 Proposed Action

The Site is bound by the Loveland and Greeley Canal and East 1<sup>st</sup> Street to the south; the Back Stage Alley to the north (which is located between East 3<sup>rd</sup> Street and East 4<sup>th</sup> Street); North Cleveland Avenue to the west; and North Lincoln Avenue to the east. Additionally, the Site is classified into Zones which are described below (Figure 2):

- Zone A is between East 3<sup>rd</sup> Street and the alley (Back Stage Alley), and between North Lincoln Avenue and North Cleveland Avenue. Zone A includes 319 and 320 North Cleveland Avenue, 301 and 311 North Lincoln Avenue, and the parking lot was formerly 223 and 225 East 3<sup>rd</sup> Street.
- Zone B is between the Opera Alley and East 3<sup>rd</sup> Street, and between North Lincoln Avenue and North Cleveland Avenue. Zone B includes 216 and 270 East 3<sup>rd</sup> Street, which was formerly 224 and 226 East 3<sup>rd</sup> Street, and 233 North Lincoln Avenue.
- Zone C is between East 2<sup>nd</sup> Street and Opera Alley, and between North Lincoln Avenue and North Cleveland Avenue. Zone C includes 206 and 210 North Cleveland Avenue, 201 North Lincoln Avenue, and 215, 219, and 227 East 2<sup>nd</sup> Street.
- Zone D is between East 1<sup>st</sup> Street and East 2<sup>nd</sup> Street, and between North Lincoln Avenue and North Cleveland Avenue. Zone D includes 130 North Cleveland Avenue, 220 and 240 East 2<sup>nd</sup> Street, and 123 North Lincoln Avenue.

The design plans for the future on-site structures were not complete at the time of this MMP; however, Pinyon understands that future activities for the South Catalyst Project includes demolition of the existing structures and development of mixed-use (residential and commercial), multi-story facilities and associated parking.

## 1.3 Key Parties and Responsibilities

The key parties, their contact information and project responsibilities, are outlined below:

Organization	Role/Responsibility	Contact Information
City of Loveland	Economic Development Manager	Mike Scholl Phone: 970-962-2607 Email: Mike.Scholl@cityofloveland.org
City of Loveland	Environmental Compliance Administrator	Tracy Turner-Naranjo Phone: 970-962-3323 Email: Tracy.Turner-Naranjo2cityofloveland.org

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.

**Table I-1 Potential and Known Environmental Concerns at the Site**

Property Address/Location	Potential Environmental Concerns
<b>Zone A</b>	
301, 311, 319 North Lincoln Avenue	Former dry cleaner and auto service station. Potential residual contaminants in soil and groundwater could include metals, VOCs, and petroleum hydrocarbons.
223 and 225 East 3 <sup>rd</sup> Street	Former used car lot and current parking lot. Potential residual contaminants in soil and groundwater could include petroleum hydrocarbons.
320 North Lincoln	Former auto repair shop with underground storage tank (UST). Potential residual contaminants in soil and groundwater could include petroleum hydrocarbons and metals.
<p><b>Discussion:</b> Multiple Phase II ESAs were conducted at 301, 311, and 319 North Lincoln. The findings of the investigations identified two areas of petroleum contamination associated with the historical presence of USTs/dispenser island, and an off-site source in the adjacent property (223 and 225 East 3<sup>rd</sup> Street) which is attributed to a former UST basin. Additionally, tetrachloroethene (PCE) and chloroform were found in soil and groundwater samples collected in the vicinity of the former dry cleaners. The PCE concentrations in soil were observed in the vicinity of the dry-cleaner (along the west property line). PCE was detected in groundwater across the Site and off-Site.</p> <p>During the initial implementation of the VCUP application for the former dry cleaners, approximately 2,592 cubic yards of impacted soils were excavated (to depths up to 20 feet below ground surface) and removed from the Site. Upon completion of excavation activities, laboratory analysis showed that VOC concentrations in the samples were not above respective CDPHE Colorado Soil Evaluation Value (CSEVs). Periodic groundwater monitoring for VOCs continues for a network of wells which are both upgradient and downgradient from 301 N. Lincoln. PCE concentrations in groundwater continue to decrease over time, however they are still above the Colorado Water Quality Control Commission (WQCC), <i>Regulation No. 41, The Basic Standards for Ground Water</i>.</p> <p>During the 2015 Phase II ESA field activities, two soil and groundwater samples were collected and analyzed from the Zone A area at 223 and 225 East 3<sup>rd</sup> Street (Figure 3). Several polycyclic aromatic hydrocarbon (PAH) constituents were detected in the soil collected from the northern portion of the parking lot at concentrations exceeding the Environmental Protection Agency (EPA) Regional Screening Level (RSL) for residential soils. PCE and various metals were detected in soil samples at concentrations below the applicable regulatory standards. Chloroform was detected in the groundwater sample collected from the northern portion of the parking lot at a concentration exceeding the groundwater organic chemical standard. PCE was also detected in the groundwater, but was below the groundwater organic chemical standard.</p>	
<b>Zone B</b>	
216 East 3 <sup>rd</sup> Street	UST site and historical auto service center. Potential residual contaminants in soil and groundwater could include VOCs, petroleum hydrocarbons, and metals.
270 East 3 <sup>rd</sup> Street (formerly 224 and 226 East 3 <sup>rd</sup> Street)	Former leaking underground storage tank (LUST) site from former auto repair activities (Carrol's Conoco). Potential residual contaminants in soil and groundwater could include VOCs, petroleum hydrocarbons, and metals.

Property Address/Location	Potential Environmental Concerns
<p><b>Discussion:</b> The property at 270 East 3<sup>rd</sup> 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>	<p style="text-align: center;"><b>Zone C</b></p>
<p>201 North Lincoln Avenue</p>	<p>Auto repair and filling station. Potential residual contaminants in soil and groundwater could include VOCs, petroleum hydrocarbons, and metals.</p>
<p><b>Discussion:</b> 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>	

Property Address/Location	Potential Environmental Concerns
<b>Zone D</b>	
123 North Lincoln Avenue	Auto repair and filling station. Potential residual contaminants in soil and groundwater could include VOCs, petroleum hydrocarbons, and metals.
<p>The property at 123 North Lincoln Avenue (Figure 3) operated as an auto repair and filling station from 1937 to approximately 2005. The 2014 Phase I report indicated two USTs were present on the property. One UST was removed during road construction activities in 2001. The second UST was not found, and no other information is available.</p> <p>During the 2015 Phase II ESA field activities, three soil and groundwater samples were collected and analyzed from Zone D (Figure 3). None of the analyzed constituents exceeded the appropriate regulatory value. A geophysical survey was completed on the property to evaluate the presence of the USTs. One anomaly consistent with the presence of a small UST was identified at 123 North Lincoln Avenue property (Figure 4).</p>	

*Notes:*

*Refer to the Phase II ESA report dated February 5, 2016 and the Phase II ESA Additional Work report dated February 23, 2016 for further details regarding historical site uses, site characterization activities, and analysis of collected data*

## 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 environmental 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.

### 3. Personnel Requirements and Training

The Contractor will manage all RMs, including soil, groundwater, surface water, asbestos, lead and other contaminated substances to prevent exposure to the environment, project personnel and the public and to prevent impacts of non-impacted areas. The Contractor will be responsible for implementation and maintenance of environmental controls and ensure that:

- All necessary equipment and personnel are provided to implement this MMP
- Personnel are trained to recognize and manage regulated materials
- Contaminated material that has been disturbed is not reused on-site
- Contaminated material that has been disturbed is not disposed of into storm drains, sanitary sewers, streams, irrigation facilities or waterways
- Non-salvageable, non-hazardous solid waste materials removed by the Contractor are removed from the Site and disposed of at a licensed Subtitle D landfill facility in accordance with local, state and federal laws
- The MMP Supervisor, discussed below, will be qualified to verify implementation of this MMP

#### 3.1 Supervisor

Prior to implementation of the MMP, the project team will retain a MMP Supervisor in a quality assurance (QA) role to independently verify that the requirements of this plan are adhered to. The MMP Supervisor will be responsible for the following:

- Provide documentation of training and past experience with chemical-related health and safety (documentation must be maintained on-site)
- Be on-site to verify site operations
- Provide oversight and direction in the management of RMs on an as-needed basis when potentially contaminated media have been encountered
- Verify or perform field screening of soil in adherence to this plan (see Section 8)
- Complete logs thoroughly detailing QA site activities
- Verify adherence to this plan
- Identify unknown soils or materials and implement the MMP
- Verify that the CABI, if necessary, is properly certified prior to collecting suspect ACM samples

#### 3.2 Tier I – Front-Line Workers

Tier I workers include all personnel that would be responsible for mitigating potential regulated materials. Those workers could include equipment operators and laborers actually handling materials in accordance with this MMP. These workers must:

- 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. Soil Management Procedures

Project activities may include excavations where impacted soils may be encountered. Because of the heterogeneous nature of the soil, it is important that the Contractor be aware of the possibility of encountering petroleum and/or solvent impacted soils or suspect ACM in soils including building debris or buried utilities. This section is presented for the purpose of assisting the Contractor in properly identifying and managing potentially impacted or impacted soils.

