

**INTERGOVERNMENTAL AGREEMENT
CONCERNING THE CONSTRUCTION AND MAINTENANCE OF THE I-25 / US 34
INTERCHANGE – INTERIM IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this ____ of _____, 2008, by and between CITY OF LOVELAND, COLORADO, a home rule municipality (the “City”), and CENTERRA METROPOLITAN DISTRICT No. 1, a quasi-municipal corporation and a political subdivision of the State of Colorado (the “District”).

WHEREAS, the District is responsible for assisting with regional public infrastructure improvements that benefit certain real property situated in the County of Larimer, State of Colorado (hereafter referred to as the “Regional Improvement Area”), more particularly shown on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the District and the City have entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, (the “MFA”) to provide, among other things, for the financing for the regional public infrastructure improvements; and

WHEREAS, the District and the City entered into an Intergovernmental Agreement dated August 8, 2005, to fund the 1601 Process Application for the interim improvements to the U.S. Highway 34/I-25 interchange; and

WHEREAS, the District and the City entered into an Intergovernmental Agreement dated July 12, 2006, to fund the Final Design for the interim improvements to the U.S. Highway 34/I-25 interchange; and

WHEREAS, the District and the City, acting as the “Local Agency,” desire to partner in the construction and maintenance of the interim improvements more specifically known as Colorado Department of Transportation (“CDOT”) Project CC 0341-066 (15401), hereinafter referred to as the “Project” which includes safety improvements to the interchange, architectural enhancements to the bridge and landscape enhancements.

WHEREAS, the safety improvements to the interchange, architectural enhancements to the bridge and the landscaping will collectively benefit all of the City of Loveland.

NOW, THEREFORE, in consideration of the promises of the parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

1. Construction Work. The City shall be responsible for securing a contractor to construct the Project. Said construction work shall be completed in accordance with CDOT specifications. The City’s public bidding documents for the Project shall contain a requirement that only those companies that are CDOT prequalified may bid on the safety improvements, bridge enhancements or landscaping. The City shall also comply with the bidding procedures established in the MFA. The District shall review the final scope of work and provide comments

to the City prior to advertising for bid and prior to execution of the construction contract for the Project. The bidding documents are anticipated to reflect three schedules of work with the following priority for funding: Safety Improvements, Bridge Enhancements and Landscaping. Notwithstanding the cap established in Paragraph 2 below, the District shall also review and comment on any change orders that have the effect of cumulatively increasing the cost of the Project by more than five percent (5%) over the awarded amount of the contract. The construction contract for the Project shall contain a provision requiring the contractor to substantially complete the Project no later than sixteen (16) months after the notice to proceed is issued by the City.

2. Construction Costs. The District shall pay all costs necessary to complete the Project including, without limitation, those costs associated with the construction, City administration, and CDOT review; provided, however, that said costs shall be capped at Twelve Million Dollars (\$12,000,000). Costs in excess of this amount shall first be approved by the parties by written amendment to this Agreement approved by the City Manager and the District Manager. All purchase orders related to the Project shall be issued by the City. Invoicing and payment of the Project costs shall be as follows:

a. Construction Costs. The City shall review all invoices submitted for the Project and forward the results of this review to the District within fifteen (15) days. The District shall provide payment directly to the contractor within thirty (30) days of receipt of such billing from the City. The District shall provide evidence to the City of all payments made.

b. City Administration Costs. The District shall pay the City an administrative fee equal to Forty-Nine Thousand Nine Hundred Dollars (\$49,900), which is part of the agreed upon total estimated costs for the Project. This fee shall be used to contract for project management services restricted to this Project. The District shall pay such fee within thirty (30) days of receipt of a bill from the City, which billing shall not occur more frequently than monthly.

c. CDOT Review Costs. The District shall pay all costs associated with CDOT review services necessary to complete the Project which are estimated to be Seventy-One Thousand Five Hundred Dollars (\$71,500), and which are part of the agreed upon total estimated cost for the Project. The City shall review all invoices submitted for the services and forward the results of this review to the District within fifteen (15) days. The District shall provide payment directly to CDOT within thirty (30) days of receiving such billing from the City. The District shall provide evidence to the City of all payments made.

