

**LOVELAND CITY COUNCIL MEETING
TUESDAY, MARCH 5, 2013
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO**

The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at bettie.greenberg@cityofloveland.org or 970-962-3319.

5:30 P.M. DINNER - City Manager's Conference Room
6:30 P.M. REGULAR MEETING - City Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

1. **CITY CLERK** (presenter: Terry Andrews)
APPROVAL OF COUNCIL MINUTES
Motion to approve Council minutes from the February 12, 2013 study session and from the February 19, 2013 regular meeting
This is an administrative action to approve the Council minutes.

2. **CITY MANAGER** (presenter: Bill Cahill)
AMENDMENT TO MUNICIPAL CODE PERTAINING TO SENIOR ADVISORY BOARD
Motion to approve and order published on second reading an ordinance amending Section 2.60.240 of the Loveland Municipal Code pertaining to the Senior Advisory Board
This is a legislative action to adopt an ordinance on second reading amending Section 2.60.040 relating to the Senior Advisory Board membership. The first reading of the

- ordinance was approved unanimously by City Council at the February 19, 2013 meeting.
3. **FINANCE** (presenter: John Hartman)
SUPPLEMENTAL BUDGET AND APPROPRIATION-FLEET AND POLICE FUNDS
Motion to approve and order published on second reading an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for expenses related to the cost of fuel and parts for the operation of the city fleet and for police overtime expenses for special investigations
 This is an administrative action. The ordinance appropriates revenues received in 2012 and fund balance to the 2012 budget for vehicle maintenance expenses and police overtime costs. The appropriation is necessary so that 2012 expenses do not exceed the appropriated amount in the Vehicle Maintenance Fund and the Police Seizure and Forfeiture Fund. The first reading of the ordinance was approved unanimously by City Council at the February 19, 2013 meeting.

 4. **DEVELOPMENT SERVICES** (presenter: Greg George)
CONVEYANCE OF PROPERTY – BUCK FOURTH SUBDIVISION
Motion to approve and order published on second reading an ordinance authorizing the conveyance of real property located in Lots 1 and 2, Block 1 and Tract C, Buck Fourth Subdivision, City of Loveland, Larimer County, Colorado
 This is an administrative action to consider an ordinance on second reading authorizing the conveyance of a parcel of real property owned by the City and used as a part of an existing regional detention pond to the current owner of Lots 1 and 2, Block 1 and Tract C, Buck Fourth Subdivision in return for a permanent exclusive easement over such property to permit continued operation of the regional detention pond and a new utility easement. The conveyance and the new easement are intended to clean up title defects resulting from modifications made in the Buck 4th Subdivision plat for a development that has never occurred and preserve the City's right to maintain the detention pond and sewer line in their existing locations. The first reading of the ordinance was approved unanimously by City Council at the February 19, 2013 meeting.

 5. **DEVELOPMENT SERVICES** (presenter: Kerri Burchett)
VACATING PORTION OF DRAINAGE EASEMENTS –MINERAL FIRST SUBDIVISION
A motion to approve and order published on second reading, an ordinance vacating a portion of drainage easements on Lots 5 & 6, Block 1, Mineral First Subdivision, City Of Loveland
 This is a legislative action to adopt an ordinance on second reading vacating portions of two drainage easements on Lots 5 and 6, Block 1, Mineral First Subdivision. The applicant is Boulder Creek Builders. The first reading of the ordinance was approved unanimously by City Council at the February 19, 2013 meeting.

 6. **PUBLIC WORKS** (presenter: Ken Cooper)
SALE OF CITY PROPERTY – 905, 915, 925, 933 AND 935 NORTH TAFT AVENUE
A motion to approve and order published on second reading an ordinance authorizing the sale of city property located at 905, 915, 925, 933, and 935 North Taft Avenue
 This is an administrative matter approving the sale of approximately 5.2 acres of City-owned property located at 905, 915, 925, 933, and 935 North Taft Avenue, which were parcels acquired for the Taft Avenue widening project. The first reading of the ordinance was approved unanimously by City Council at the February 19, 2013 meeting.

7. **PARKS & RECREATION** (presenter: Keven Aggers)
IGA WITH THOMPSON SCHOOL DISTRICT R2-J FOR JOINT USE FACILITIES
Motion to approve Resolution #R-19-2013, approving an Intergovernmental Agreement between the City of Loveland and Thompson School District R2-J concerning joint use of facilities
 This is an administrative action to adopt a resolution approving an Intergovernmental Agreement with Thompson R2-J School District to establish the parameters for co-use of facilities and update the Intergovernmental Agreement dated February 4, 1998.

8. **DEVELOPMENT SERVICES** (presenter: Alison Hade)
WAIVER OF FEES – CONSTRUCTION BY LOVELAND HABITAT FOR HUMANITY
Motion to adopt Resolution #R-20-2013, waiving certain development fees for the construction of eight residences by Loveland Habitat For Humanity
 This is an administrative action to approve a resolution waiving all development, capital expansion, and enterprise fees for the construction of eight new single family dwellings by Loveland Habitat for Humanity in 2013. The total fee estimate for all eight dwellings is \$206,444.37. The requested fee waiver is \$185,796.56. Habitat for Humanity will pay the remaining \$20,647.81.

9. **PARKS & RECREATION** (presenter: Marilyn Hilgenberg)
PUBLIC HEARING
IGA WITH COLORADO PARKS & WILDLIFE – “FISHING IS FUN” GRANT
 1. **Motion to adopt Resolution #R-21-2013, approving an Intergovernmental Agreement between the City of Loveland and the State of Colorado Division of Parks and Wildlife to accept a “Fishing is Fun” grant for enhancements to the River’s Edge Natural Area**
 2. **Motion to adopt and order published on first reading an ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for a Federal grant from the United States Fish and Wildlife Service for construction of certain components of the River’s Edge Natural Area Development Project**
 These are administrative actions. The resolution allows the City to enter into an intergovernmental agreement with the State of Colorado to accept grant funding awarded by the United States Fish and Wildlife Service, through the Colorado Fishing is Fun program, in the amount of \$90,000. The ordinance appropriates grant funding for the River’s Edge Natural Area project.

10. **CITY MANAGER** (presenter: Bill Cahill)
REPORT OF THE CITY COUNCIL’S ANNUAL GOAL-SETTING SESSION
Motion to accept and approve the Report of the City Council’s Annual Goal-Setting Session
 This is an administrative action accepting and approving the Report of the City Council’s Annual Goal-Setting Session held on January 26, 2013.

11. **CITY MANAGER** (presenter: Terry Andrews)
AMENDMENT OF THE HANDBOOK FOR BOARDS AND COMMISSIONS
Motion to adopt Resolution #R-22-2013, amending the City of Loveland Handbook for Boards and Commissions
 This is an administrative action to adopt an amended Handbook for Boards and Commissions. The proposed amendments to the Handbook are primarily clean up in nature.

12. **HUMAN RESOURCES** (presenter: Julia Holland)
SCHEDULED CHANGE OF MEETING DATES – FIRE RETIREMENT PLAN BOARD
Motion to adopt the Resolution #R-23-2013, amending the scheduled meeting dates of the City of Loveland Fire Retirement Plan Board
 The Fire Retirement Board voted and approved a request to change the regularly scheduled Board meetings to allow the new provider, ICMA-RC, sufficient time in which to prepare quarterly review reports. This will allow the Board to review current fund data regarding the plan, thus better meeting their fiduciary responsibility for the plan.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

CITY COUNCIL

- a. **Citizens' Report** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*
- b. **Business from Council** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*
- c. **City Manager Report**
- d. **City Attorney Report**

PROCEDURAL INFORMATION

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

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

13. **WATER & POWER** (presenter: Jim Lees)
WATER ENTERPRISE FUNDING
Motion to approve on second reading Resolution #R-16-2013, concerning funding for the Water Enterprise to improve the Water Treatment Plant and undertake a comprehensive water line replacement program
 This is an administrative action to adopt a resolution that provides funding mechanisms for the Water Enterprise through external and internal loans, a series of rate increases, and an annual transfer of funds from the General Fund to the Water Enterprise. This funding will be used to improve the Water Treatment Plant and undertake a comprehensive water line replacement program. This resolution was approved on first reading at the February 19, 2013 City Council meeting with five Councilors voting in favor and three against.
14. **DEVELOPMENT SERVICES** (presenter: Greg George)
PUBLIC HEARING
OIL AND GAS DEVELOPMENT REGULATIONS

Motion to adopt on first reading an ordinance adding to the Loveland Municipal Code Chapter 18.77 for the regulation of oil and gas operations and Chapter 18.78 for setbacks for development from oil and gas operations in the City of Loveland

This item is a legislative action to consider adoption of an ordinance on first reading to establish regulations on oil and gas development. The ordinance would:

- Require operators to obtain a permit from the City prior to locating an oil and gas facility within Loveland city limits.
- Provide two processes and each with a different mix of standards for obtaining a permit.
 - o **Mandatory process:** The mandatory process would require compliance with standards referred to as “baseline standards.” These standards are designed to protect public health, safety and welfare and the environment, while avoiding preemption by state law and the Colorado Oil and Gas Conservation Commission (COGCC) regulations. The permit would require approval by the Planning Commission, with possible appeal to City Council.
 - o **Optional process:** The optional process would be strictly voluntary and would require compliance with standards referred to as “enhanced standards,” in addition to most of the baseline standards. These standards are designed to mitigate adverse impacts on public health, safety and welfare and the environment to a greater degree than required by the COGCC. To encourage operators to agree to comply with these higher enhanced standards that might otherwise be preempted by state law, the permit would be approved by the Director of Development Services, with no appeal to either the Planning Commission or City Council. Any appeal would be to Larimer County District Court.

**15. FINANCE (presenter: Brent Worthington)
JANUARY 2013 PRELIMINARY FINANCIAL REPORT**

This is an information only item. No Council action is required. The Snapshot Report includes the City’s preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending January 31, 2013.

**16. CITY MANAGER (presenter: Alan Krcmarik)
INVESTMENT REPORT FOR JANUARY**

This is an information only item. No Council action is required. The budget estimate for investment earnings for 2013 is \$2,760,560. For January, the amount posted to the investment account is \$100,323 including realized gains. Actual year-to-date earnings are lower than the budget projection by \$129,527. Based on the monthly statement, the estimated annualized 1.18% yield on the securities held by USBank was down from last month and under the annual target rate of 1.20% for 2013. Reinvestment rates have been near record low levels, much lower than the budget projection.

ADJOURN

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Clark, Farley, McKean, Trenary, Klassen, Taylor, Fogle and Shaffer. City Manager, Bill Cahill was also present.

Chief Randy Mirowski came forward to thank Council for their support to Loveland Fire and Rescue Authority in achieving a long term goal that started four years ago to increase staffing and deployment levels to three firefighters per engine. This standard impacts both the response time within the community and safety for firefighters. Council expressed their appreciation to everyone involved for their dedication and hard work in achieving this goal.