### 4.1 General Procedures

The following procedures will apply to all excavation activities conducted for this project by the Contractor:

- The Contractor will be responsible for providing all necessary equipment and personnel (including HSOs, foremen, laborers, MMP Supervisor, etc.) to implement this MMP.
- The Contractor will be responsible for coordinating with the MMP Supervisor, a licensed Subtitle D landfill, the City, and the Engineer prior to work commencement, in order to verify that work adheres to the provisions of this MMP.
- During excavation if any soils are encountered that exhibit unusual staining, discoloration or odors, the Contractor must stop work and contact the MMP Supervisor. The MMP Supervisor will provide direction regarding the handling of these materials in accordance with Section 4.
- If unanticipated contaminated materials are encountered, work in the affected area must stop immediately and the MMP Supervisor will be notified about the findings. Work will not resume in the area until the MMP Supervisor provides authorization.
- If suspect asbestos-containing material (ACM) fill, household debris, construction debris, etc., is encountered, work in the area must stop immediately, the MMP Supervisor will be notified, and a CABI must be mobilized to the Site to collect samples. If necessary, the MMP Supervisor will determine if an abatement contractor is needed at the Site.

### 4.2 Soil Stockpiling Requirements

Soil that exceeds field screening standards (as specified in Section 4.5 below), or exhibits visual or olfactory evidence of impacts, will be temporarily stockpiled on 6-millimeter (mil) plastic sheeting pending receipt of the results of laboratory analysis in accordance with Section 8. Stockpiles of potentially impacted soil will be limited to a maximum of 500 cubic yards each. Implementation of stormwater best-management practices (BMPs) of stockpiles of potentially impacted material will be completed to prevent contact with stormwater runoff and to mitigate potential stockpile erosion including:

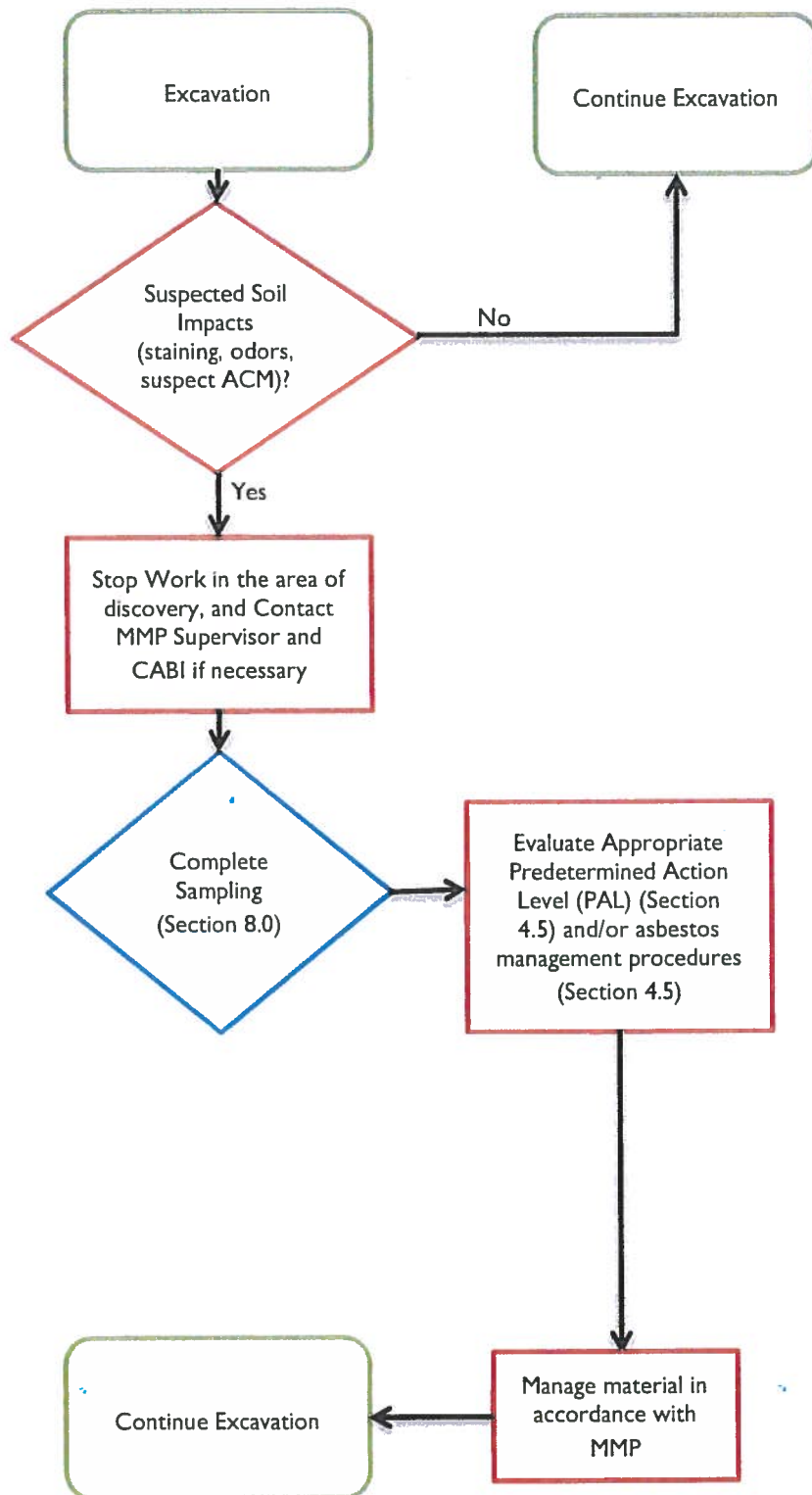
- Minimizing the amount of soil disturbed at one time
- Prevent runoff from off-site areas from flowing across disturbed areas
- Slow down the runoff flowing across the Site
- Remove sediment from on-site runoff before it leaves the Site

### **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

If logistically there is no place to reuse this soil on- or off-site, it may be disposed of at a licensed Subtitle D landfill. All manifests from off-site disposal must be maintained.

#### **4.5.3 Impacted-Restricted Reuse**

Soil with chemical concentrations above RSLs for residential property, but below RSLs for worker protection (commercial or industrial property), may be reused at an on-site or off-site commercial, industrial, or mixed-use property without limitation, assuming:

- The groundwater protection levels have been met
- For mixed-use properties, residential spaces must not be at ground level or below
- It is free of construction/demolition debris, including ACMs
- The owner of the receiving property approves it
- The soil is capped with an engineered barrier such as concrete or asphalt
- If groundwater protection values have not been met, soil must be placed greater than 10 feet above the static groundwater level.

Impacted-restricted reuse soil was identified at the northern portion of Zone A in sample ZA-01-S-0-5. Further details regarding this sample and additional samples collected at the Site 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.

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

- The analytical data
- How and where the soils are used on the project
- A reference to the proximity to groundwater (must be ten feet above static water level if it does not meet the groundwater protection values)
- Whether clean cover material will be placed above the material

If logistically there is no place to reuse this soil on- or off-site, it may be disposed of at a licensed Subtitle D landfill. All manifests from off-site disposal must be maintained.

#### **4.5.4 Health Risk – Restricted Reuse or Disposal**

For soils that fall in the health-risk category (above industrial use [commercial or worker protection]), it will be necessary to complete a risk evaluation, compare concentrations to background concentrations, or reuse the soil with an engineered barrier to eliminate exposure. If risk analysis is technically or financially prohibitive, or prolongs the project, landfill disposal should be selected as the mitigation option. The MMP Supervisor should be consulted to recommend additional alternatives.

Generally, soils that fall into this category are as follows:

- 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.

## 5. Construction Water Handling Procedures

Construction water may consist of stormwater, surface water, groundwater, and/or leachate and will be addressed using the following procedures. Surface water and leachate are not expected to be prevalent during this project.

