

DATE: April 16, 2013
STAFF: Kelly DiMartino
Molly North

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

17

SUBJECT

Resolution 2013-034 Authorizing the Mayor to Execute an Intergovernmental Agreement Creating a Public Entity to Manage the Loveland to Fort Collins Stage of the USA Pro Challenge Cycling Race.

EXECUTIVE SUMMARY

Fort Collins successfully partnered with Loveland, Estes Park, Windsor and Larimer County to secure a stage in the 2013 USA Pro Challenge (Pro Challenge), a seven day, professional cycling race. This Resolution authorizes the City to enter into an intergovernmental agreement with these local government partners to create a new public entity, the Northern Colorado Pro Challenge Local Organizing Committee (LOC), which would be responsible for planning, funding, promoting and conducting the Fort Collins-Loveland stage of the August, 2013 Pro Challenge.

BACKGROUND / DISCUSSION

Fort Collins, Loveland, Estes Park, Windsor and Larimer County came together in 2012 to submit a bid to host a beginning and ending stage of the 2013 Pro Challenge. The Pro Challenge is an annual professional road cycling stage race featuring riders from sixteen international, professional teams. The race first occurred in Colorado in 2011; Northern Colorado, the first group to submit a regional bid, was awarded the 6th stage of the Pro Challenge. The race will be in Northern Colorado on Saturday, August 24, 2013. The exact route is yet to be determined; however, it will start at The Ranch, pass through Windsor, Loveland and Estes Park, and end in downtown Fort Collins.

As a Gold-level Bicycle Friendly Community, Fort Collins has demonstrated a commitment to cycling through education, encouragement, enforcement and engineering. This event provides media exposure on a statewide, national and international scale and furthers Fort Collins reputation as a leader in the cycling work. Additionally, the Pro Challenge will bring an estimated \$2 - \$4 million in publicity.

An event of this magnitude requires significant planning and coordination. Representatives from the partner entities, as well as other community organizations such as the Fort Collins Convention and Visitors Bureau and the Downtown Business Association, are working together to ensure the event is a success. The Pro Challenge owner, Classic Bicycle Racing, LLC (CBR), requires communities that are hosting the start or finish of a Pro Challenge stage to enter into a contract specifying all of the services and facilities the host community will provide. Given the regional nature of this partnership, it is in the best interest of all parties to create a new public entity with the power and authority to enter into contracts for the purpose of fulfilling Northern Colorado's race stage obligations, so that no one community bears sole responsibility and liability for the event.

The purpose of this Resolution is to authorize the execution of an intergovernmental agreement between Larimer County, Fort Collins, Loveland, Windsor and Estes Park that would create a new public entity, the Northern Colorado Pro Challenge Local Organizing Committee (LOC).

The LOC would enter into the contract with CBR. Through that contract, the LOC would agree to provide services such as transportation, security, road closures, emergency medical services, permits, parking, volunteers, food, lodging, portable restrooms, trash removal and recycling. The LOC would also have authority to enter into other contracts for services and facilities (including contracts with each local government entity to provide in-kind services and facilities), accept donations and community sponsorships, organize volunteers, and assume general managerial responsibilities over the Northern Colorado stage of the Pro Challenge.

The LOC will be governed by a nine member Executive Committee, which includes one representative from each municipality. Kelly DiMartino, Assistant to the City Manager, is serving as the City's representative. Other members will be appointed by the municipal representatives based on expertise needed to put on the event. The LOC will have nine committees: Operations, Technical, Media and Public Relations, Marketing, Volunteers, VIP/Hospitality, Sponsorship/Sales, Education/Community Outreach, and Festival & Ancillary Events.