1. CITY MANAGER

Regulations Oil and Gas Development

Development Services Director, Greg George introduced this item to Council to present and receive feedback on draft regulations for oil and gas development within Loveland city limits. City Attorney, John Duval was also present to address Council and answer questions. Mr. George reviewed the schedule of meetings held since adopting the ordinance for a moratorium in May, 2012, and extending the moratorium in December, 2012, to allow time for the Colorado Oil and Gas Conservation Commission (COGCC) to complete their rule making which is expected to be complete later this month. There are two types of processes to include: baseline standards which are mandatory; and enhanced standards, which are voluntary. The Planning Commission Review process and Administrative Review process were outlined to clarify Council's role in case of an appeal. COGCC's new rules for groundwater baseline sampling and monitoring, building setbacks and mitigation areas were also presented. The Commission's rules were then reviewed in comparison to current City codes. Council discussion ensued. Council directed staff to move forward with the proposed regulations to be considered at a public hearing of the Planning Commission on February 25, 2013 and first reading of the ordinance for Council consideration on March 5, 2013. Any changes that occur throughout the process will be included in a redlined copy to Council.

The study session was adjourned at 9:20 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

CALL TO ORDER	Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.
PLEDGE OF ALLEGIANCE	The Boy Scouts led the Pledge of Allegiance
ROLL CALL	Roll was called and the following responded: Gutierrez, Farley, Klassen, Trenary, McKean, Shaffer and Clark. Councilor Fogle arrived at 6:33 p.m. Councilor Taylor was absent.
PROCLAMATION	Councilor Farley read the proclamation declaring February 17, 2013 through February 23, 2013 as "national Engineers Week" which was accepted by City Engineer Dave Klockeman.
	PROCLAMATION Whereas, National Engineers Week, founded in 1951 by the National Society of Professional Engineers, is always celebrated at the time of George Washington's Birthday in February because he was our first president and a military engineer, and Whereas, the purpose of National Engineers Week is to increase public awareness and appreciation of the engineering profession; and Whereas, engineers are encouraging our young math and science students to realize the practical power of their knowledge; and Whereas, The Engineers of the State of Colorado will actively help to maintain and sustain the vital infrastructure of our civilized and national environments; and Whereas, engineers help America remain at the forefront of technological development and contribute to countless breakthroughs that improve the quality of life for people throughout the world. Now, Therefore , we, the Loveland City Council of the City of Loveland, do hereby proclaim February 17 through 23, 2013 as National Engineers Week in the City of Loveland. Signed this 19th day of February, 2013 Cecil A. Gutierrez, Mayor
PROCLAMATION	Councilor Shaffer read the Proclamation declaring February 24, 2013 through March 2, 2013 , "Peace Corps Week" , which was accepted by Matt Hogue.
	PROCLAMATION Whereas, the Peace Corps has become an enduring symbol of the United States' commitment to encourage progress, create opportunity and expand development at the grass-roots level in the developing world; and Whereas, since 1961, more than 210,000 Americans have served as Peace Corps volunteers in 139 countries and, during the course of the past 52 years, 79 men and women from Loveland have responded to the Unites States' call to join the Peace Corps; and Whereas, Peace Corps volunteers have made significant and lasting contributions around the world in agriculture, business development, information technology, education, the environment as well as health and HIV/AIDS, and have improved the lives of individuals and communities worldwide; and Whereas, Peace Corps volunteers have strengthened the ties of friendship and understanding between the people of the United States and those of other countries; and

Whereas, Peace Corps volunteers, enriched by their experiences overseas, have brought their communities throughout the United States a deeper understanding of other cultures and traditions, thereby bringing a domestic divided to our nation; and

Whereas, the City of Loveland recognizes the achievements of the Peace Corps and honors its volunteers – past and present – and reaffirms the United States' commitment to helping people help themselves throughout the world.

Now, Therefore, we, the Loveland City Council of the City of Loveland, do hereby proclaim February 24 through March 2, 2013 as Peace Corps Week in the City of Loveland.

Signed this 19th day of February, 2013
Cecil A. Gutierrez, Mayor

PROCEDURAL INFORMATION

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items. Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to remove any of the items or public hearings listed on the Consent Agenda. Councilor Klassen asked for items 11 and 13 to be removed from the Consent Agenda. Councilor Shaffer moved to approve the Consent Agenda, with the exception of items 11 and 13. The motion was seconded by Councilor Trenary and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY MANAGER

Approval of Council Minutes
Motion

Administrative Action: The minutes from the February 5, 2013 regular meeting were approved.

2. CITY CLERK

Board & Commission Appointments

Administrative Action: The following appointments to the Senior Advisory Board, and the Planning Commission were approved:

Richard Zlamany as a regular member of the Senior Advisory Board for a partial term effective until December 31, 2012

Anne Brown to the Senior Advisory Board as the representative for Senior Singles for a two-year term effective until February 19, 2015

Bob Massaro to the Planning Commission for a partial term effective until December 31, 2013

17. DEVELOPMENT SERVICES

Historic Designation – Elks Lodge / Lovelander Hotel

Ordinance # 5743

Legislative Action: "AN ORDINANCE DESIGNATING AS A HISTORIC LANDMARK THE LOVELAND ELKS LODGE/LOVELANDER HOTEL LOCATED AT 103 EAST 4TH STREET IN LOVELAND, COLORADO" was approved and ordered published on second reading.

4. PUBLIC WORKS

Traffic Signal Replacement – U.S. 34 & Boyd Lake Avenue

Ordinance #5744

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR SIGNAL REPLACEMENT AND OTHER IMPROVEMENTS AT THE INTERSECTION OF US 34 AND BOYD LAKE AVENUE" was approved and ordered published on second reading.

5. PUBLIC WORKS

Railroad Crossing Repairs – U.S. Hwy 287

Ordinance #5745

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR RAILROAD CROSSING REPAIRS ON U.S. 287" was approved and ordered published on second reading.

6. PARKS & RECREATION

Award of construction contract – River's Edge Natural Area

Motion

Administrative Action: Motion to approve and award a services contract to Taylor Kohrs, LLC for a lump sum cost of \$1,373,834, and authorizing the City Manager to sign the contract was approved.

7. DEVELOPMENT SERVICES

Vacating Portion Of Drainage Easements- Mineral First Subdivision

1st Rdg. Ord. & P.H.

Legislative Action: A Public Hearing was held and a motion making the findings in Section V of the Staff memorandum dated February 19, 2013 was approved and "AN ORDINANCE VACATING A PORTION OF DRAINAGE EASEMENTS ON LOTS 5 AND 6, BLOCK 1, MINERAL FIRST SUBDIVISION, CITY OF LOVELAND" was approved and ordered published on first reading.

8. Finance

PUBLIC HEARING

Supplemental Budget And Appropriation-Fleet And Police Funds

1st Rdg. Ord. & P.H.

Administrative Action: A Public Hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR EXPENSES RELATED TO THE COST OF FUEL AND PARTS FOR THE OPERATION OF THE CITY FLEET AND FOR POLICE OVERTIME EXPENSES FOR SPECIAL INVESTIGATIONS" was approved and ordered published on first reading.

9. PUBLIC WORKS AND FINANCE

Award Construction Contract – Coulson Excavating Company

Motion

Administrative Action: A motion to award the 2013 Street Resurfacing Program, Asphalt paving Contract (Schedule AP) to Coulson Excavating Company of Loveland, CO in the amount of \$1,550,000 and to authorize the City Manager to execute the contract was approved.

10. PUBLIC WORKS AND FINANCE

Award Construction Contract- Jag's Enterprises, Inc.

Motion

Administrative Action: A motion to approve the extension of the 2013 Street Resurfacing Program-Concrete Rehabilitation Project Schedule TA to JAG's Enterprises, Inc. of Greeley, CO in the amount of \$650,000 and to authorize the City Manager to execute the contract, was approved.

11. PUBLIC WORKS

PUBLIC HEARING

Sale of City Property

This item was removed from the Consent Agenda and will be considered on the Regular Agenda.

12. DEVELOPMENT SERVICES

PUBLIC HEARING

1st Rdg. Ord. & P.H.

Administrative Action: A Public Hearing was held and 'AN ORDINANCE AUTHORIZING THE CONVEYANCE OF REAL PROPERTY LOCATED IN LOTS 1 AND 2, BLOCK 1 AND TRACT C, BUCK FOURTH SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO" was approved and ordered published on first reading.

13. WATER AND POWER

Intergovernmental Agreement – Joint Compensation Study

Motion

This item was removed from the Consent Agenda and will be considered on the Regular Agenda.

14. CITY MANAGER

PUBLIC HEARING

Amendment to Municipal Code Pertaining to Senior Advisory Board

Motion

Legislative Action: A Public hearing was held and "AN ORDINANCE AMENDING SECTION 2.60.240 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO THE SENIOR ADVISORY BOARD" was approved and ordered published on first reading.

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports

None

b) Business from Council

Shaffer

There was an audit of the Housing Authority of the City of Loveland (HACOL) financial records and everything was found to be in order. Housing Authority ready to have tenants move into phase II of Mirasol. Councilor Shaffer attended the following: Innovation after hours, Love and Lights at the Feed and Grain, CDOT Transportation Commission. Councilor Shaffer informed the public regarding her vote on the Artspace development and her leases with Barry Floyd, owner of the Feed and Grain building, that after conferring with the City Attorney, Councilor Shaffer determined there was no conflict of interest with regard to the development.

Fogle

Attended Love and Lights at the Feed and Grain. Councilor thanked ELE, (Engaging Loveland Events) for their work with the snow sculpture event, adding that in 2014 the City of Loveland will host the National Snow Sculpture.

Farley	Attended the following: Museum event: David Yost appearing/ Several Artworks events; Love and Lights at the Feed and Grain.
Klassen	Attended the Love and Lights at the Feed and Grain. Spoke in tribute to past City Councilor Forrest Knox.
Clark	Councilor Clark indicated he was involved in the Chamber of Commerce and there was some discussion regarding Development and Review processes. He requested to be added to the Title 18 Committee. This item will come back to Council for approval.
Trenary	Highlighted inclusion of the City of Loveland in the "Colorado Life" magazine. City of Loveland Fire personnel, students from local high schools as well as citizen volunteers will be going around the City on three consecutive Saturdays starting February 23, 2013 distributing Carbon monoxide and smoke detectors, as well as checking existing detectors, for the "Leaders Abroad Urging Rights, Equality, and Non-violence" (LAUREN) project".
Gutierrez	Attended the following: Ribbon Cutting at Park Place; Boys and Girls Club appreciation breakfast; Valentine remailing program volunteer appreciation luncheon; unveiling of the 25 th "City with a Heart" placement at Big O Tire. Mayor Gutierrez served as moderator for the Veterans Forum.
c) <u>City Manager Report</u>	
Cahill	Expressed appreciation to the Economic Development for the inclusion in "Colorado Life" publication.
d) <u>City Attorney Report</u>	
	None

PROCEDURAL INFORMATION

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

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

11. PUBLIC WORKS

PUBLIC HEARING

Sale of City Property – 905,915,925,933 and 935 N. Taft Ave

1st Rdg. Ord & P.H.