### 5.1 Stormwater

The Contractor shall obtain a Colorado Discharge Permit System (CDPS) permit for stormwater discharges associated with construction. The Contractor (or design engineer) shall prepare a stormwater management plan (SWMP) for construction as required by the permit. The Contractor will assign a SWMP administrator, who will oversee or perform routine inspections and regulatory reporting/correspondence to ensure that the SWMP "living document" is modified and developed to remain in compliance with National Pollutant Discharge Elimination System (NPDES) regulations. Specific stormwater management requirements, including BMPs, will be addressed in the project-specific SWMP. The SWMP will also be updated accordingly as project progresses and these facilities are constructed or removed.

### 5.2 Groundwater

Sampling has confirmed the presence of chloroform throughout Zones A and B; tetrachloroethylene (PCE) throughout Zone A, in the central portion of Zone B, and the southeastern portion of Zone C; arsenic in the northwestern portion of Zone B and the southern portion of Zone C; and selenium in the southeastern portion of Zone C at concentrations which potentially exceed discharge limits.

At the time of this MMP, specific design plans had yet to be completed. Based on the observed concentrations of chloroform, arsenic, selenium, and PCE in groundwater, if the design requires dewatering, a CDPHE Water Quality Control Division (WQCD) Remediation Activities Discharging to Surface Water permit (COG315000), must be completed and submitted to the WQCD. This would likely require additional groundwater sampling to analyze for all of the required permit parameters. **The WQCD requires the application to be submitted 45 days prior to the anticipated date of discharge, and should therefore be submitted as early in the planning process as possible to avoid potential delays.**

To better assess the potential need for dewatering, the following groundwater depths were collected at the Site on December 7, 2015. Groundwater was encountered between 12.26 and 17.34 feet below ground surface (bgs) (Table 5-1). Groundwater flow in the area is variable, but based on the topography of the area and the overall trend of groundwater elevation at the Site, the general hydraulic gradient at the Site is presumed to be to the east-southeast (Figure 5) (Pinyon, 2016a).

**Table 5-1 Depth to Groundwater - December 7, 2015**

Monitoring Well	Depth to Water (feet below ground surface)
<b>Zone A</b>	
ZA-SB-01	17.34
ZA-SB-02	16.66
<b>Zone B</b>	
ZB-SB-03	15.22
ZB-SB-04	14.11

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
<b>Zone C</b>	
ZC-SB-09	14.33
ZC-SB-10	12.85
ZC-SB-11	12.26
ZC-SB-12	12.40
<b>Zone D</b>	
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:

- Specifying the dewatering water treatment methodology
  - Listing the numeric effluent limitations
  - Monitoring parameters, and frequencies
  - Describing pollutant control, material handling, and spill prevention practices
  - Describe proper housekeeping, recording, and reporting procedures
  - Ensure site personnel, including operators, are properly trained for the work they are completing including oversight and operator licensed by the State of Colorado
- The Contractor must fill out and submit a monthly Discharge Monitoring Report (DMR) to the CDPHE-WQCD for the life of the permit, even if no water is produced.
4. Pump, contain, and haul water to a proper disposal facility in accordance with applicable laws and regulations.

If dewatering is necessary, water from dewatering operations cannot be directly discharged into waters of the State, including wetlands, irrigation ditches, canals, or storm sewers, unless allowed by a permit. Unless prohibited by law or otherwise specified in the Contract, the water from dewatering operations will be contained in basins in locations approved by the engineer, treated for discharge in accordance with the CDPHE-WQCD permit(s), or will be hauled away from the project for proper disposal in accordance with applicable laws and regulations.

#### **5.2.1 Leachate**

If saturated materials are encountered, stockpile areas will be constructed to drain material before re-use as engineered fill, or transport to a licensed Subtitle D landfill (assuming it is impacted). Generated liquids will drain to a central sump. The sump will be excavated into the ground and sloped to a central location. It will also be lined with 6-mil polyethylene sheeting, and have a layer of gravel to hold the sheeting in place. A berm will be placed around the sump to prevent surface water from commingling with the generated leachate water. In addition, saturated soils may be placed in a constructed sump that is completely lined to contain any liquids. The saturated soils can be allowed to dry and the liquids evaporate. Otherwise, any liquids accumulated within the sump must be submitted for analysis by the Contractor and coordinated with the MMP Supervisor. If constituents in the water exceed the CDPHE-WQCD permit limits, the water will be disposed off-site using appropriate profiling and manifesting or treated and discharged in accordance with the permit(s). Solid waste which has been drained or mixed must pass the paint filter test prior to disposal at a licensed Subtitle D landfill by U.S. EPA Method 9095A.

## 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

for disposal as a non-hazardous waste, the MMP Supervisor will arrange for off-site disposal at a licensed facility as solid waste.

- The material will be characterized and manifests will be obtained before it is disposed off-site, and the material will be disposed as soon as possible.
- Any special wastes that are generated will be managed in accordance with the applicable local, state and federal regulations.
- Where suspicious material is determined to be non-hazardous by the MMP Supervisor through additional assessment, the material may be disposed as non-hazardous solid waste at a licensed Subtitle D landfill.

## **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.

## 8. Waste Characterization Protocols

The following presents protocols to characterize special and/or suspicious waste, which have not been previously characterized for disposal. When potentially contaminated material is encountered, the Contractor and MMP Supervisor will be responsible for coordinating with the City for sampling, waste profiling, and agency notifications. The Contractor and MMP Supervisor will be responsible for evaluating special wastes (for disposal purposes) in accordance with 6 CCR 1007-3, Section 262.11., and in accordance with all other applicable federal, state and local regulations. Further, waste disposal facilities may have special requirements necessary for the Contractor to obtain an approved waste profile and manifests. This evaluation must identify whether the wastes are characteristic or listed hazardous wastes. The following table is a summary of potential wastes that may be encountered at the Site and the sample methods and associated regulatory standards. Further details are provided throughout Section 8.

**Table 8-1 Waste Characterization Protocols**

Contaminant of Concern	Method of Identification	Identification Process	Analytical Methods	Applicable Regulatory Standards
Volatile Organic Compounds and/or Petroleum Hydrocarbons	Visual, olfactory, PID screening	If potentially impacted soils are encountered, work in that area must stop and the MMP Supervisor must be notified immediately.	VOCs by EPA 8260C	EPA RSLs for Industrial and Residential soil.
			TPH by EPA 8105B	For UST sites: OPS threshold value of 500 mg/kg. If that value is exceeded, further analysis for PAH is required, which would then be compared to the Tier I Risk-Based Screening Levels (RBSLs).
Asbestos-Containing Materials	Visual	If potential ACM is encountered, work in that area must stop and the MMP Supervisor must be notified immediately. A CABI must be mobilized to the site to evaluate next steps and collect samples.	Polarized light microscopy	If asbestos is detected, impacted soil must be handled according to Section 5.5 of the Solid Waste Regulations, or Regulation No. 8 of the Air Quality Control Commission Regulations, whichever is applicable to the situation as determined by the CABI.

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)

## 8.2 20-Times Rule

The licensed Subtitle D landfill will accept solid material where concentrations are less than 20 times the hazardous listing for characteristic waste (20 Times Rule), except for PCBs as discussed in Section 8.6. The EPA Toxicity Characteristic Leaching Procedure (TCLP) Maximum Concentrations of Contaminants is presented as Appendix B. As an example, the regulatory level of lead (a Resource Conservation and Recovery Act [RCRA] regulated metal) is 5.0 milligrams per liter (mg/L) when analyzed by TCLP. The Waste Management acceptable limit, when analyzed by totals analysis, would then be less than 100 mg/kg, using the 20 Times Rule. If concentrations of any contaminant exceed the 20 Times Rule by totals analysis, then analysis for TCLP is required. If the TCLP results exceed the toxicity characteristic maximum concentration (Appendix B) then the material would require disposal at a hazardous waste disposal site in accordance with CDPHE requirements.

If final analytical results are below 20 Times Rule concentrations, the material then may be transported to a licensed Subtitle D landfill for disposal as non-hazardous solid waste. If the material exceeds regulatory levels, then hazardous waste disposal will be required, in accordance with all applicable regulations.