FINANCIAL / ECONOMIC IMPACTS

As part of the 2013-2014 Budget Process, City Council approved \$50,000 for the event; the City has also agreed to provide \$50,000 of in-kind services. The event is expected to create a positive economic impact and local spending benefit.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

RESOLUTION 2013-034
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT
CREATING A PUBLIC ENTITY TO MANAGE THE LOVELAND TO FORT COLLINS
STAGE OF THE USA PRO CHALLENGE CYCLING RACE

WHEREAS, the USA Pro Challenge is an annual professional road cycling race that first took place in Colorado in 2011 (the “Pro Challenge”); and

WHEREAS, the Pro Challenge is conducted in locations around Colorado over a seven-day period, with each day's racing being one “stage” of the overall race; and

WHEREAS, in 2012, the City partnered with Larimer County, the City of Loveland and the towns of Windsor and Estes Park (the “Government Partners”), as well as other local organizations, to submit a bid to host a stage of the 2013 Pro Challenge; and

WHEREAS, the bid was successful, and the Northern Colorado stage of the 2013 Pro Challenge is scheduled to take place on August 24, 2013, starting at The Ranch and passing through Windsor, Loveland and Estes Park before finishing in downtown Fort Collins; and

WHEREAS, the Pro Challenge owner, Classic Bicycle Racing, LLC (“CBR”) requires communities that are selected to host the start or finish of a particular stage to enter into a contract with CBR that spells out all the services and facilities that a host community must provide; and

WHEREAS, the Government Partners have formed a committee with other groups such as the Downtown Business Association, the Fort Collins Convention and Visitors Bureau, the local cycling community and other interested individuals, to put together the Northern Colorado stage bid and to start organizing for the race events, but this committee is not a legal entity with authority to enter into contracts, so its ability to arrange for all the facilities and services needed for the Pro Challenge is limited; and

WHEREAS, Section 29-1-203(4) of the Colorado Revised Statutes permits the establishment of a separate governmental entity by agreement; and

WHEREAS, rather than have one of the Government Partners enter into the contract with CBR and assume all responsibility and liability for organizing what is truly a regional event, the Government Partners are proposing to create a new public entity to organize and manage the Pro Challenge race events in Northern Colorado; and

WHEREAS, the public entity, which would be called the Northern Colorado Pro Challenge Local Organizing Committee (“LOC”), would be created through an intergovernmental agreement between the Government Partners and would enter into the contract with CBR to host the Northern Colorado Pro Challenge stage; and

WHEREAS, a copy of the current draft of the proposed intergovernmental agreement is attached and incorporated herein as Exhibit “A” (the “IGA”); and

WHEREAS, under the IGA, the LOC would have the power to:

- collect, hold and spend funds, though not the authority to tax;
- negotiate and enter into contracts;
- employ individuals
- incur debts, liabilities and obligations, to the extent permitted by law and with limitations set by the IGA;
- undertake any other actions that are necessary for it to perform its obligations under the IGA to plan, fund, promote and conduct the Pro Challenge stage as required by CBR; and

WHEREAS, the LOC would be governed by a nine-member Executive Committee that includes one representative from each of the Government Partners; and

WHEREAS, the IGA would terminate and the LOC would dissolve on December 31, 2013, unless the parties agree to extend the IGA for one or more years; and

WHEREAS, Section 29-1-203(1) of the Colorado Revised Statutes states that governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of them, only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with other governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the Mayor is hereby authorized to execute an Intergovernmental Agreement for the creation of the LOC in substantially the form attached hereto as Exhibit “A”, along with such additions or modifications as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Section 2. That the City Manager is hereby authorized to appoint the City's representative to the LOC.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of April A.D. 2013.

Mayor

ATTEST:

City Clerk

**AGREEMENT FOR THE ESTABLISHMENT OF THE NORTHERN COLORADO
PRO CHALLENGE LOCAL ORGANIZING COMMITTEE**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this _____
_____ among the following public entities which shall collectively be referred to as the “Parties”, or individually as a “Contracting Party”: County of Larimer, Town of Estes Park, the City of Fort Collins, the City of Loveland, the Town of Windsor.