3. Project Schedule. It is anticipated that the construction contract for the Project will be executed within thirty (30) days of the City receiving final approval of the design of the Project by CDOT and the Project will be substantially complete within sixteen (16) months of the City's issuance of a notice to proceed under the construction contract for the Project. However, nothing in this Agreement shall be construed to require commencement or completion of the Project by these dates, or any particular date.

4. Construction Work Oversight. The City will have primary responsibility for managing the Project; provided, however, that the City and the District shall work collaboratively during construction of the Project. Such collaboration will likely include regular participation in project meetings and review of change orders.

5. Maintenance. The Parties acknowledge that the Intergovernmental Agreement between the City and CDOT requires the bridge enhancements (Exhibit B) and landscaping (Exhibit C) to be maintained by the City. As such the City and the District agree to share the annual cost of maintaining these improvements on a 50/50 basis. The District will act on behalf of the City to secure and manage all necessary maintenance contracts for the bridge enhancements and landscaping each year. Said maintenance is anticipated to include, but is not limited to, routine care and replacement of plants, trees and irrigation system, mowing of all grasses including dry land seeded area, periodic cleaning, replacement or repair of the bridge lighting and stone work, painting of the steel beams, and paying utility bills. The District will compile all bills annually, including 10% of the direct cost to cover administration, and submit them to the City for reimbursement of 50% of the total cost. The City shall pay such bills within thirty (30) days of receipt. The estimated total cost of maintenance for the bridge enhancements and landscaping is anticipated to be approximately one hundred thousand dollars (\$100,000) per year. City Manager approval shall be required if the City's share of the annual maintenance costs exceeds fifty thousand dollars (\$50,000). Maintenance of the safety improvements will be the responsibility of the City and CDOT in accordance with the Intergovernmental Agreement between them.

6. Waiver of Damages. To the extent permitted by law, the District hereby covenants and agrees to save and hold harmless the City, and its officers, employees, and agents, from any and all liability, loss, costs, charges, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of the City's performance under the terms of the Agreement. The District specifically agrees to hold the City harmless from any damages whatsoever that result from the timing of the performance of the hired contractors including, but not limited to, any and all consequential damages and lost revenues.

7. Multi-Fiscal Year Obligations. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

8. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver by the City or the District, express or implied, of any of the notice requirements, immunities, limitations to liability, rights, benefits, protections, or other provisions under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* or under any other law.

9. Force Majeure. Notwithstanding anything contained herein to the contrary, the parties agree that to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, illegality, act of God, or any cause beyond the control of the City, or strikes or labor trouble affecting the City (whether or not in the power of the City to settle the same), prevents or delays the performance by the City under this Agreement, the City shall be relieved of the consequences thereof without liability, so long as and to the extent that the City's performance is prevented by such cause; provided, however, that the City shall exercise due diligence in its efforts to resume performance within a reasonable period of time.

10. Governing Law and Enforceability. This Agreement shall be construed in accordance with the laws of the State of Colorado, and venue shall be in the District Court of the County of Larimer, State of Colorado. The parties recognize that there are legal constraints imposed upon the City by constitutions, statutes, rules, and regulations of the State of Colorado and of the United States and imposed upon it by the City Charter and the Loveland Municipal Code, and that subject to such constraints, the parties intended to carry out the terms and conditions of this Agreement.

11. Assignment. Neither party may assign this Agreement without the other party's prior written consent.

12. Waiver. No waiver by either of the parties of any term or condition of this Agreement shall be deemed to be or shall be construed as a waiver of any other term or condition of this Agreement, nor shall any waiver of a breach of any provision of this Agreement be deemed to constitute a waiver or any subsequent breach of the same provision.

13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

14. Entire Agreement. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.

15. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

17. Notices. Other than billing invoices which may be sent by first class mail, written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City: David Klockeman, P.E., City Engineer
City of Loveland Public Works Department
410 East 5th Street
Loveland, CO 80537

With a copy to: City Attorney's Office
Attn: City Attorney
City of Loveland
500 East Third Street
Loveland, CO 80537

If to District: Centerra Metropolitan District No. 1
Attn: Rich Shannon
2725 Rocky Mountain Ave., Suite 200
Loveland, CO 80538

With a copy to: Alan Pogue
Icenogle Norton
1331 17th Street, Suite 500
Denver, CO 80202

18. Construction of Agreement. This Agreement shall be construed according to its fair meaning as if prepared by both parties and shall be deemed to be and contain the entire understanding of the parties.