## 8.3 Volatile Organic Compounds

Volatile organic compounds that could potentially be encountered at the Site include petroleum hydrocarbons and chlorinated solvents. If the Contractor or MMP Supervisor classifies materials (using PID, odor, staining, etc.) as potentially impacted by petroleum hydrocarbons or chlorinated solvents, the material will be segregated as previously discussed in Section 4.2. If this material has not been previously profiled, one composite sample of soil for every 500 cubic yards of stockpiled soil will be acquired by the MMP Supervisor, and will be analyzed for:

- VOCs using EPA Method 8260C
- RCRA 8 metals using EPA Method 6010/7471 and TCLP lead
- Total Petroleum Hydrocarbons (TPH) by EPA Method 8015B

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

## 8.4 Asbestos-Containing Materials

If suspect ACM is encountered, work in the area must stop immediately, the MMP Supervisor will be notified, and a CABI must be mobilized to the Site to collect samples. If the suspect material is confirmed to be ACM, the handling of the waste must abide by the rules set forth in Section 5.5 of the Solid Waste Regulations, or Regulation No. 8 of the Air Quality Control Commission Regulations, whichever is the more appropriate regulation for the situation. The City Project Manager and Engineer should immediately be notified of the finding.

## 8.5 Slag, Coal, Ash

If slag, coal, or ash is identified, then the material will be tested for:

- VOCs by EPA Method 8260C
- PAHs by EPA Method 8270

- 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.

## 9. Imported Materials

Any soils, including embankment and/or topsoil, brought to the Site must meet the Non-Impacted/Unrestricted Reuse PAL as described above in Section 4.6.2.

For each source of imported embankment or topsoil:

- The Contractor shall assure and certify that unacceptable levels of hazardous waste and substances, including but not limited to those defined in the 40 CFR Part 261 Subparts C and D, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 101(14) as amended, are not incorporated into the project as a result of importing embankment or topsoil materials.
- The Contractor shall submit such certification to the City Project Manager, signed and stamped (or sealed) by one of the following:
  - A qualified environmental consultant
  - Certified industrial hygienist (CIH)
  - Certified hazardous materials manager (CHMM)
  - Registered professional engineer (PE)
  - Certified Safety Professional (CSP)
  - Registered Environmental Manager (REM)
- Additionally, the material must be visually evaluated by a CABI, and be determined free of any confirmed or suspected ACMs, solid waste, debris, and demolition materials.

If Contractor source material for embankment or topsoil, originating outside of the project limits, is placed at the project and is at any time found to be contaminated with unacceptable levels of hazardous waste or substances, the Contractor shall remove the contaminated material from the project, dispose of it in accordance with applicable laws and regulations, and make necessary restoration.

The cost of complying with these requirements, including sampling, testing, and corrective action by the Contractor, will not be paid for separately, and shall be included in the work.

### 9.1 Sample Analysis and Frequency

Representative samples of proposed import fill shall be collected in sufficient quantity to determine that the material is not contaminated as determined by the MMP Supervisor and the City. It is recommended that import fill be sampled at a frequency of every 1,000 cubic yards for at least three samples and then resampled for each new import source. After a source has been certified as "clean" additional sampling will be required if there is a change of material (i.e. based on visual observation). Samples shall be analyzed for the following constituents:

- VOCs by EPA Method 8260
- PAHs by EPA Method 8270

- 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.

## 10. Reporting

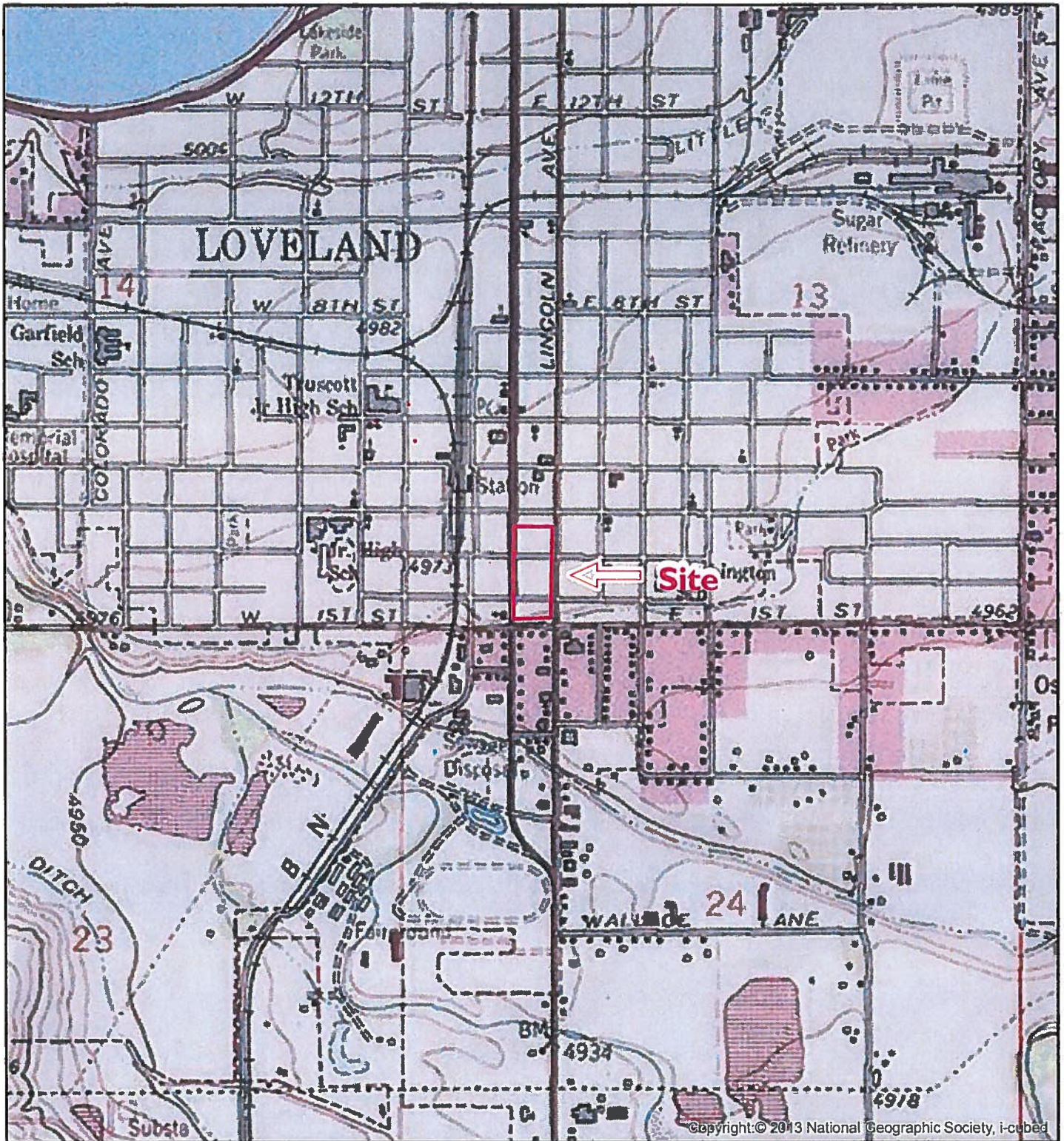
Upon project completion, the MMP Supervisor will prepare a summary report detailing the work performed at the project specifically related to the implementation of this MMP. The report will include the following:

- Property description
- Work description
- Copies of all field logs which detail daily operations
- Summary of analytical results
- Copies of all analytical reports
- Waste manifests for all solid waste, soil, water or other material transported off-site for disposal
- Maps showing the locations of site features related to this MMP, including sample locations, location of wastes discovered, and any other important features identified during the course implementation of this MMP
- Representative site photographs detailing work performed
- Any other documentation detailing important features related to this project