WITNESSETH:

WHEREAS, the Colorado Constitution, Article XIV, Section §18 and §29-1-201, C.R.S., *et seq.* provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other; and

WHEREAS, §29-1-203, C.R.S., as amended, authorizes any political subdivisions or agency of the State of Colorado to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting entities, including the sharing of costs, imposition of taxes, or incurring of debt; and

WHEREAS, §29-1-203(4) permits the establishment of a separate governmental entity by agreement; and,

WHEREAS, the Parties agree that it is in the best interests of the Parties and their citizens to promote and conduct the August 24, 2013, Loveland-Fort Collins Stage of the USA Pro Challenge (The Event) to be conducted by Classic Bicycle Racing, LLC (CBR); and,

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement for the purposes of establishing a separate Public Entity (Public Entity) to promote and conduct The Event and to define the purpose of such Entity and to state the manner in which each of the Parties hereto will participate; and,

WHEREAS, the Parties intend that the Public Entity shall fall within the definition of a “public entity” under the Colorado Governmental Immunity Act, §24-10-101, C.R.S; and,

WHEREAS, the Parties intend that those individuals providing services to the Public Entity, either as employees or volunteers are Public Employees within the scope of §24-10-103 C.R.S.; and,

WHEREAS, the Parties intend that the Public Entity created by this agreement is an Enterprise within the meaning of Article X, §20 of the Constitution of the State of Colorado; and,

WHEREAS, the Parties intend that the Public Entity is not subject to the revenue and spending limitations imposed by Article X, §20(2)(d) of the Colorado Constitution; and,

WHEREAS, the Parties intend that the Public Entity and its activities all be in furtherance of a public purpose;

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

I. PREAMBLE

The Parties agree that the recitals set forth above are true and correct and those recitals are hereby incorporated in the body of this Agreement as operative provisions.

II. ESTABLISHMENT OF THE NORTHERN COLORADO PRO CHALLENGE LOCAL ORGANIZING COMMITTEE

1. The Parties hereby establish the Public Entity to be known as the Northern Colorado Pro Challenge Local Organizing Committee (“LOC”) which shall be responsible for planning funding, promoting, and conducting The Event.
2. The LOC is hereby created as a Colorado public entity established pursuant to §29-1-203, C.R.S. *et seq.* and pursuant to the Colorado Governmental Immunity Act, §24-10-101, C.R.S., *et seq.*
3. The LOC is an independent legal entity, separate and distinct from the Parties, but subject to their ownership and control.

III. ESTABLISHMENT OF THE LOC BOARD

1. **Governing Board.** The LOC shall be governed by an Executive Committee (EC) which shall have the power to perform all acts necessary, whether express or implied, to fulfill the purpose, and to provide the functions, services and facilities, for which the LOC was created.
2. **Composition of the Executive Committee.** The EC shall consist of nine (9) members. The members of the EC shall be appointed as follows:
 - a. One member shall be appointed by each of the parties for a total of five (5) members.
 - b. The five members so appointed shall appoint four (4) additional members using whatever process and criteria the five members deem advisable keeping in mind the fundraising, public relations, and technical expertise needed to put on the Event.
 - c. Members shall serve until this agreement terminates.
 - d. Vacancies to the EC shall be filled either by the parties or members making the original appointment.
 - e. Members shall serve without compensation.

3. **Voting and Quorum.** Each member of the EC shall have one (1) vote. A quorum of the EC shall consist of five members. No official action may be taken by the EC on any matter unless a quorum is present. The affirmative vote of a majority of the EC members present at the time of the vote shall be required for the EC to take action. The EC may meet, vote and act through electronic means. The EC is subject to the Colorado Open Meetings Law.

4. **Bylaws.** The EC may either adopt bylaws or it may adopt an organizing resolution or rules establishing officers and detailing all matters in connection therewith, including the election, duties and terms of officers and the filling of any officer vacancies, the establishment and responsibilities of committees, scheduling of meetings, and standing operating and fiscal procedures, as it deems necessary, provided the bylaws or rules are in compliance with Articles I and II of Title 29, C.R.S., as amended, and this Agreement.