Administrative Action: Facilities Manager, Ken Cooper introduced this item to Council.

This is an administrative action approving the sale of approximately 5.2 acres of City-owned property located at 905, 915, 925, 933 and 935 N. Taft Avenue, which were parcels acquired for the Taft Avenue widening project. Mayor Gutierrez opened the public hearing at 7:37 p.m. Salvador Valdivia, 800 W. 4th St, asked Council to clarify what the matter was before them and then asked for a brief discussion regarding raw water rights. Mayor Gutierrez closed the public hearing at 7:46 p.m. Councilor Shaffer moved to approve on first reading and ordered published on first reading an "Ordinance authorizing the sale of 905,915,925,933 and 935 Taft Ave". The motion seconded by Councilor Klassen, carried with all Councilors present voting in favor thereof.

13. WATER AND POWER

Intergovernmental Agreement – Joint Compensation Study

Resolution #R-17-2013

Administrative action: Water and Power Director Steve Adams introduced this item to Council. This is consideration of an intergovernmental agreement with Platte River Power Authority, Estes Park, Fort Collins and Longmont for participation in a joint compensation study for certain power utility positions. Councilor Shaffer moved to approve Resolution #R-17-2013, of the Loveland City Council approving an intergovernmental agreement between the City of Loveland, Colorado, Platte River Power Authority, the Town of Estes Park, the City of Fort Collins, and the City of Longmont for participation in a Joint Compensation Study. The motion, seconded by Councilor Trenary, carried with all Councilors present voting in favor thereof.

RESOLUTION #R-17-2013

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO, PLATTE RIVER POWER AUTHORITY, THE TOWN OF ESTES PARK, THE CITY OF FORT COLLINS, AND THE CITY OF LONGMONT FOR PARTICIPATION IN A JOINT COMPENSATION STUDY

WHEREAS, Platte River Power Authority ("Platte River") is coordinating a study to benefit its member cities to determine market compensation rates for certain power utility positions; and

WHEREAS, the City of Loveland desires to participate in the study and share in the cost of the study with the Town of Estes Park, the City of Fort Collins, and the City of Longmont; and

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

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

- Section 1. That the "Intergovernmental Agreement for the Funding and Coordination of a Joint Compensation Study," attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.
- Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernmental Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.
- Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.
- Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 19th day of February, 2013.

Cecil Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

18. CITY CLERK

Approval of Council Minutes

Motion

This is an administrative action. City Clerk Terry Andrews introduced this item to Council. Councilor Klassen moved to approve the minutes from the January 22, 2013

study session. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

19. CITY MANAGER

Water Enterprise Funding

Resolution #R-16-2013

Administrative Action: This item was introduced by Utility Accounting Manager, Jim Lees. This resolution provides funding mechanisms for the Water Enterprise through external and internal loans, and a series of rate increases, and an annual transfer of funds from the General Fund to the Water Enterprise. This funding will be used to improve the Water Treatment Plant and undertake a comprehensive water line replacement program. Discussion of section 3 of the resolution regarding the General Fund transfer ensued. Loveland Utility Commission members, Dave Schneider, Dan Herlihey, and John Rust spoke. Mayor Gutierrez opened the public hearing at 8:57p.m. Salvador Valdivia, 800 E. 4th St. recommended that Council postpone this item, until the oil and gas issues were resolved. Mayor Gutierrez closed the public hearing at 9:00 p.m. Councilor Shaffer moved to approve Resolution #R-16-2013 on first reading. Councilor Klassen seconded the motion. City Council discussion ensued. Councilor Trenary made the following amendment to the original motion:

Resolution #R-16-2013 be amended as follows:

The 4th Whereas-strike the words "General Fund transfer" and Section 3; Change "Section 4" to "Section 3" and "Section 5" to "Section 4" and the new Section 3 be amended as follows:

Currently:

"2014 13% increase"
 "2015 9% increase"
 "2016 9% increase"
 "2017 9% increase"
 "2018 9% increase"
 "2019 9% increase"
 "2020 8% increase"
 "2021 8% increase"
 "2022 8% increase"

Shall read as
 Shall read as
 Shall read as
 Shall read as
 Shall read as
 Shall read as
 Shall read as
 Shall read as
 Shall read as

Amended:

2014 15.55% increase
 2015 11.55% increase
 2016 11.55% increase
 2017 11.55% increase
 2018 8.0% increase
 2019 6.59% increase
 2020 6.5% increase
 2021 5.6% increase
 2022 5.0% increase

Councilor Farley seconded the motion to amend Resolution #R-16-2013. Discussion ensued.

Councilor Trenary moved to "Call the Question" on the amendment. All Councilors present voted in favor to call the question. A roll call vote of the motion to amend the resolution was taken with four Councilors present voting in favor and Councilors Klassen, McKean, Fogle, and Clark voting against. The motion failed.

Further discussion ensued. A motion to "Call the Question" on the original motion was made by Councilor Fogle. A roll call vote was taken to "Call the Question" and failed with four Councilors present voting in favor and Councilors McKean, Fogle, Clark and Farley voting against. Discussion ensued. A roll call vote was taken on the original motion approving Resolution #R-16-2013, on first reading as proposed. The motion carried with five Councilors voting in favor and Councilors Farley, Shaffer and Trenary voting against.

FIRST READING

RESOLUTION #R-16-2013

A RESOLUTION CONCERNING FUNDING FOR THE WATER ENTERPRISE TO IMPROVE THE WATER TREATMENT PLANT AND UNDERTAKE A COMPREHENSIVE WATER LINE REPLACEMENT PROGRAM

WHEREAS, for well over one hundred years, the City of Loveland Water Utility has provided the Loveland community with a safe and reliable source of potable water at some of the lowest rates in the State of Colorado; and

WHEREAS, the Water Utility is now facing significant financial challenges due to escalating regulatory requirements, increasing operation and maintenance costs, aging infrastructure, and water treatment plant capacity limitations; and

WHEREAS, to meet these challenges and provide for the City's future economic growth and development, the Water Utility must improve the water treatment plant and undertake a comprehensive water line replacement program; and

WHEREAS, the City Council desires to secure adequate funding for the Water Utility to meet these project needs through a combination of sources, specifically external borrowing, internal borrowing, General Fund transfer, and water rate increases, designed to equitably distribute the financial impacts between current and future Water Utility customers and the citizens of Loveland who will benefit from the City's future economic growth and development; and

WHEREAS, Section 13-3(b) of the Loveland Municipal Charter provides that loans from one utility account to another shall be allowed with the City Council's approval, but shall require the affirmative vote of a majority of the entire City Council; and

WHEREAS, the Loveland Municipal Charter and Code provide that all utility rates, charges, and fees shall be set by the City Council by resolution adopted upon two readings.

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

Section 1. That the City Council hereby directs the City Manager to secure for the City Council's future consideration and approval as the Board of the City's Water Utility Enterprise a twenty-year amortized loan from an external source (or sources) to the Water Enterprise, on the most advantageous terms available as determined by the City Manager, in consultation with the City Attorney and the City's Executive Fiscal Advisor, in the principal amount necessary to pay all financing costs and establish any required reserves to achieve net loan proceeds of Ten Million Dollars (\$10,000,000).

Section 2. That the City Council hereby authorizes and approves the Power Enterprise loaning to the Water Enterprise in 2013 Six Million Dollars (\$6,000,000) to be repaid by the Water Enterprise to the Power Enterprise in eight annual, fully-amortized principal and interest payments with the interest to be determined and accrue at the variable rate and in the manner required by Loveland Municipal Charter Section 13-3(b).

Section 3. That the City Council hereby directs that, in each year during the eight-year term of the loan contemplated in Section 2 above, the City Manager shall include in the City's annual budget and appropriation ordinances for each of those years the transfer of Seven Hundred Fifty Thousand Dollars (\$750,000) from the General Fund to the Water Enterprise to be used by the Water Enterprise to pay the principal due on the Six Million Dollar (\$6,000,000) loan from the Power Enterprise.

Section 4. That the City Council hereby adopts the following rate increases across all Water Utility customer classes for each of the next nine years as listed below, said rate increases to take effect beginning with billings mailed on or after January 1 of the then-current year:

2014	13% increase
2015	9% increase
2016	9% increase
2017	9% increase

2018	9% increase
2019	9% increase
2020	8% increase
2021	8% increase
2022	8% increase

The rate increases adopted herein shall be in addition to, and not in lieu of, any other rate increases for water service that may hereafter be adopted by the City Council to more accurately reflect the cost of providing water service to the Water Utility's customers.

Section 5. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this ____ day of March, 2013.

20. CITY MANAGER

Extension of Comcast Franchise Agreement

Ordinance #5746

Administrative Action: Assistant City Manager Rod Wensing introduced this item to Council. The ordinance moves the expiration of the current cable franchise from April 30, 2013 to December 31, 2013. Councilor Shaffer moved to approve and ordered published on second reading "AN ORDINANCE AMENDING THE CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND COMCAST OF COLORADO II, LLC TO EXTEND THE TERM OF THE FRANCHISE AGREEMENT". Councilor Trenary seconded the motion and a roll call vote was taken with eight Councilors present voting in favor and Councilor Klassen voting against.

21. FINANCE

(presenter: Brent Worthington)

DECEMBER 2012 PRELIMINARY FINANCIAL REPORT

This is an information only item. Finance Director, Brent Worthington introduced this item to Council. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending December 31, 2012.

19. CITY MANAGER

(presenter: Alan Krcmarik)

INVESTMENT REPORT FOR DECEMBER 2012

This is an information only item. Executive Fiscal Advisor, Alan Krcmarik introduced this item to Council. The budget estimate for investment earnings for 2012 was \$2,729,560. Through December 2012, the amount posted to the investment account is \$2,520,033 including realized gains. Actual year-to-date earnings are lower than the budget projection by \$209,525. Based on the monthly statement, the estimated annualized 1.22% yield on the securities held by USBank was down from last month and under the annual target rate of 1.70% for 2012. Reinvestment rates are near record low levels, much lower than the budget projection.

Mayor Gutierrez directed Item 21 to be considered before Item 20.

22. CITY MANAGER

SETTLEMENT OF THE KLEN V. CITY OF LOVELAND LAWSUIT

Resolution #R-18-2013

City Attorney John Duval recused himself from this item stating a conflict of interest and directed Deputy City Attorney Judy Schmidt to advise City Council on this issue.

This is an administrative matter to consider a resolution approving the Material Terms of Settlement Agreement ("Agreement") pertaining to the Klen Lawsuit against the City and several City employees, on the condition that the settlement payment under the Agreement will be made by the City's insurer, the Colorado Intergovernmental Risk Sharing Agency ("CIRSA"). The resolution also authorizes the City Manager, in consultation with legal counsel appointed by CIRSA, to enter into a formal "Final Settlement Agreement" on the City's behalf. Councilor Shaffer moved to approve Resolution #R-18-2013. The motion seconded by Councilor Clark, carried with six voting in favor and Mayor Gutierrez voting against.