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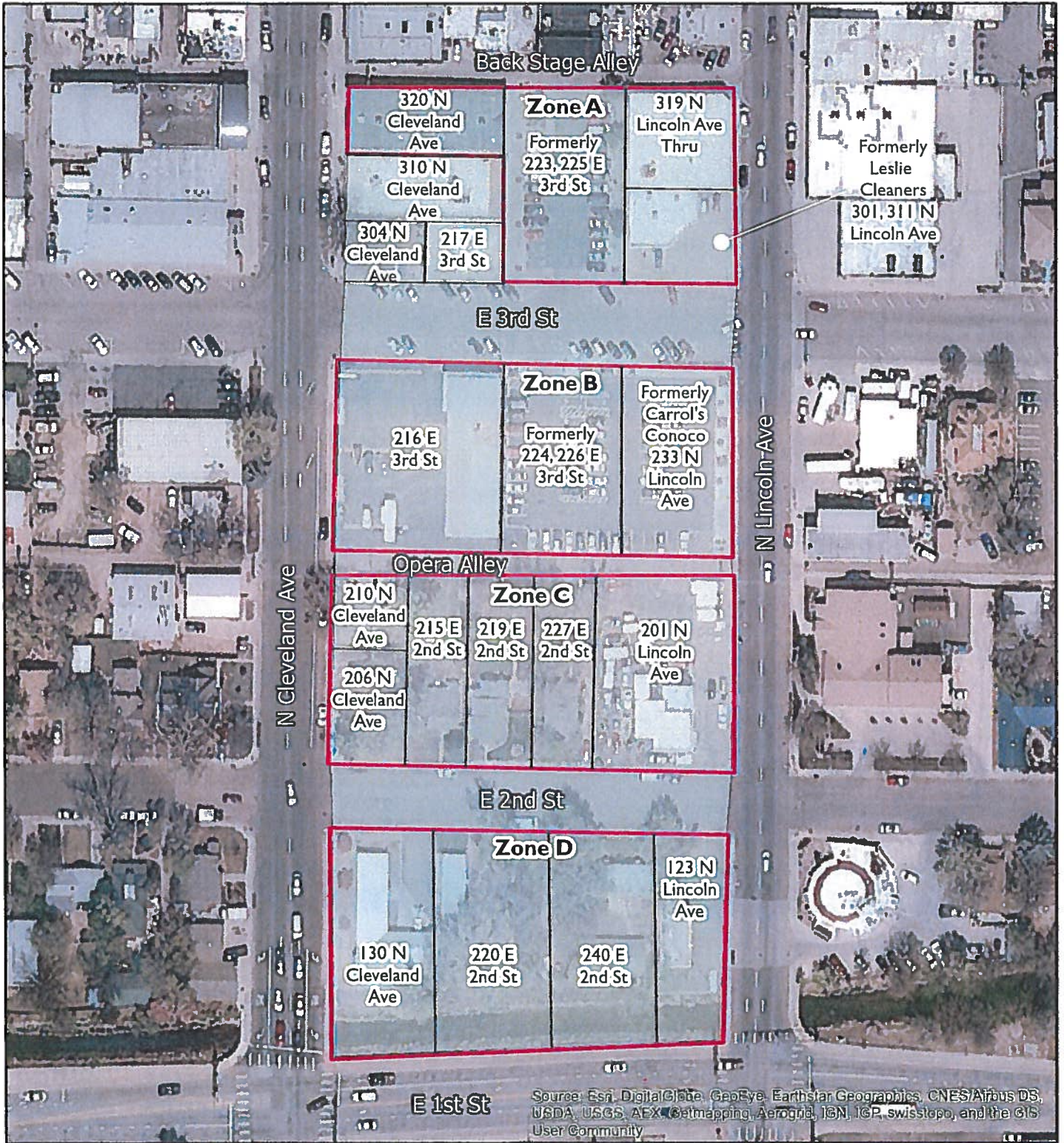
## Figures



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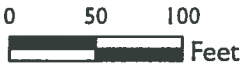
<p>N</p> <p><b>Legend</b></p> <p> Site Boundary</p> <p>USGS 7.5' Topographic Map Loveland, Colorado 1962 (revised 1984)</p>	<p>0 750 1,500 Feet</p>		<p><b>SITE LOCATION</b> South Catalyst Project Loveland, Colorado</p>
	<p>Site Location: Section 13, T 5N, R 69W, 6th Principal Meridian</p>		

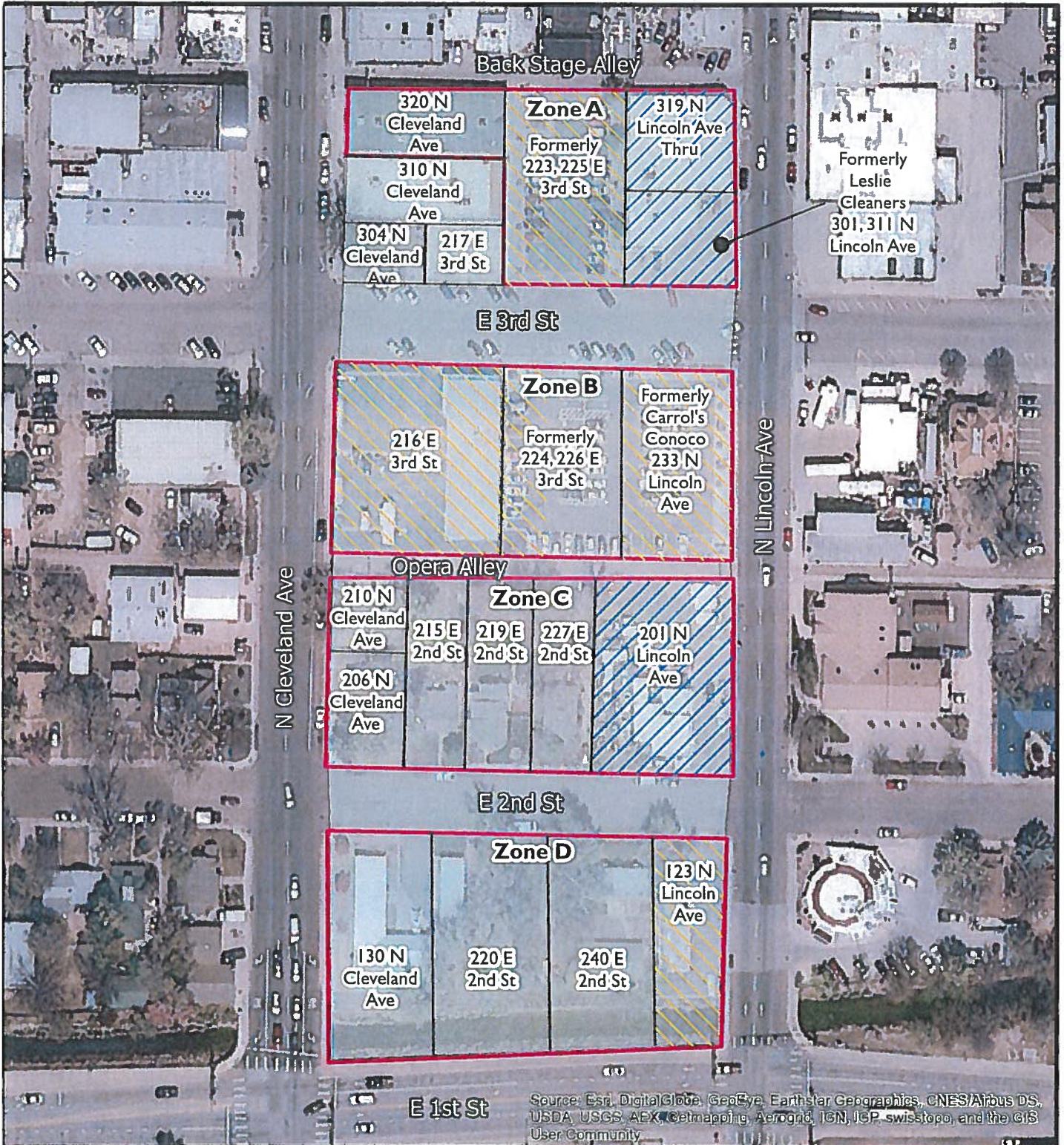
Pinyon Project Number: I/15-1073-01.8002	Drawn By: JAF	Figure: I
	Reviewed By: TRG	Date: 12/18/2015