IV. POWERS OF THE LOC

1. **Plenary Powers.** Except as otherwise limited by this Agreement, the LOC, in its own name and as provided herein, shall have and may exercise all powers lawfully authorized to any of the Parties and may exercise such powers pursuant to §29-1-203, this Agreement, as amended, including all incidental, implied, expressed or such other powers as necessary to execute the purposes of this Agreement. These powers include the authority to receive and expend funds from any source, to apportion costs and obligations to the Parties as stated herein or as may from time to time be agreed to, and to enter into contracts. The LOC shall act through the EC, officers and agents as authorized by this Agreement, the bylaws or other resolution of the EC. The LOC shall not have the power to levy taxes on its own behalf or on behalf of any Contracting Party or to bind any Party to a debt or obligation without the specific consent of the Party, nor shall the LOC have the power of eminent domain.

2. **Enumerated Powers.** The LOC is authorized to undertake all actions reasonably necessary to planning, funding, promoting, and conducting the Event, and to carry out the intent and purpose of this Agreement, including but not limited to:

a. Negotiate, enter into and perform contracts, agreements and other obligations with the USA Pro Challenge for the purpose of promoting and conducting The Event.

b. Collect, hold, and spend funds from any source including donations, sponsorships, advertising, product sales, fees, ancillary events, and other spectator charges.

c. Acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any legal or equitable interest in personal property in connection with The Event.

d. Enter into, make and perform contracts and agreements with other governmental, non-profit, and private entities which are reasonably necessary to stage The Event.

- e. Employ individuals, engage in employee borrowing arrangements, and contract with others as the EC deems necessary for the promotion and staging The Event or to otherwise perform the obligations of agreements related to The Event.
- f. Conduct the business and affairs of the LOC.
- g. Incur debts, liabilities or obligations to the extent and in the manner permitted by law. However, the LOC shall not incur debt in excess of Twenty-Five Thousand Dollars (\$25,000.00) without agreement of the Parties.
- h. Sue and to be sued in its own name.
- i. Receive contributions, gifts, bequests, grants, cash, equipment or services from the Parties or any other public or private individual or entity for the furtherance of the intent and purpose of this Agreement, and the LOC's performance of its obligations under this Agreement.
- j. Undertake any other actions or services that the LOC believes are reasonably necessary for the exercise of its powers and the performance of its obligations under this Agreement.

V. RULES AND REGULATIONS

The EC may promulgate and adopt rules, regulations, policies and procedures which the EC deems necessary to carry out the intent and purposes of this Agreement, and to exercise the LOC's powers and perform the LOC's obligations. After their initial adoption, the rules, regulations, policies and procedures may be modified or amended, provided any such modification or amendment: (a) is approved by a majority vote of the EC; (b) is consistent with the purpose and intent of this Agreement; (c) is not in conflict with any of the provisions of this Agreement; and (d) is in compliance with any and all applicable state and federal laws.

VI. FINANCIAL COMMITMENT OF THE PARTIES

1. **Funding.** The Parties agree to provide initial funding, which funds may be in cash transfers or in-kind services to the LOC as follows:

The City of Fort Collins:	Fifty-thousand dollars (\$50,000.00) plus \$50,000 in-kind.
The City of Loveland:	Fifty-thousand dollars (\$50,000.00) plus \$50,000 in-kind.
The Town of Windsor:	Eight-thousand dollars (\$8,000.00).
The Town of Estes Park:	Fifteen-thousand dollars (\$15,000).
Larimer County:	In-kind only.

2. **Future Funding.** It is understood that the LOC's budget is continuing to evolve. It is the goal of the EC to manage the event on a zero-based budget, where no profit is gained and expenses do not exceed revenue. To provide accountability, the EC shall meet on May 15, June

15, and July 15 to review the budget. If on these dates the LOC's budget is not accomplishing this goal, then the LOC will take the following actions:

- a. Refine the budget by reducing expenses or seek additional private funding so the goal may be attained; and
- b. Offset expenses by increasing the in-kind services being provided by the Parties.