RESOLUTION #R-18-2013

A RESOLUTION APPROVING SETTLEMENT OF THE KLEN V. CITY OF LOVELAND LAWSUIT

WHEREAS, in early 2007, Edward J. Klen, Stephen J. Klen, Diverse Construction, Inc. and Holstein Self-Service Storage, LLC (collectively, the "Klens"), commenced Civil Action No. 07-CV-00347 in the U.S. District Court for Colorado (the "Lawsuit") naming the City of Loveland ("City") and several City employees as defendants; and

WHEREAS, while most of the Klens' claims against the City and its employees have been dismissed by the courts over the course of the past six years, some of the remaining claims against the City and some of its employees are still to be decided at trial; and

WHEREAS, Chief District Court Judge Marcia S. Krieger recently ordered the parties to participate in a settlement conference to be mediated by Magistrate Judge Michael E. Hegarty; and

WHEREAS, attending this conference with City representatives was a representative from the City's insurer, the Colorado Intergovernmental Risk Sharing Agency ("CIRSA"); and

WHEREAS, the CIRSA representative attended this conference, in part, because the City has already spent its \$150,000 deductible in defense of this Lawsuit, so any settlement reached would require CIRSA's approval and its payment of any settlement amount; and

WHEREAS, as a result of the mediation, a proposed settlement was reached by the parties, and approved by CIRSA; and

WHEREAS, the proposed settlement was reduced to writing in the "Material Terms of Settlement Agreement" attached as Exhibit "A" (the "Agreement"); and

WHEREAS, Section 1. of the Agreement expressly provides that it and the parties' "Final Settlement Agreement" are subject to the City Council's approval; and

WHEREAS, the Council has reviewed the settlement terms and conditions of the Agreement and finds that the proposed settlement is in the best interests of the City to avoid the continued expense and vagaries of litigation, but to do so without any admission of wrongdoing in this matter by the City or its employees.

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

Section 1. That the Agreement is hereby approved with the understanding and on the condition that the \$495,000 settlement payment to the Klens under the Agreement will be made by CIRSA.

Section 2. That the City Manager, in consultation with the City's CIRSA appointed legal counsel, is authorized to enter into the formal "Final Settlement Agreement" on the City's behalf on terms and conditions consistent with the Agreement and or such other terms and conditions as the City Manager determines are in the City's best interests.

Section 3. That the City Council received the recommendation of the parties that the Council consider a proposal from the Klens to expand their existing gun range and finds, in connection therewith, as follows:

A. Provided the Klen proposal for expansion, when submitted to the City, is in substantial compliance with the currently approved "Anasazi Park Phase 2 - Major Amendment to Special Review No. 835" ("Special Review No. 835"), there may be no need for additional special review or modification of a special review, as otherwise required under City Code Title 18, with respect to such a proposed expansion of the existing gun range into the existing, but currently unfinished, approximately 9,000 square foot portion of the Anasazi Park Phase 2 building located at 697 North Denver Avenue, Loveland, Colorado (the "Expansion").

B. Provided that a proposed expansion, as described in Section 3.A. above, is hereafter submitted to the City by the Klens in substantial compliance with Special Review No. 835, the existing capital expansion fee credits held by the City with respect to the Anasazi Park Phase 2 building located at 697 North Denver Avenue will suffice to cover any capital expansion fees owed for such a proposed expansion, and, therefore, no further capital expansion fees will be owed by the Klens, Diverse or Holstein (whichever might be responsible for same) to the City for any such proposed expansion.

C. That the City will consider entering into a services contract (subject to annual appropriation as required by City Charter Section 11-6(b) and Section 20, Article X of the Colorado Constitution) between the City and the Klens, Diverse or Holstein (as the case might be) for the Loveland Police Department's use of Plaintiffs' gun range in the Anasazi Park Phase 2 building for training purposes, provide such contract is at the same cost as the original 2008 contract, \$47,870 per year (prorated at \$3,989.17 per month), between the City and the previous gun range operator. Any such services contract shall include such other applicable conditions as the City currently includes in its similar services contracts and shall be completed in accordance with the City's current purchasing requirements.

Based on the foregoing, the City Manager is authorized to acknowledge and confirm these findings in the parties' formal "Final Settlement Agreement" and to enter into on the City's behalf the services contract described above in paragraph C.

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

ADOPTED this 19th day of February, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

Teresa G. Andrews, City Clerk

22. CITY MANAGER

Executive Session concerning *Beierwaltes v. City of Loveland* lawsuit

At 11:19 p.m. Councilor Shaffer moved that the City Council go into executive session, as authorized in CRS Sections 24-6-402(4)(b),(4)(c) and (4)(g) and in City Charter Sections 4-4(c)(1),(c)(3) and (c)(6). This executive session will address a lawsuit currently pending in Larimer County District Court, City of Loveland v. Beierwaltes, together with such other matters as may relate to or affect this lawsuit. The purpose of the executive session will be to receive legal advice from the City Attorney and special legal counsel Kent Campbell; and since this lawsuit is a matter that is subject to negotiations: to receive reports concerning any negotiation discussions; to develop the City's negotiation positions and strategies; and to instruct the City's negotiators

concerning those positions and strategies. In addition, documents and records related to this lawsuit may be considered that are protected by the mandatory non-disclosure provisions of the Colorado Open Records Act, including, without limitations, work product documents. The motion seconded by Councilor Clark carried with five voting in favor and two against.

Council reconvened at 12:21 p.m.

ADJOURNMENT

Having no further business to come before Council, the February 19, 2013 Regular Meeting was adjourned at 12:21 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

**CITY OF LOVELAND****CITY MANAGER'S OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 2
MEETING DATE: 3/5/2013
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:

An Ordinance on second reading amending Section 2.60.240 of the Loveland Municipal Code pertaining to the Senior Advisory Board

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
-

DESCRIPTION:

This is a legislative action to adopt an ordinance on second reading amending Section 2.60.040 relating to the Senior Advisory Board membership. At its February 19, 2013 meeting, City Council unanimously approved this ordinance on first reading as a consent agenda item.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

Poudre Valley Hospital has, by merger, become the University of Colorado Health and the Poudre Valley Hospital/Aspen Club has accordingly become the UCH Aspen Club/Senior Services. At its February 6, 2012 meeting the Senior Advisory Board unanimously approved a motion recommending that the City Council amend Loveland Municipal Code Section 2.60.250 to reflect these changes.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

An Ordinance amending Section 2.60.240 of the Loveland Municipal Code pertaining to the Senior Advisory Board

FIRST READING February 19, 2013

SECOND READING March 5, 2013

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 2.60.240 OF THE LOVELAND MUNICIPAL CODE PERTAINING TO THE SENIOR ADVISORY BOARD

WHEREAS, Section 2.60.240 of the Loveland Municipal Code currently sets forth the membership of the City's Senior Advisory Board; and

WHEREAS, the Poudre Valley Hospital has, by merger, become the University of Colorado Health and the Poudre Valley Hospital/Aspen Club has accordingly become the UCH Aspen Club/Senior Services; and

WHEREAS, the Senior Advisory Board unanimously recommends that the City Council amend Loveland Municipal Code Section 2.60.250 to reflect these changes.

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

Section 1. That Section Subsection A. of Section 2.60.240 of the Loveland Municipal Code is hereby amended to read as follows:

2.60.240 Senior advisory board.

A. There is established a senior advisory board consisting of fifteen members. Nine members shall be appointed by the city council to serve terms of three years. Six members shall be nominated by the senior advisory board, and approved by the city council, to serve terms of two years. These six members shall consist of one at large member, and one member from each of the following organizations: Chilson Senior Advisory Committee, Housing Authority of the City of Loveland, Colorado, McKee Senior Services, the UCH Aspen Club/Senior Services, and the McKee Medical Center Seasons Club.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

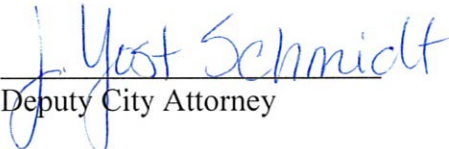
ADOPTED this 5th day of March, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

**CITY OF LOVELAND****BUDGET OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: 3
MEETING DATE: 3/5/2013
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman

TITLE:

An ordinance on second reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for expenses related to the cost of fuel and parts for the operation of the city fleet and for police overtime expenses for special investigations

RECOMMENDED CITY COUNCIL ACTION:

Approve the ordinance on second reading.

OPTIONS:

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

DESCRIPTION:

This is an administrative action. The ordinance appropriates revenues received in 2012 and fund balance to the 2012 budget for vehicle maintenance expenses and police overtime costs. The appropriation is necessary so that 2012 expenses do not exceed the appropriated amount in the Vehicle Maintenance Fund and the Police Seizure and Forfeiture Fund. The first reading of the ordinance was approved unanimously by City Council at the February 19, 2013 meeting.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

The revenue in the ordinance has been received to cover the expenses. Fund balance is used for parts and fuel purchases which will be billed to user agencies as they occur in 2013.

SUMMARY:

In the Vehicle Maintenance Funds actual expenses for fuel and parts exceeded budgeted amounts projections done in early fall in preparation for the annual wrap-up ordinance due to higher than projected usage.

The City received funds from police seizure revenue as part of the Joint Task Force late in December of 2012. These funds are available to fund the overtime costs incurred in these investigations. Federal reporting requirements require these revenues and costs be segregated in a special fund.

In both cases the appropriation is needed to ensure that expenses do not exceed the appropriated amount in the funds at the close of the 2012 fiscal year as required by State Law.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. An ordinance on second reading enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for expenses related to the cost of fuel and parts for the operation of the city fleet and for police overtime expenses for special investigations.