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

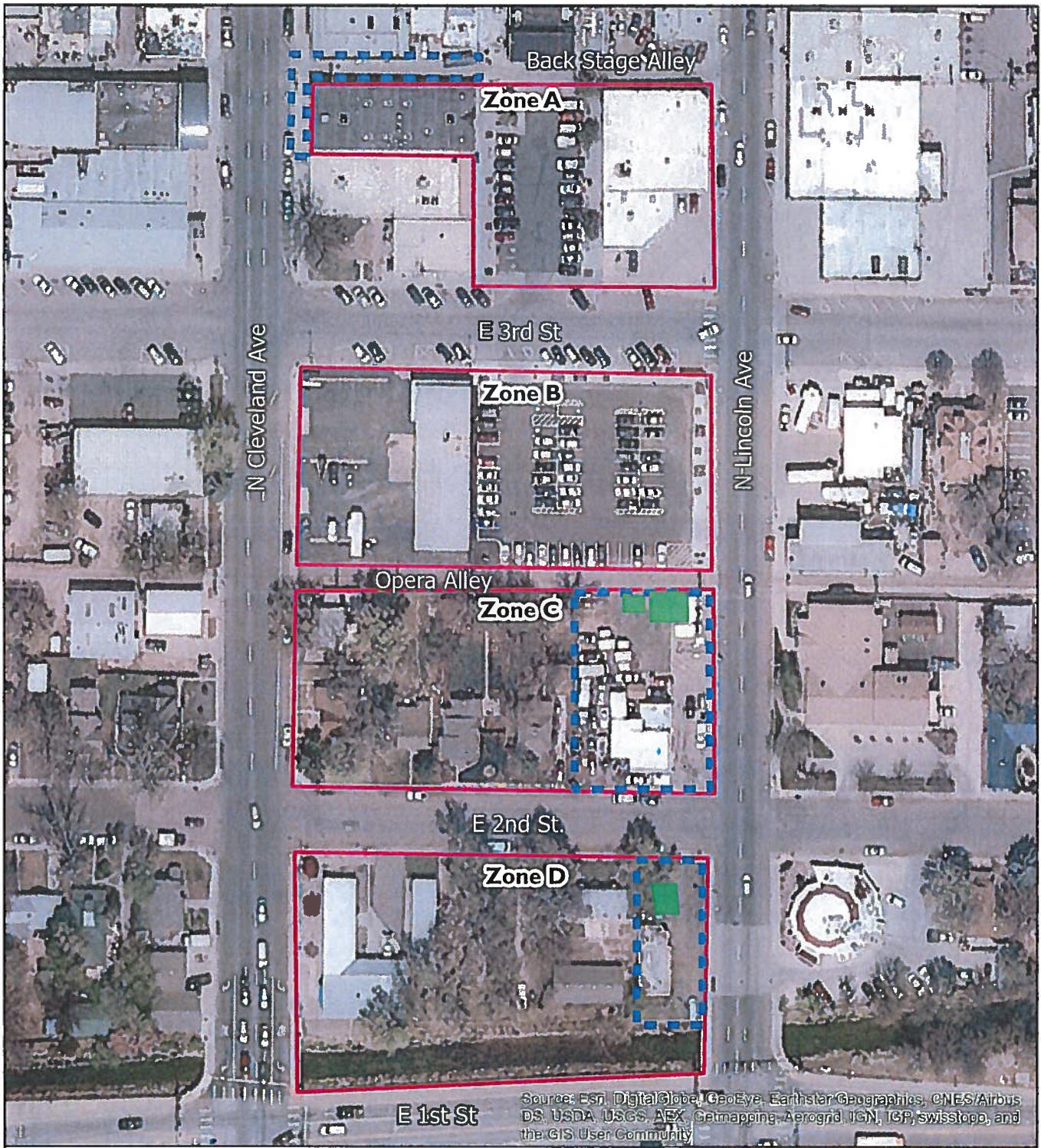
<p><b>N</b></p> <p><b>Legend</b></p> <p> Zone Boundary</p> <p> Parcels</p>		
	<p><b>SITE MAP</b></p> <p>South Catalyst Project Loveland, Colorado</p>	
<p>Site Location: Section 13, T 5N, R 69W, 6th Principal Meridian</p> <p>Pinyon Project Number: I/15-1073-01.8002</p>	<p>Drawn By: SJA</p> <p>Reviewed By: PJM</p>	<p>Figure: 2</p> <p>Date: 2/17/2016</p>








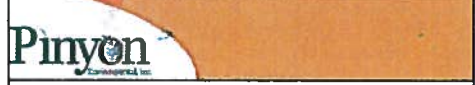
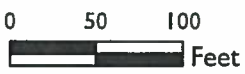
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

<p><b>N Legend</b></p> <p> Zone Boundary</p> <p> Parcels</p> <p>0 50 100 Feet</p>	<p> Area of Potential Petroleum and Chlorinated Solvent Impacted Soil and Groundwater</p> <p> Area of Potential Petroleum Impacted Soil and Groundwater</p>		
		<p><b>AREAS OF ENVIRONMENTAL CONCERN</b></p> <p>South Catalyst Project Loveland, Colorado</p>	
<p>Site Location: Section 13, T 5N, R 69W, 6th Principal Meridian</p> <p>Pinyon Project Number: I/15-1073-01.8002</p>		<p>Drawn By: SJA</p> <p>Reviewed By: PJM</p>	<p>Figure: 3</p> <p>Date: 2/18/2016</p>



**Legend**

-  Geophysical Anomalies Indicative of Underground Storage Tanks
-  Geophysical Survey Boundary
-  Zones



**GEOPHYSICAL SURVEY RESULTS**

South Catalyst Project  
Loveland, Colorado

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

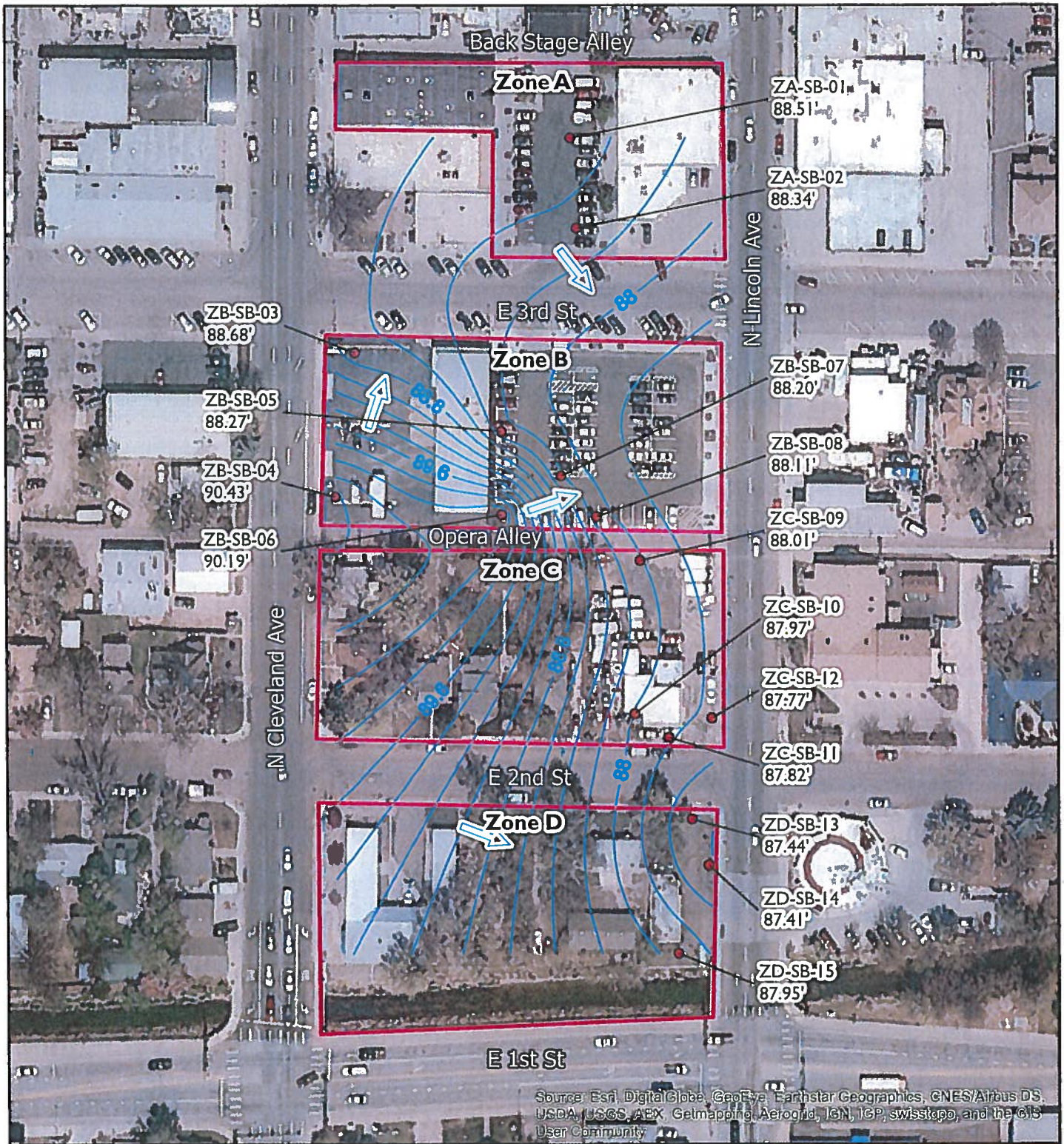
Drawn By: SJA

Figure: 4

Pinyon Project Number: 1/15-1073-01.8002

Reviewed By: PJM

Date: 2/18/2016



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS 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