(Remainder of page left intentionally blank)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF LOVELAND, COLORADO

By: _____
Don F. Williams, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CENTERRA METROPOLITAN DISTRICT NO. 1

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Name

Title

Date

EXHIBIT A

Regional Improvement Area

Exhibit A
to Centerra Master Financing
and Intergovernmental Agreement
"Metro District Map"

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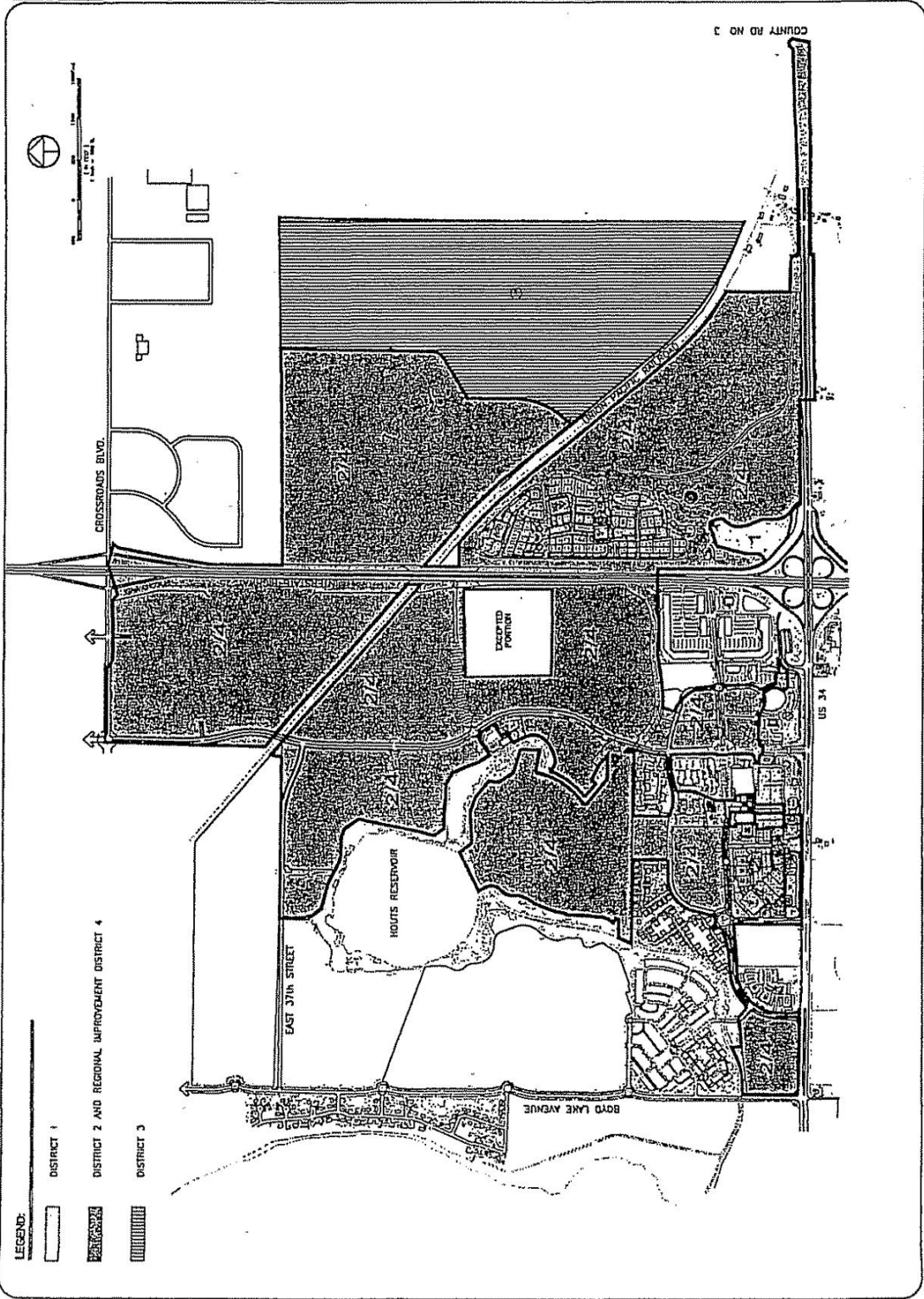


EXHIBIT B

Bridge Enhancements

EXHIBIT C

Landscaping