FIRST READING February 19, 2013

SECOND READING March 5, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR EXPENSES RELATED TO THE COST OF FUEL AND PARTS FOR THE OPERATION OF THE CITY FLEET AND FOR POLICE OVERTIME EXPENSES FOR SPECIAL INVESTIGATIONS

WHEREAS, the City has revenues from labor and maintenance charges and fund balance available in Vehicle Maintenance Fund 81 and Police Seizure revenues in the Police Seizure and Forfeiture Fund 207 that were not appropriated at the time the City 2012 budget was adopted; and

WHEREAS, the City has experienced costs for fuel and vehicle parts in excess of that anticipated and included in the City 2012 budget; and

WHEREAS, the City has received revenue from seized property as the result of joint investigations with other police agencies to fund overtime costs incurred in the joint investigations; and

WHEREAS, Section 11-6 of the City of Loveland Charter permits the City Council to ratify a commitment or contract in excess of appropriated amounts if it adopts an ordinance making the necessary appropriation and determines that ratification would be in the best interest of the City and/or permits the transfer of monies from one fund to another by ordinance amending the budget as adopted; and

WHEREAS, the City Council desires to authorize the expenditure of these funds *nunc pro tunc* by enacting a supplemental budget and appropriation to the City 2012 budget and ratify the commitment of such funds, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That revenues in the amount of \$63,450 from department charges related to vehicle maintenance and fund balance in the Vehicle Maintenance Fund 81 and \$34,190 in revenues in the Police Seizure and Forfeiture Fund 207 are available for appropriation. These revenues are appropriated *nunc pro tunc* for 2012 for purchases of fuel and vehicle parts and for police overtime, respectively. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Fiscal 2012 Supplemental Budget
Fleet Maintenance Fund 502**

Revenues

Fund Balance		109,480
501-00-000-0000-326452	Fleet Charges	63,450

Total Revenue		172,930

Appropriations

501-23-261-1902-42030	Motor Fuel	84,930
501-23-261-1902-42032	Parts & Supplies	88,000

Total Appropriations		172,930

**Fiscal 2012 Supplemental Budget
Police Seizure and Forfeiture Funds 207**

Revenues

207-00-000-0000-32300	Other Government Agency	34,190

Total Revenue		34,190

Appropriations

207-21-204-2112-41021	Overtime	34,190

Total Appropriations		34,190

Section 2. That Council hereby finds that ratification of the expenditure of the revenues set forth above and/or transfer of such revenues to fund purchases of fuel and vehicle parts and for police overtime, respectively, is in the best interest of the City and ratifies such expenditures.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

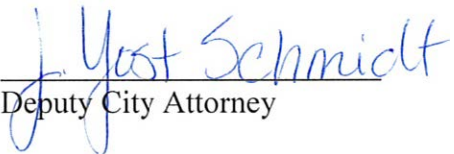
ADOPTED this 5th day of March, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 4
MEETING DATE: 3/5/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Greg George, Director, Development Services

TITLE:

An Ordinance on second reading authorizing the conveyance of real property located in Lots 1 and 2, Block 1 and Tract C, Buck Fourth Subdivision, City of Loveland, Larimer County, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Adopt the Ordinance on second reading

OPTIONS:

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

DESCRIPTION:

This is an administrative action to consider an ordinance on second reading authorizing the conveyance of a parcel of real property owned by the City and used as a part of an existing regional detention pond to the current owner of Lots 1 and 2, Block 1 and Tract C, Buck Fourth Subdivision in return for a permanent exclusive easement over such property to permit continued operation of the regional detention pond and a new utility easement. The conveyance and the new easement are intended to clean up title defects resulting from modifications made in the Buck 4th Subdivision plat for a development that has never occurred and preserve the City's right to maintain the detention pond and sewer line in their existing locations. City Council adopted the ordinance on first reading on February 19, 2013 as an item on the Consent Agenda.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:

This matter involves a parcel of commercial property at the southwest corner of N. Wilson Avenue and West 43rd Street. On the Buck First Subdivision plat, this parcel was identified as Tract N and dedicated to the City for use as a regional storm water detention pond in 1998.

Pursuant to statute (C.R.S. §31-23-107), this dedication vested fee title in the City. The developer of the Buck First Subdivision constructed the regional detention pond and the City accepted and continues to operate and maintain the pond. The Buck First Subdivision plat also dedicated a 20' utility easement, which is used for the operation and maintenance of a sanitary sewer main. **A**

copy of the Buck First Subdivision is attached as Schedule 1.

Tract M of the Buck First Subdivision was intended for commercial development, as reflected in the Buck Addition General Development Plan – Amendment Number Two (#P-40) approved by Ordinance 4943 on November 16, 2004. In 2005, the owner of Tract M of the Buck First Subdivision proposed modification of the subdivision plat to: (i) relocate the City's regional detention pond farther to the south, in order to accommodate a large grocery store anchor for the commercial development; and (ii) provide a new easement for the sanitary sewer main that was to be relocated to accommodate the commercial development.

To facilitate this development, Council adopted an ordinance (Ordinance 5052) authorizing conveyance of a portion of the City's detention pond parcel to the owner of Tract M, conditioned upon (1) receipt of offsite drainage easements to the south to facilitate relocation of the detention pond; (2) design of the relocated detention pond acceptable to the City; (3) construction of the relocated/modified detention pond in its new location; and (4) acceptance by the City of the relocated/modified pond. The FDP for the commercial development, known as the Glen Isle Town Center, was approved by the Planning Commission on October 17, 2006. The Buck Fourth Subdivision plat, which reflected the subdivision after future relocation of the pond, was recorded on November 7, 2006. ***A copy of the Buck Fourth Subdivision is attached as Schedule 2.***

The proposed development contemplated by the Buck Fourth Subdivision plat has never occurred and a portion of the commercial property (which was Tract M of the Buck First

Subdivision) is now owned by the developer's lender, Mile High Banks (or its designee, Utes Land Company).

The Bank has proposed the following actions to correct title defects resulting from the failure of the development and the conditions in Ordinance 5052:

1. a quit claim deed from the City for any interest in Lots 1-9, inclusive, and Tracts A, C, D, E, F, G, H, and I of the Buck Fourth Subdivision, which will transfer title to a portion of Lots 1 and 2 and Tract C of the Buck Fourth Subdivision previously included in the City's Tract N of the Buck First Subdivision and used by the City for the existing detention pond (referred to as the "Property" and **depicted on Schedule 3**);
2. a perpetual, exclusive easement to the City for continued use of the Property as a regional detention pond, subject to the owner's right to use the pond for storm drainage and for other purposes consistent with the City's use if approved by the City; and
3. an easement to the City for the continued use of the sanitary sewer main.

These actions will result in ownership aligning with the parcels platted under the Buck Fourth Subdivision, while preserving the City's continued use of the Regional Detention Pond and sanitary sewer main in their current locations. The need for relocation of the pond (as originally proposed with the Buck Fourth) or the utility easement can be addressed as a part of future development proposals, if necessary. These actions will protect the City's current uses and the future potential for commercial development.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Schedule 1 – Buck First Subdivision Plat
2. Schedule 2 – Buck Fourth Subdivision Plat
3. Schedule 3 - City Property to be Conveyed
4. Ordinance
5. Power Point Presentation



60 0 60 120 180

GRAPHIC SCALE - FEET

SCALE = 1"=60'

OCTOBER 15th, 1998

16.2622 acres $\pm$
see Plat Sheet J of J

Stewart & Associates,
P.O. Box 1000
St. Louis, MO 63101
(314) 436-1000

BUCK FOURTH SUBDIVISION

BEING A SUBDIVISION OF TRACTS M, N, AND O, BUCK FIRST SUBDIVISION, SITUATE IN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO



Sign / Seal

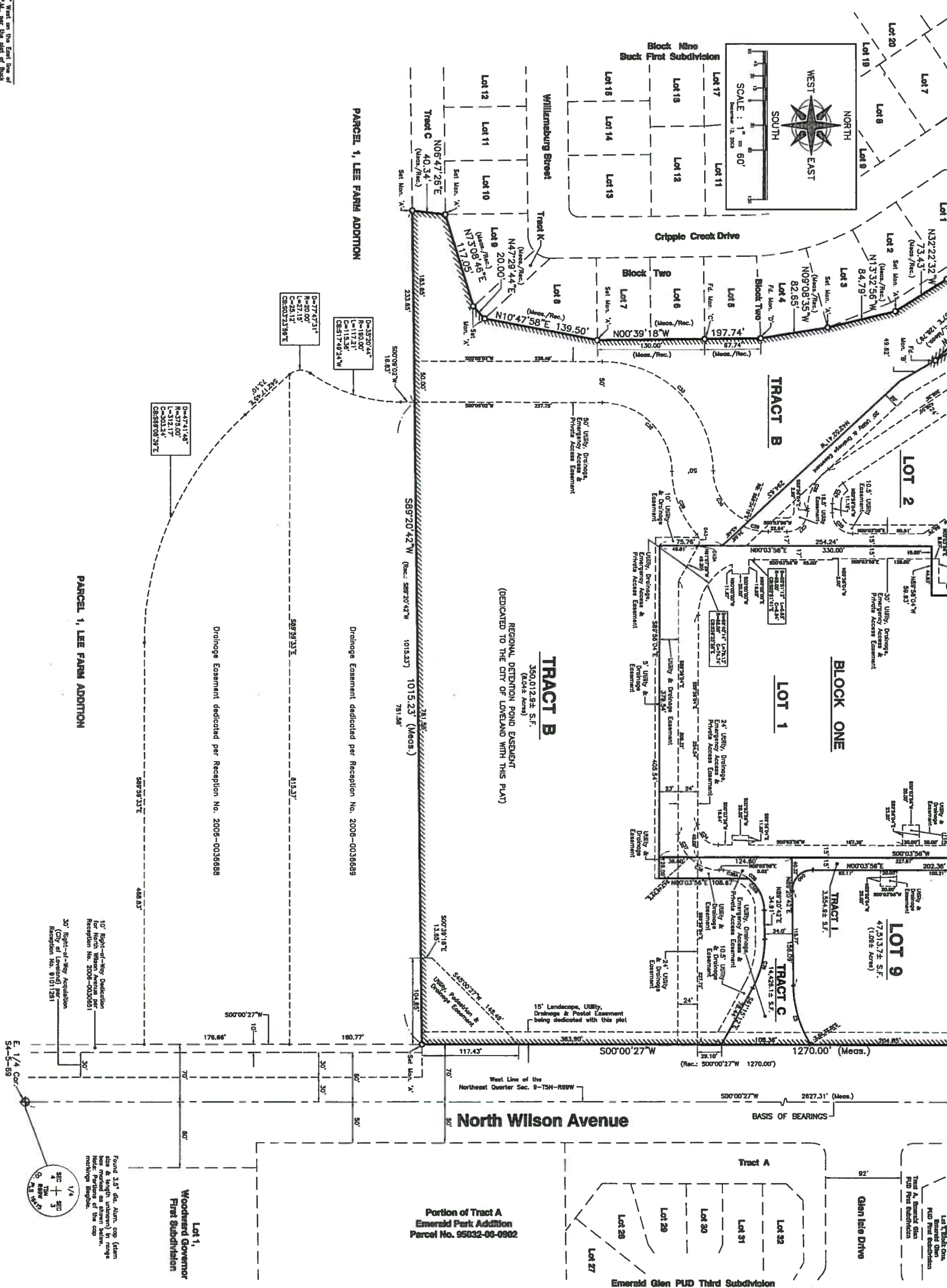
See Sheet 1 of 3
For Informational Legend

LINE	BEARING	DISTANCE
1	S87°43'44"W	19.72
2	S87°13'38"W	14.82
3	S00°00'00"W	14.82
4	S87°58'00"E	7.20
5	S87°58'00"E	6.88
6	S87°58'00"E	6.88
7	S87°58'00"E	6.88
8	S87°58'00"E	6.88
9	S87°58'00"E	6.88
10	S87°58'00"E	6.88
11	S87°58'00"E	6.88
12	S87°58'00"E	6.88
13	S87°58'00"E	6.88