**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: I/15-1073-01.8002

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



**Appendix A**

**Environmental Protection Agency Regional Screening Levels**













Toxicity and Chemical-Specific Information										Screening Levels											
BFO (mg/kg-day)	IR (µg/m³)	UR (µg/m³)	RD <sub>50</sub> (mg/kg-day)	RD <sub>10</sub> (mg/kg-day)	RD <sub>1</sub> (mg/kg-day)	RI <sub>10</sub> (mg/m³)	RI <sub>1</sub> (mg/m³)	GIABS	ABS	C <sub>crit</sub> (mg/kg)	Analyte	CAS No.	Resident Soil (mg/kg)	Industrial Soil (mg/kg)	Resident Air (µg/m³)	Industrial Air (µg/m³)	Tapwater (µg/L)	MCL (µg/L)	SSL (mg/kg)	SSL (mg/kg)	
											7-7	NA	4.3E+07	1.6E+08	3.1E+01	1.3E+02	6.3E+01	1.2E+01	1.2E+01	1.2E+01	
											Carb	23650-58-5	4.7E+02	6.2E+03	3.1E+01	1.3E+02	6.3E+01	1.2E+01	1.2E+01	1.2E+01	
											Licholol	77001-63-4	1.3E+01	1.6E+02	3.1E+01	1.3E+02	6.3E+01	1.2E+01	1.2E+01	1.2E+01	
											Lead Compounds										
											Lead Chromate	7759-97-6	3.0E+01	6.2E+00	6.8E+08	6.2E+05	4.1E+02	6.8E+08	4.1E+02	6.8E+08	
											Lead Phosphate	7448-27-7	6.2E+01	3.8E+02	2.9E+01	1.0E+00	9.1E+00	2.9E+01	1.0E+00	9.1E+00	
											Lead acetate	501-04-2	1.9E+00	6.2E+00	3.5E+02	1.5E+01	2.8E+01	3.5E+02	1.5E+01	2.8E+01	
											Lead and Compounds	7439-92-1	4.0E+02	8.0E+02	1.9E+01	1.9E+01	1.5E+01	1.9E+01	1.5E+01	1.9E+01	
											Lead sulfidate	13395-32-6	6.4E+01	2.7E+02	2.9E+01	1.0E+00	9.2E+00	2.9E+01	1.0E+00	9.2E+00	
											Lead sulfidate	79-06-2	7.0E+04	1.2E+02	6.8E+01	1.0E+00	1.3E+04	6.8E+01	1.0E+00	1.3E+04	
											Lead sulfidate	330-55-2	1.0E+01	2.3E+02	1.0E+01	1.0E+01	3.3E+00	1.0E+01	3.3E+00	3.3E+00	
											Lead sulfidate	7439-93-2	1.0E+01	2.3E+02	1.0E+01	1.0E+01	4.0E+00	1.0E+01	4.0E+00	4.0E+00	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02	7.5E+01	3.9E+02	
											Lithium	7439-93-2	1.3E+03	1.6E+04	3.9E+02	3.9E+02	7.5E+01	3.9E+02			











Toxicity and Chemical-specific Information										Screening Levels										
SFO (mg/kg-day)	IR (ug/m <sup>3</sup> )	RID <sub>1</sub> (mg/kg-day)	RID <sub>2</sub> (mg/kg-day)	RIC <sub>1</sub> (ug/m <sup>3</sup> )	RIC <sub>2</sub> (ug/m <sup>3</sup> )	max-gen	GIABS	ABS	C <sub>10</sub> (mg/kg)	Contaminant	Analyle	CAS No.	Resident Soil (mg/kg)	Industrial Soil (mg/kg)	Resident Air (ug/m <sup>3</sup> )	Industrial Air (ug/m <sup>3</sup> )	Topwater (ug/L)	MCL (ug/L)	SSL (mg/kg)	SSL (mg/kg)
M	P	C	P	P	P	P	I	A	M				key	key	key	key	key	key	key	key
2.0E-02	P	7.0E-03	P	1.0E-01	P	3.0E-03	I	0.1		Tris(2-chloroethyl)phosphate	115-86-8	2.7E-01	1.1E+02	1.1E+02	4.2E-03	1.8E-02	2.4E+01	3.0E+01	4.2E+02	1.4E+01
3.2E-03	P	1.0E-01	P	3.0E-03	P	1.0E-01	I	0.1		Tris(2-ethylhexyl)phosphate	78-42-2	1.7E+02	3.5E+02	4.2E-03	4.2E-02	2.4E+01	6.0E+00	3.0E+01	2.7E+00	1.4E+01
1.0E+00	C	2.3E+04	C	9.0E-03	P	5.0E-03	I	0.1		Tris(2-ethylhexyl)phosphate (Soluble Salt)	NA	2.3E+01	5.6E+02	3.4E-04	4.4E-02	8.0E-00			3.0E+01	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Urethane	51-70-6	1.2E-01	2.3E+00	3.0E-03	4.2E-02	2.5E-02			3.0E+00	
3.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Urethane (Ester)	1314-62-1	6.0E-01	8.4E+02	3.4E-04	4.4E-02	1.5E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Urethane (Ester)	78-42-2	1.9E+01	5.6E+02	3.4E-04	4.4E-02	8.0E-00			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Urethane (Ester)	5871-64-6	1.0E+02	2.1E+03	2.1E+01	8.8E+01	4.4E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Urethane (Ester)	1187-05-4	9.1E+01	3.8E+02	2.1E+01	8.8E+01	4.4E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Vinyl Bromide	645-00-3	1.2E-01	5.2E-01	8.0E-02	3.0E-01	1.0E-01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Vinyl Chloride	75-01-4	6.0E-02	1.7E-00	1.7E-01	2.0E-00	5.0E-01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Water	91-81-2	1.0E+00	2.5E-01	1.7E-01	2.0E-00	5.0E-01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Water	70-30-3	5.0E+01	2.4E+02	1.0E-01	4.4E+01	1.0E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Water	106-38-3	5.0E+01	2.4E+02	1.0E-01	4.4E+01	1.0E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Water	75-17-3	6.5E+01	2.6E+02	1.0E-01	4.4E+01	1.0E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Water	1330-20-7	6.5E+01	2.6E+02	1.0E-01	4.4E+01	1.0E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Zinc Phosphate	1314-84-7	2.3E+00	3.5E+01	1.0E-01	4.4E+01	1.0E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Zinc and Compounds	7440-80-6	2.3E+00	3.5E+01	1.0E-01	4.4E+01	1.0E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Zinc and Compounds	1312-87-1	3.2E+00	4.1E+03	1.0E-01	4.4E+01	1.0E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Zinc	7440-07-7	6.3E-01	9.3E+00	1.0E-01	4.4E+01	1.0E+01			3.0E+00	
7.2E-01	I	4.4E-06	I	3.0E-03	P	1.0E-01	I	0.1		Zinc	7440-07-7	6.3E-01	9.3E+00	1.0E-01	4.4E+01	1.0E+01			3.0E+00	



**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	<b>Arsenic</b>	7440-38-2	<b>5.0</b>
D005	<b>Barium</b>	7440-39-3	<b>100.0</b>
D018 vol	Benzene	71-43-2	0.5
D006	<b>Cadmium</b>	7440-43-9	<b>1.0</b>
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	<b>Chromium</b>	7440-47-3	<b>5.0</b>
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	<b>Lead</b>	7439-92-1	<b>5.0</b>
D013 pest	Lindane	58-89-9	0.4
D009	<b>Mercury</b>	7439-97-6	<b>0.2</b>
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	<b>Selenium</b>	7782-49-2	<b>1.0</b>
D011	<b>Silver</b>	7440-22-4	<b>5.0</b>
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

(Attach Proposed Form of Lease Agreement for 320 North Cleveland Avenue)

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.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. **Term.** This Lease shall have a primary term of ten (10) years commencing on April 26, 2017, unless sooner terminated by operation of law or in accordance with this Lease. Provided that Tenant is not in default under the terms herein, this Lease may be renewed by Tenant, for two (2) additional periods of five (5) years each, provided that Tenant provides written notice of its election to exercise its option at least ninety (90) days prior to the expiration of the then existing Lease term or extension thereof.

2. **Premises.** The premises to be leased shall consist of the Property and the Building.

3. **Use of Premises.** Tenant shall be permitted to use and occupy the Premises; provided, however, that such use and occupation is consistent with (i) the covenants and easements and all other matters of record as of the date of this Lease, and (ii) all present and future laws, ordinances and regulations, including environmental regulations, of any governmental authority having jurisdiction over the Premises. Tenant shall not permit any nuisance to be maintained on the Premises or permit any disorderly conduct, common noise, or other activity having a tendency to annoy or disturb any adjoining property.