In the event that these actions are not sufficient to provide adequate funding for the LOC's necessary expenses, each of the Parties agrees to return to their respected governing bodies to request supplemental funding.

VII. USE OF FUNDS – CONTRIBUTIONS

The LOC shall use the funds generated in connection with contributions, sponsorships, advertising revenue, ticket sales and any revenue from any source solely for the purpose of promoting and conducting The Event and LOC operations including any expense obligated to CBR.

VIII. BOOKS AND RECORDS

The LOC shall provide for the keeping of accurate and correct books of account showing in detail the revenue and expenses in connection with The Event. The LOC's books of account shall correctly show any and all revenues, costs, or charges paid to or to be paid by each of the Parties, and all funds received by, and all funds expended by the LOC. The LOC's books and records shall be open to inspection during normal business hours upon reasonable notice by the Parties. The books and records of the LOC shall also be made available to the public in accordance with the provisions of §24-72-201, C.R.S., *et seq.* (the "Open Records Act").

The LOC shall cause an audit to be conducted by an independent Certified Public Accountant licensed to practice in the State of Colorado. The LOC shall comply with the provisions of §29-1-601, C.R.S. *et seq.*, The Local Government Audit Law, as may be amended from time to time. The LOC shall comply with all federal and state financial reporting requirements.

IX. REPORTS TO PARTIES

On a monthly basis, the LOC shall submit a comprehensive financial report to the Parties summarizing the, revenue, expenses, obligations and other activities of the LOC starting the end of the month following approval of this Agreement.

X. ASSETS OF THE LOC

1. **Assets.** Any assets purchased or received by the LOC subsequent to the formation of the LOC shall be owned by the LOC for the mutual benefit of the Parties. Assets purchased with

funds of the LOC and one or more Parties shall be owned jointly in proportion to the amounts contributed.

2. **Asset Inventory Schedules.** The LOC shall maintain an asset inventory list for any and all real and personal property acquired by the LOC.

XI. OTHER REPRESENTATIONS AND OBLIGATIONS OF THE PARTIES

1. The Parties have read and understand the agreements, obligations, and undertakings of the LOC with respect to CBR. The Parties agree to use their best efforts and to participate in good faith for the LOC to comply with such agreements, obligations and undertakings.

2. The Parties understand and agree that individual agreements, obligations and undertakings of each of them for its portion of the Event will be required. The parties shall use their best efforts and to participate in good faith for themselves individually and for the LOC to comply with those agreements, obligations and undertakings.

3. The Parties understand and agree that the CBR will issue an Event Handbook that contains additional obligations and conditions for promoting and staging the Event. The parties agree to use their best efforts and to participate in good faith for the LOC and the Parties to comply with the terms and conditions of the Handbook.

4. The Parties waive all claims for indemnification and damages against each other for any claims arising out of the performance of this agreement or the performance of any agreement or undertaking with CBR.

XII. DEFAULT OF PERFORMANCE

1. In the event any Contracting Party fails to perform any of its covenants and undertakings under this Agreement, the LOC may terminate this Agreement as to such Contracting Party. The LOC shall cause written notice of the LOC's intention to terminate said Agreement as to such Contracting Party to be given to that party's governing body identifying the matter in default. Upon failure to cure any such default within thirty (30) days after such notice is given, the membership in the LOC of the defaulting party shall thereupon terminate and said Contracting Party shall thereafter have no voting rights as a member of the LOC, nor be entitled to representation on the EC, and said Contracting Party may thereafter be denied service by the LOC. Furthermore, any Contracting Party whose participation is terminated under the provisions of this article of the Agreement shall forfeit all right, title and interest in and to any property of or within the LOC to which it may otherwise be entitled upon the dissolution of the LOC. Subject to Section XI (4), this article is not intended to limit the right of the LOC or any Contracting Party under this Agreement to pursue any and all other remedies it may have for breach of this Agreement.