LINE	BEARING	DISTANCE	CURVE DATA
C1	S87°43'44"W	19.72	CHORD 14.82
C2	S87°13'38"W	14.82	CHORD 14.82
C3	S00°00'00"W	14.82	CHORD 14.82
C4	S87°58'00"E	7.20	CHORD 7.20
C5	S87°58'00"E	6.88	CHORD 6.88
C6	S87°58'00"E	6.88	CHORD 6.88
C7	S87°58'00"E	6.88	CHORD 6.88
C8	S87°58'00"E	6.88	CHORD 6.88
C9	S87°58'00"E	6.88	CHORD 6.88
C10	S87°58'00"E	6.88	CHORD 6.88
C11	S87°58'00"E	6.88	CHORD 6.88
C12	S87°58'00"E	6.88	CHORD 6.88
C13	S87°58'00"E	6.88	CHORD 6.88
C14	S87°58'00"E	6.88	CHORD 6.88
C15	S87°58'00"E	6.88	CHORD 6.88
C16	S87°58'00"E	6.88	CHORD 6.88
C17	S87°58'00"E	6.88	CHORD 6.88
C18	S87°58'00"E	6.88	CHORD 6.88
C19	S87°58'00"E	6.88	CHORD 6.88
C20	S87°58'00"E	6.88	CHORD 6.88
C21	S87°58'00"E	6.88	CHORD 6.88
C22	S87°58'00"E	6.88	CHORD 6.88
C23	S87°58'00"E	6.88	CHORD 6.88
C24	S87°58'00"E	6.88	CHORD 6.88
C25	S87°58'00"E	6.88	CHORD 6.88
C26	S87°58'00"E	6.88	CHORD 6.88
C27	S87°58'00"E	6.88	CHORD 6.88
C28	S87°58'00"E	6.88	CHORD 6.88
C29	S87°58'00"E	6.88	CHORD 6.88
C30	S87°58'00"E	6.88	CHORD 6.88
C31	S87°58'00"E	6.88	CHORD 6.88
C32	S87°58'00"E	6.88	CHORD 6.88
C33	S87°58'00"E	6.88	CHORD 6.88
C34	S87°58'00"E	6.88	CHORD 6.88
C35	S87°58'00"E	6.88	CHORD 6.88
C36	S87°58'00"E	6.88	CHORD 6.88
C37	S87°58'00"E	6.88	CHORD 6.88
C38	S87°58'00"E	6.88	CHORD 6.88
C39	S87°58'00"E	6.88	CHORD 6.88
C40	S87°58'00"E	6.88	CHORD 6.88
C41	S87°58'00"E	6.88	CHORD 6.88
C42	S87°58'00"E	6.88	CHORD 6.88
C43	S87°58'00"E	6.88	CHORD 6.88
C44	S87°58'00"E	6.88	CHORD 6.88
C45	S87°58'00"E	6.88	CHORD 6.88

BASE OF BEARINGS STATEMENT:
Basis of Bearings for this plat are based on the recent bearing of South 07°00'27" West on the East line of Block of Section 4, Township 5 North, Range 69 West of the 6th P.M., per the plat of Buck First Subdivision to the City of Loveland, County of Larimer, State of Colorado, as recorded on the Office of the Clerk and Recorder of Larimer County, Colorado. (Instrumentation of said plat on shown).

According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. No warranty, may or may not be made by the surveyor as to the accuracy of the survey shown hereon. The survey is shown hereon from the date of the subdivision shown hereon.



Found 3.5' d.c. Alum. cap (from size & length unknown) in cross hole. Part of the cap matching depth.

INTERMILL LAND SURVEYING, INC.
1301 NORTH CLEVELAND AVENUE
LOVELAND, COLORADO 80537
P.O. BOX 988-0316 / FAX (970) 432-9775

REVISIONS:
1. Revision per City of Loveland, 12-22-08
2. Revision per City of Loveland, 12-22-08
3. Revision per City of Loveland, 12-22-08

DATE: 12-22-08
SCALE: 1"=60'
APPROVED BY: [Signature]

CLIENT: 43RD STREET PARTNERS, L.L.C.
Attn: Robert D. Smith
Golden, Colorado 80401

PROJECT TITLE: BUCK FOURTH SUBDIVISION
TO THE CITY OF LOVELAND, COLORADO

SHEET NO. 3
NO. OF SHEETS 3
PROJECT NO. P-04-5603

[illegible]

FIRST READING February 19, 2013

SECOND READING March 5, 2013

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF REAL PROPERTY LOCATED IN LOTS 1 AND 2, BLOCK 1 AND TRACT C, BUCK FOURTH SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

WHEREAS, the City of Loveland owns certain real property identified as Tract N, Buck First Subdivision, City of Loveland (the “Tract N”), which was dedicated to the City for use as a regional detention pond by the Buck First Subdivision plat recorded December 11, 1998 at Reception No. 98109239 in the real property records of the Larimer County Clerk and Recorder (the “Buck First Subdivision”); and

WHEREAS, the developer constructed and the City accepted, operates and maintains a regional detention pond on Tract N (the “Regional Detention Pond”); and

WHEREAS, the Buck First Subdivision plat also dedicated a 20’ utility easement located north of the boundary of Tract N, in which the City constructed, operates and maintains a sanitary sewer line (the “Utility Easement”); and

WHEREAS, Tract M of the Buck First Subdivision (“Tract M”) was subsequently acquired by 43rd Street Partners, LLC, a Colorado limited liability company (“43rd Street Partners”); and

WHEREAS, 43rd Street Partners, as owner, and Horizon Banks, N.A., NKA Mile High Banks (“Lender”) entered into a Deed of Trust recorded May 24, 2005 at Reception No. 20050041811 securing a loan to finance development of Tract M; and

WHEREAS, by adoption of Ordinance No. 5052 on December 20, 2005, the City Council of the City of Loveland (“Council”), authorized conveyance of a portion of the Tract N to 43rd Street Partners upon satisfaction of certain conditions, including relocation of the Regional Detention Pond to the south, so as to facilitate proposed commercial development on Tract M; and

WHEREAS, the Buck Fourth Subdivision plat was recorded November 7, 2006 at Reception No. 20060084244 in the real property records of the Larimer County Clerk and Recorder (the “Buck Fourth Subdivision”), which re-platted Tracts M and N, including relocation of the line dividing Tracts M and N to the south as proposed to facilitate commercial development, and dedicated Tract B of the Buck Fourth Subdivision to the City for the Regional Detention Pond; and

WHEREAS, in addition to Tract B of the Fourth Subdivision, the Buck Fourth Subdivision plat reflects that additional drainage easements adjacent to the south were dedicated to the City by separate instruments recorded at Reception Nos. 2006-0036688 and 2006-0036689 to facilitate relocation of the Regional Detention Pond; and

WHEREAS, the proposed commercial development to be facilitated by the Buck Fourth Subdivision has not occurred, the Regional Detention Pond has not been relocated to the south and remains on the property that previously constituted Tract N of the Buck First Subdivision, the City sanitary sewer line remains in the Utility Easement dedicated by the Buck First Subdivision plat and vacated by the Buck Fourth Subdivision plat and the Lender has foreclosed on and now owns, itself or through its designee Utes Land Company, a Colorado corporation (“Utes”), the real property that previously constituted Tract M of the Buck First Subdivision; and

WHEREAS, the Lender proposes to grant the City a perpetual exclusive easement for the Regional Detention Pond (the “New Detention Pond Easement”) over that portion of Tract N of the Buck First Subdivision now located within Lots 1 and 2, Block 1 of the Buck Fourth Subdivision as depicted and legally described on **Exhibit A** attached hereto and incorporated by reference (the “Property”) and a new easement over and across the Utility Easement (the “New Utility Easement”) in return for a quit claim deed transferring the City’s interest in Lots 1-9, inclusive, and Tracts A, C, D, E, F, G, H, and I of the Buck Fourth Subdivision, which includes the Property, from the City to Utes as Lender’s designee; and

WHEREAS, the proposed grant of the New Detention Pond Easement and New Utility Easement and conveyance by the City will correct title defects resulting from modifications made in the Buck Fourth Subdivision, allowing the potential for future development, while preserving the City’s right to maintain the existing Regional Detention Pond and sanitary sewer line in their current locations; and

WHEREAS, pursuant to Loveland Municipal Charter Section 4-7 the Council must act by ordinance to approve the transfer of fee ownership of real property owned by the City; and

WHEREAS, the City desires to authorize conveyance of the City’s interest in Lots 1-9, inclusive, and Tracts A, C, D, E, F, G, H, and I of the Buck Fourth Subdivision, which includes the Property, to the Lender’s designee on the terms and conditions hereinafter set forth in order to serve the best interests of the City and to facilitate the future development of the Buck Fourth Subdivision.

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

Section 1. That Council hereby repeals Ordinance No. 5052 previously approved on December 20, 2005 and adopts this Ordinance in lieu thereof.

Section 2. That Council hereby finds and determines that the conveyance of the City’s interest in Lots 1-9, inclusive, and Tracts A, C, D, E, F, G, H, and I of the Buck Fourth Subdivision, which includes the Property as described on **Exhibit A**, is in the best interest of the City of Loveland and, subject to receipt of the New Detention Pond Easement and the New Utility Easement, the Property is not needed for any governmental purpose.

Section 3. That the conveyance of the City's interest in Lots 1-9, inclusive, and Tracts A, C, D, E, F, G, H, and I of the Buck Fourth Subdivision, is hereby authorized and approved, subject to the City's receipt of the New Detention Pond Easement and the New Utility Easement acceptable in form and substance to the City Manager.

Section 4. That the City Manager is authorized to execute the following deeds, documents or agreements, the form of which is approved by the City Attorney: (a) a quit claim deed by which the City of Loveland conveys interest in Lots 1-9, inclusive, and Tracts A, C, D, E, F, G, H, and I of the Buck Fourth Subdivision to Utes as the Lender's designee; (b) agreements or documents by which the Lender or Utes as its designee, grants to the City the New Detention Pond Easement and the New Utility Easement. Further, the City Manager is authorized to execute, on behalf of the City of Loveland, all documents, the form of which is approved by the City Attorney necessary to consummate the transfer of the City's interest described herein and receipt of the New Detention Pond Easement and the New Utility Easement.

Section 5. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 6. That this Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 7. That the City Clerk shall record this Ordinance in the real property records of the Larimer County Clerk and Recorder promptly after the Ordinance becomes effective.