4. **Fulfillment of DRA.** This Lease fulfills the City's obligation to TFL under Section 17.2 of DRA regardless of the amount of revenue generated, if any, from the Premises. The Net Proceeds (defined below) received by Tenant pursuant to this Lease shall be considered Movie Theater revenue for purposes of calculating the Movie Theater revenue under Section 17 of the DRA. Notwithstanding the foregoing, the Net Proceeds shall not be a credit towards or constitute an offset from the City's separate obligation to provide a \$2,189,944 cash incentive for the Movie Theater as set forth in Section 17 of the DRA ("Movie Theater Incentive"). For purposes of the Lease, the term "Net Proceeds" is defined as: all rents, revenue, income, issues, royalties, bonuses, profits and proceeds from the Premises, net of reasonable and customary expenses passed through to a sub-tenant under such leases including real property taxes, insurance premiums and operating expenses. Nothing contained herein shall constitute an affirmative obligation for Tenant to re-lease the Premises or to receive a certain level of Net Proceeds from the operation of the Premises.

5. **Rent and Deposit.** In consideration for the right to use and occupy the Premises as permitted herein, Tenant shall pay to the City **Ten Dollars (\$10.00)** for the entire Lease term ("Rent"). City acknowledges receipt of Rent for the initial Lease term. Tenant shall not be charged a rental deposit for the Premises.

6. **Utilities.** Tenant shall be responsible for the timely payment of charges for water, wastewater, electric, trash, recycling, gas, internet, telephone and any other utility services servicing the Premises.

7. **Alterations.** Subject to the City's prior written approval, which shall not be unreasonably withheld, conditioned or delayed, Tenant may, during the term of this Lease, at Tenant's expense, install temporary or permanent demising walls to create or separate offices, erect inside partitions, add to existing electric power service, add telephone outlets, add light fixtures,

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.

**10. Maintenance of Property.** Tenant shall be responsible for maintaining the landscaping located on the Property. Tenant shall also be responsible for removing any snow that accumulates on any parking lot and on the sidewalks located on the Property.

**11. No Discrimination.** Tenant shall not discriminate on any grounds prohibited under federal or state law, including without limitation, race, color, disability, or national origin, in the use or occupancy of the Premises.

**12. Taxes. Real Property Taxes and Assessments.**

**a.** Real Property Taxes and Assessments. City shall pay promptly when due all real estate taxes and general assessments, if any, for the Premises that would be otherwise due if the occupancy and use of the Premises were for governmental public purposes. Tenant shall pay promptly when due all real estate taxes and general assessments, if any, for the Premises that are a result of Tenant's occupancy and use of the Premises. Tenant shall pay all special assessments, if any, for the Premises that are a result of Tenant's occupancy or use of the Premises. City shall promptly pay when due all other special assessments.

**b.** Personal Property Taxes. Tenant shall be responsible for, and shall pay promptly when due, any and all taxes and assessments levied or assessed against any furniture, fixtures, equipment and items of a similar nature that Tenant installs or locates in or about the Premises.

**13. Insurance.**

**a.** City. For the duration of the Lease, City shall procure and maintain a fire and casualty insurance policy for the Premises, in an amount equal or greater to the full replacement value of the Premises.

**b.** Tenant. For the duration of this Lease, Tenant shall procure and keep in force a policy of comprehensive general liability insurance insuring Tenant and naming the City as an additional insured with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) aggregate. The general liability policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), and blanket contractual, independent contractors, products and completed operations. The general liability policy shall contain a minimum limit of Three Hundred Thousand Dollars (\$300,000.00) for property damage liability coverage for the Premises which limit may be increased by the City, in the exercise of its reasonable discretion, based upon any use that increases the risk or potential scope of damage to the Premises. The general liability policy shall contain a severability of interests provision. The general liability policy shall be for the mutual and joint benefit and protection of Tenant and the City and shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policy for any loss occasioned to the City, its officers, employees, and agents

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,

servants, subcontractors, or authorized volunteers, or (ii) out of any violation by Tenant, its employees, agents, servants, subcontractors, or authorized volunteers of any law, regulation, or ordinance. Tenant shall investigate, handle, respond to, and defend against any such liability, claims, and demands related thereto and shall bear all other related costs and expenses, including court costs and attorneys' fees. Tenant's indemnification obligation shall not extend to any injury, loss, or damage to the extent caused by the act, omission, or other fault of the City. This paragraph shall survive the termination or expiration of this Lease.

**15. Governmental Immunity.** Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* ("Act") and under any other applicable law. The Parties understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the City, its departments, commissions, boards, officials, and employees is controlled and limited by the provisions of the Act, as now or hereafter amended.

**16. Sublease and Assignment.** Tenant may assign all or any part of this Lease or sublease all or any part of the Premises to any other person or entity, without City's prior approval. In the event Tenant enters into a sublease for all or any part of the Premises, Tenant shall cause each sub-lessee to maintain the minimum insurance coverages listed above in Section 13.a through 13.e. Tenant shall promptly notify the City in writing of any such sublease.

**17. Holding Over.** Any holding over after the expiration of the term of this Lease or any extended term thereof, with the consent of the City, shall be construed to be a tenancy from month-to-month on the same terms and conditions provided for herein; except that the monthly rental rate shall be adjusted to reflect the then-current market rate. No holding over by Tenant shall operate to renew or extend this Lease without the written consent of the City to such renewal or extension having been first obtained.

**18. Total or Partial Destruction.** If during the term of this Lease the Building or any part thereof is destroyed or is so damaged by fire or other casualty so as to become uninhabitable, as determined by the City, then the City (unless the same is caused by Tenant's negligence and is not otherwise covered by insurance) shall repair the Building, at its own cost, with all reasonable speed, placing the same in as good a condition as it was at the time of the destruction or damage and for that purpose may enter upon the Premises. If the Building is only slightly damaged by fire or the elements so as to not render the same uninhabitable and unfit for occupancy, then the City shall repair the same as soon as practicable.

**19. Condemnation Taking.** If the entire Premises is taken for quasi-public purposes by any governmental entity or other entity having the power of condemnation, or sold by City under the threat of the exercise of said power, this Lease shall terminate as of the date that legal title to the Premises vests in the condemning authority or the date such authority takes possession of the Premises, whichever is earlier. If only a portion of the Premises is so taken, Tenant may either terminate this Lease as of the date title or possession is transferred as set forth above, whichever is earlier, or continue this Lease in effect. In the event of a total or partial taking, the

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

average for Net Proceeds multiplied by the remaining Term of the Lease including extensions thereof; or (ii) require the City 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 Tenant with replacement rental income in the amount substantially equal to the trailing twelve (12) month average for Net Proceeds. 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. It is agreed that the amount set forth in subsection (i) above is liquidated damages, and not a penalty, which amount the Parties agree is fair and reasonable and is a good faith estimate of what Tenant's monetary damages would have been, but for City's breach.

22. **Notices.** Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three (3) days after being sent by certified mail, return receipt requested:

**To the City:**

City of Loveland  
Attn: Stephen C. Adams  
500 E. Third Street, Suite 330  
Loveland, CO 80537  
(970) 962-2306  
[steve.adams@cityofloveland.org](mailto:steve.adams@cityofloveland.org)

**To The Foundry:**

The Foundry Loveland, LLC  
Attn: Kevin Brinkman  
3528 Precision Drive, Suite 100  
Fort Collins, CO 80528  
970.672.1020  
[kevin.brinkman@brinkmanpartners.com](mailto:kevin.brinkman@brinkmanpartners.com)

23. **Right of First Refusal.** Subject to approval by City Council, Tenant shall have a first right of refusal to purchase the Premises, on the condition that Tenant, at its own expense, acquires the real property adjacent to the Premises for the purposes of redevelopment of such real property as a new and additional phase of The Foundry project as such project is identified in the DRA.

24. **Time of the Essence.** It is agreed that time shall be of the essence of this Lease and each and every provision hereof.

25. **Parties Bound.** This Lease shall be binding upon, and inure to the benefit of, the City and Tenant and their respective heirs, executors, administrators, legal representatives, and/or successors.

26. **Governing Law and Venue.** This Lease shall be governed by the laws of the State of Colorado. In addition, the Parties acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States and imposed upon the City by its Charter and Code, and that, subject to such constraints, the Parties intent to carry out the terms and conditions of this Lease. Notwithstanding any other provision of this Lease to the contrary, in no event shall either of the Parties be required to exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Lease shall be interpreted in such a manner so as to be effective

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.

This Lease is hereby entered into by the Parties the day and year first above written.

*[Signature Pages to Follow]*

**CITY:**

**City of Loveland, Colorado**

By: \_\_\_\_\_  
Stephen C. Adams, City Manager

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

**TENANT:**

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

By: The Foundry Loveland, LLC, a Colorado limited liability company, its Member

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

By: \_\_\_\_\_  
Chad A. Brue, Manager

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