2. In the event of litigation between any of the Parties hereto concerning this Agreement (or between the LOC and any Contracting Party), the prevailing party may recover its costs and reasonable attorney fees incurred therein.

XIII. DURATION OF AGREEMENT

This Agreement shall be in effect from the time it is fully executed and shall continue December 31, 2013. At that time the Agreement shall terminate, the entity created by this agreement shall dissolve and financial affairs of the LOC shall be wound up.

XIV. WITHDRAWAL AND DISSOLUTION

1. **Individual Party's Withdrawal.** No Contracting Party may withdraw from this LOC.
2. **Dissolution of LOC.** Upon the termination of this Agreement pursuant to Section XIII above, the LOC Board and the Parties shall take such actions necessary to finalize and conclude the LOC's operations and effect the orderly dissolution of the LOC.
3. **Distribution of Assets.** All contributions of real and personal property, all net cash proceeds received by the LOC and existing on December 31, 2013, and all assets of the LOC shall be distributed on a proportional basis in accordance with the original contributions of the parties under Section VI, taking into consideration supplemental and additional contributions if any have been made. No consideration shall be given for in-kind services provided to the LOC for purposes of this distribution. The EC shall be responsible for inventorying the revenues, property and assets of the LOC, making distributions to the Parties and concluding the affairs of the LOC. A Contracting Party which has made a contribution toward a jointly owned asset (as defined in Section X) would be entitled to retain ownership of the asset upon termination; however, the Contracting Party must account to the LOC for the amount of the LOC's contribution toward purchase of the asset upon distribution of the other assets of the LOC.

XV. LIABILITY OF THE BOARD OF DIRECTORS, OFFICERS AND EMPLOYEES OF THE LOC

As a public entity, the LOC and its directors, officers and employees shall be immune from civil liability in accordance with, and the extent provided by §24-10-101, C.R.S., *et seq.* (the Governmental Immunity Act) and any other applicable law. In addition, and pursuant to the Governmental Immunity Act, the LOC will defend, indemnify, and hold harmless all officers, directors, and employees for claims arising from activities within the scope of their duties of such individuals. The LOC may purchase insurance for this purpose.

XVI. AMENDMENTS

This Agreement may be amended upon the affirmative vote of three Parties.

XVII. SEVERABILITY

In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions of this Agreement shall remain in full force and effect unless and until otherwise determined. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provision of this Agreement.

XVIII. SUCCESSORS AND THIRD PARTIES

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. This Agreement is not intended to, and does not, inure to the benefit any individual or entity who is not a Party.

XIX. ASSIGNMENT AND DELEGATION

No Contracting Party shall assign any of the rights nor delegate any of the duties created by this Agreement without the written approval of three quarters (3/4) of the other Parties to this Agreement, and any assignment without said approval is void.

XX. INTERPRETATION

a. This document represents the entire agreement of the parties and is deemed prepared by all of the parties.

b. Performance of this agreement is subject to the Constitution and laws of the State of Colorado and the charters of the municipal parties. Venue for any judicial action under this Agreement shall be in Larimer County District Court.

IN WITNESS WHEREOF, the Parties hereto have caused their representatives to affix their respective signatures hereto, as of the day and year hereinafter set forth.

**COUNTY OF LARIMER,
STATE OF COLORADO**

By _____

ATTEST:

Date: _____

**CITY OF FORT COLLINS,
COLORADO**

By _____

ATTEST:

Date: _____

CITY OF LOVELAND, COLORADO

By _____

ATTEST:

Date: _____

TOWN OF WINDSOR, COLORADO

By _____

ATTEST:

Date: _____

TOWN OF ESTES PARK, COLORADO

By _____

ATTEST:

Date: _____