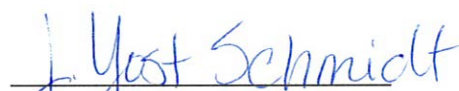
ADOPTED this 5th day of March, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A**DREXEL, BARRELL & CO.**

AUGUST 29, 2012

Engineers/Surveyors

Boulder
 Colorado Springs
 Steamboat Springs
 Grand Junction

1800 38th Street
 Boulder, CO 80301-2620

303.442.4338
 303.442.4375 Fax

LEGAL DESCRIPTION

A TRACT OF LAND WITHIN LOT 1 AND LOT 2, BUCK FOURTH SUBDIVISION, LOCATED IN THE NE1/4 OF SECTION 4, T5N, R69W OF THE 6TH P.M. CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1, THENCE N89°56'04"W, 379.54 FEET ALONG THE SOUTHERLY LINE OF SAID LOT 1;

THENCE N00°03'56"E, 75.76 FEET ALONG THE WESTERLY LINE OF SAID LOT 1 TO THE MOST SOUTHERLY CORNER OF SAID LOT 2;

THENCE N42°52'41"W, 294.63 FEET ALONG THE SOUTHWESTERLY LINE OF SAID LOT 2;

THENCE N30°40'17"W, 34.63 FEET ALONG THE SOUTHWESTERLY LINE OF SAID LOT 2;

THENCE S46°50'18"E, 22.01 FEET;

THENCE S45°41'27"E, 47.22 FEET;

THENCE S49°58'07"E, 49.01 FEET;

THENCE S52°23'32"E, 54.58 FEET;

THENCE S62°12'41"E, 116.12 FEET;

THENCE S66°44'29"E, 59.52 FEET;

THENCE S69°43'52"E, 53.46 FEET;

THENCE S76°47'06"E, 62.20 FEET;

THENCE S84°23'12"E, 47.73 FEET;

THENCE S85°50'43"E, 62.33 FEET;

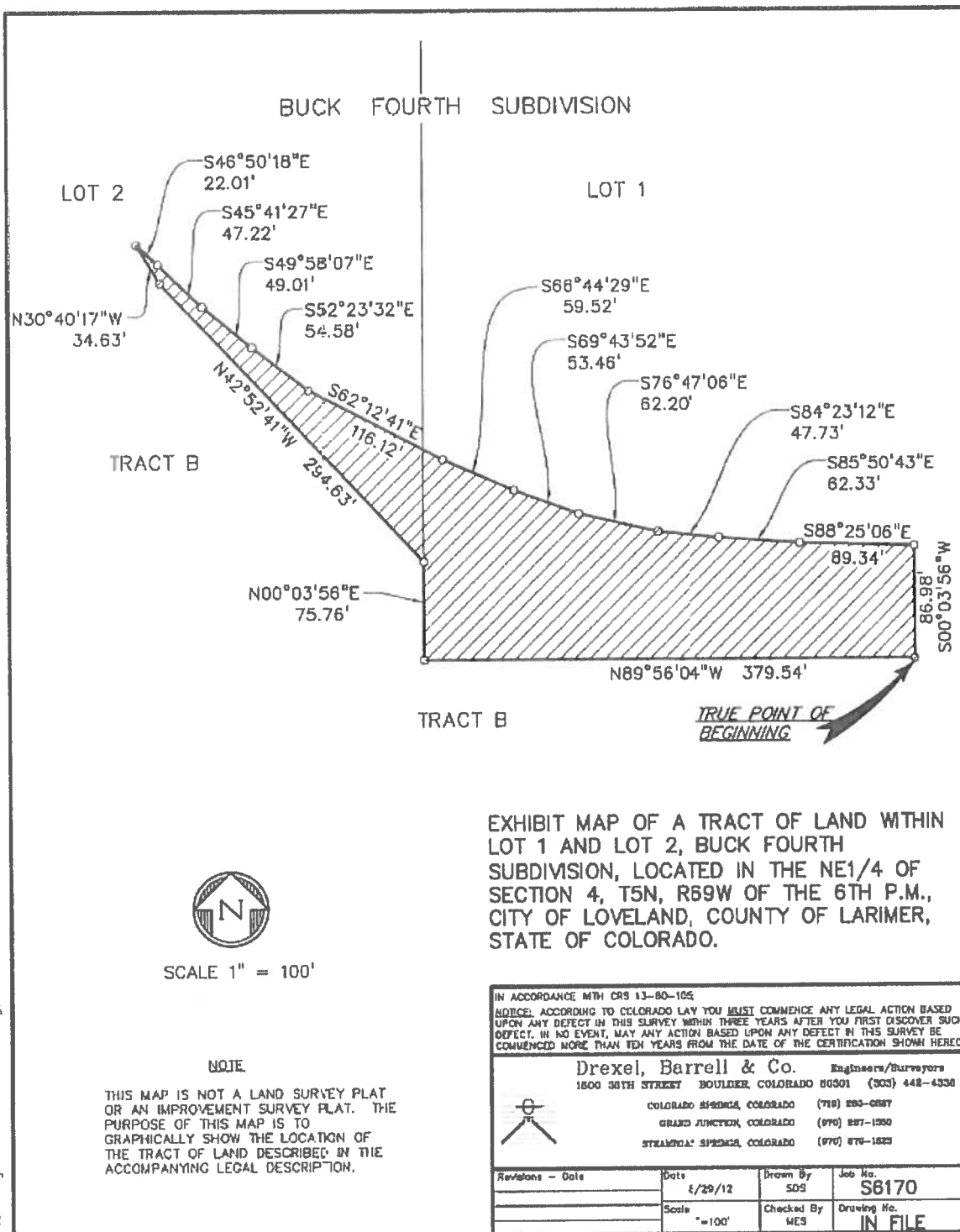
THENCE S88°25'06"E, 89.34 FEET TO A POINT ON THE EASTERLY
LINE OF SAID LOT 1;

THENCE S00°02'56"W, 86.98 FEET ALONG SAID EASTERLY LINE
OF LOT 1 TO THE TRUE POINT OF BEGINNING.

CONTAINING 1.127 ACRES

LEGAL DESCRIPTION PREPARED BY

MATHEW E. SELDERS
COLORADO LICENSE NO. 27275
1800 38TH STREET
BOULDER, CO 80301
303-442-4338



S:\S6170\Drawings\Exhibits\6170ex01.dwg, 8/30/2012 1:05:11 PM

I, Franklin D. Blake, being a registered Professional Land Surveyor in the State of Colorado, do hereby certify that the survey of BUCK FIRST SUBDIVISION was made by me or under my supervision and that the survey is accurately represented on this plat and that the statements contained hereon were read by me and the same are true to the best of my knowledge.

State of Colorado } S.S.
County of Larimer }

The foregoing instrument was acknowledged before me this 17th day of November, 1998, by Franklin D. Blake.

My notarial commission expires 12/31/2001.

NOTARY PUBLIC Amy P. Blaylock

Approved this 17th day of November, 1998, by the City Engineer of the City of Loveland, Colorado.

BY Alan Wilson
CITY ENGINEER

Approved this 15th day of November, 1998, by the current Planning Manager of the City of Loveland, Colorado.

BY [Signature]
CURRENT PLANNING MANAGER

This plat is approved by the City of Loveland Planning Commission this ___ day of ___, 19__.

BY N/A
CHAIRMAN

This plat is approved by the Director of Community Services of the City of Loveland, Larimer County, Colorado, this 25th day of November, 1998, for filing with the Clerk and Recorder of Larimer County and for conveyance to the City of the public dedications shown hereon, which are accepted; subject to the provision that approval in no way obligates the City of Loveland, for the financing or constructing of improvements on land, streets or easements dedicated to the public except as specifically agreed to by the Director of Community Services.



DIRECTOR OF COMMUNITY SERVICES

Witness our hands and seal of the City of Loveland, Colorado, this ___ day of ___, 19__.

ATTEST [Signature]
CITY CLERK

This plat was filed for record in the office of the Clerk and Recorder at ___ o'clock ___ M., ___ and is duly recorded in Book ___ at Page ___ or at Reception No. ___.

CLERK AND RECORDER
County of Larimer, State of Colorado

NOTES:

- There is a 14 foot utility and easement along all street rights-of-way, a 10' utility and drainage easement along all alley rights-of-way.
- Construction of public improvements and issuance of building permits within this subdivision are governed by a separate agreement between the City of Loveland and the owner, which agreement constitutes a covenant running with the land.
- All tracts are open space, utility, drainage and pedestrian access easements, except for Tracts L and M.
- Tracts L and M are for future development; Tract N is a regional detention pond and also a utility, drainage and pedestrian access easement.
- All tracts are to be owned and maintained by the Homeowners Association, except for Tract L, M and N.
- Tracts L, M and N are not to be prepared with City of Loveland treated water.
- This property is subject to a development agreement which has been recorded in the real property records of Larimer County.
- This property is subject to a Preliminary Development Plan which is on file in the City Building Division.
- Boundaries are based on the assumption that the East line of the Northeast 1/4 of Section 4-T15N-R69W bears S00°00'27"W.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned being all the owners and lienholders of the following described public streets, roads, or highways, which property is located in the North 1/2 of Section 4, Township 5 North, Range 69 West of the Sixth P.M., containing 125.5335 acres, more or less, being a subdivision of all of the Buck First and Second Additions to the City State of Colorado, being more particularly described as follows: Considering the East line of said North 1/2 as bearing bearings contained herein relative thereto, is contained within the boundary lines which begin at a point which bears S0°58'20"42"W 50.00 feet from the Northeast Corner of said Section 4, and run thence S00°00'27"W 1270.00 feet; then east; thence N00°00'27"E 1270.00 feet; thence N89°20'42"E 4340.00 feet to the point of beginning; do hereby subdivide tracts, outlots, right-of-ways and easements as shown on this plat; and do hereby designate and dedicate: (1) all easements shown on this plat, other than private easements, to and for public use, except where indicated otherwise on this plat; to and for public use for the installation and maintenance of utility, irrigation and drainage facilities; and do hereby dedicate this SUBDIVISION to the City of Loveland, Colorado. All expenses involving necessary improvements for a water system, sewer, sidewalks, street signs, street improvements, traffic control signs, alley grading and surfacing, gas service, electric service be paid by the owner.

OWNER: GIULIANO AND FATHER CONSTRUCTION, INC. A COLORADO CORPORATION
also known as GIULIANO AND FATHER CONSTRUCTION CO., INC., A COLORADO CORPORATION

State of Colorado } S.S.
County of Larimer }

The foregoing instrument was acknowledged before me this 21st day of October, 1998, by John T. Giuliano and Construction, Inc.

My notarial commission expires 2/21/2000

NOTARY PUBLIC [Signature]

J.S. BUCK AND ASSOCIATES

BY Barry K. Fancher
BARRY K. FANCHER, Managing Partner

BY Roger D. Kurtz
ROGER D. KURTZ, Managing Partner

State of Colorado } S.S.
County of Larimer }

The foregoing instrument was acknowledged before me this 21st day of October, 1998, by Barry K. Fancher and Partners of J.S. Buck and Associates.

My notarial commission expires 12-24-2000

NOTARY PUBLIC [Signature]

BUCKHORN LOVELAND LIMITED LIABILITY CO.

BY Robert S. Dildine
ROBERT S. DILDINE, Manager

State of Colorado } S.S.
County of Larimer }

The foregoing instrument was acknowledged before me this 21st day of October, 1998, by Robert S. Dildine of Limited Liability Co.

My notarial commission expires 7/21/2001

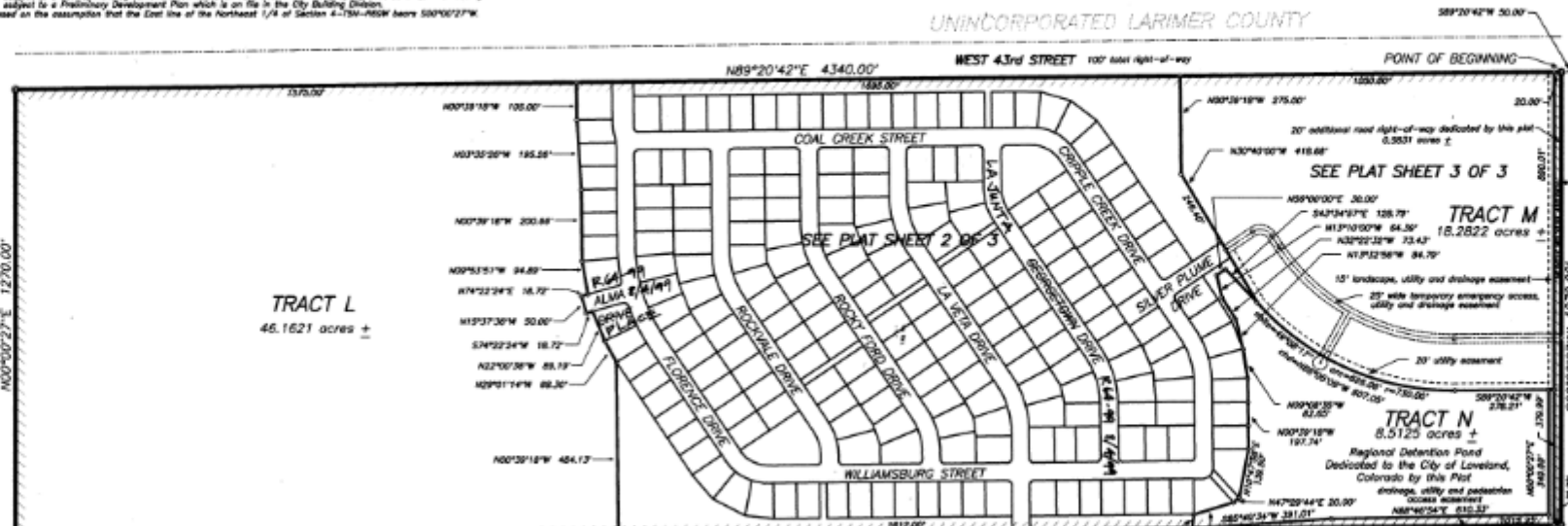
NOTARY PUBLIC [Signature]

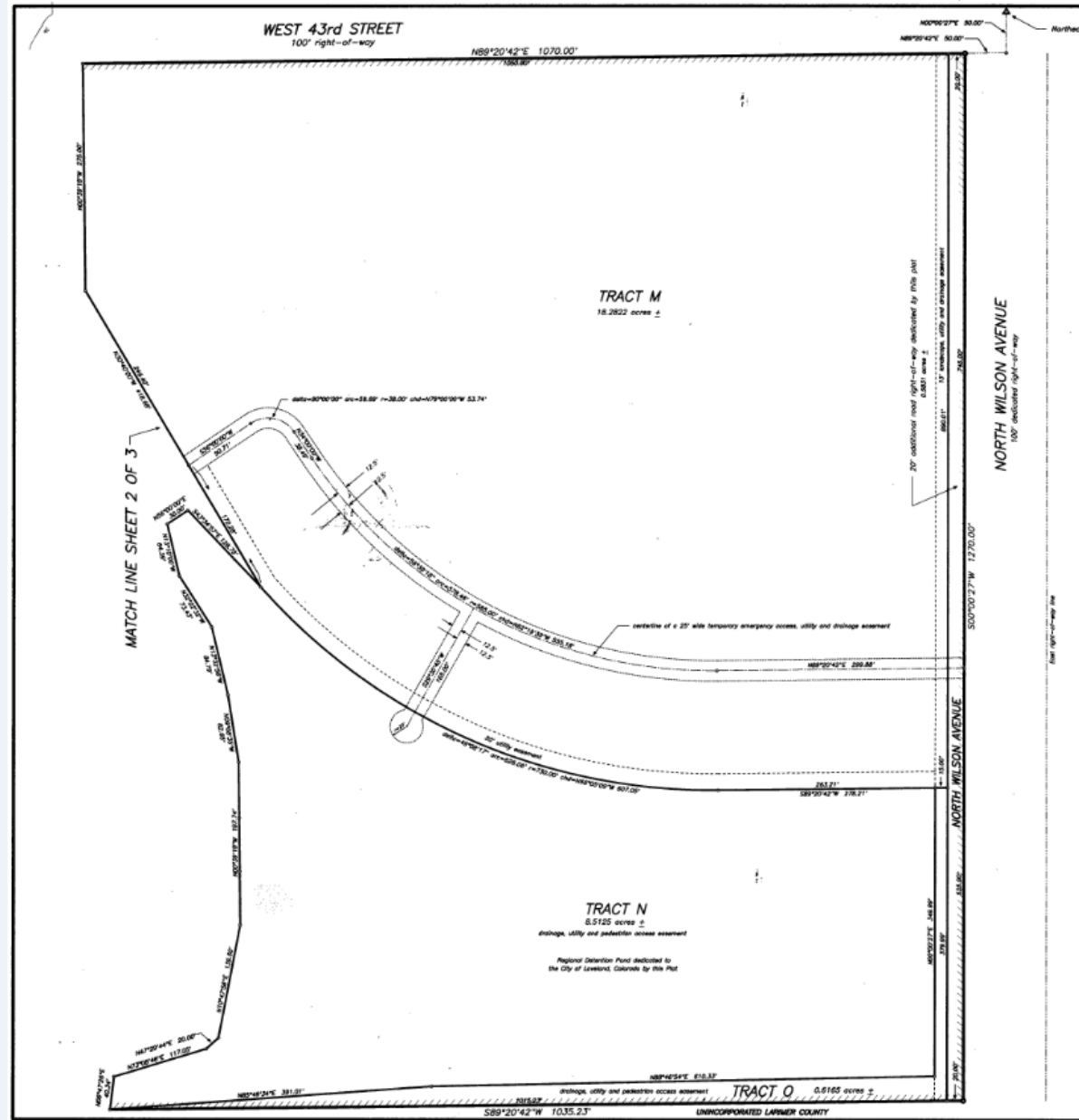
I, Arthur E. March, an attorney licensed to practice law in the state of Colorado, certify that I have examined the foregoing instrument, and that the parties executing the dedication are the owners thereof free and clear of all liens and encumbrances, except right-of-way to the extent of easements recorded in Book 2049 at Page 327, easements recorded in Book 2049 at Page 327, and any other easements recorded in the public records of Larimer County, Colorado as indicated in the notice recorded in Book 2049 at Page 327, and I certify that there is no other interest in the property. So sworn this 21st day of October, 1998.

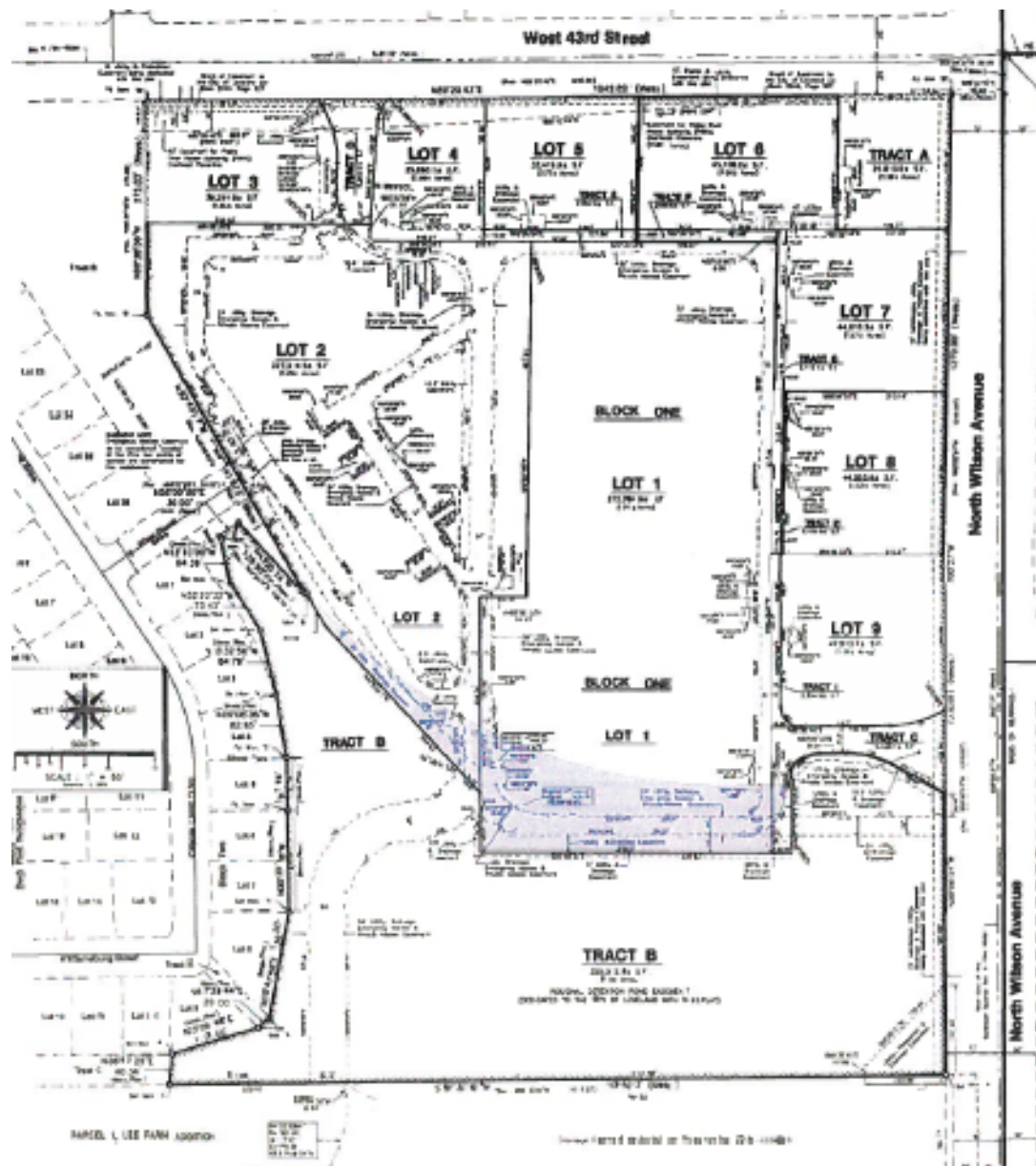
ATTORNEY AT LAW

UNINCORPORATED LARIMER COUNTY

UNINCORPORATED LARIMER COUNTY









CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 5
MEETING DATE: 3/5/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Kerri Burchett

TITLE:

An ordinance vacating a portion of drainage easements on Lots 5 & 6, Block 1, Mineral First Subdivision, City Of Loveland

RECOMMENDED CITY COUNCIL ACTION:

A motion to adopt on second reading, "AN ORDINANCE VACATING A PORTION OF DRAINAGE EASEMENTS ON LOTS 5 & 6, BLOCK 1, MINERAL FIRST SUBDIVISION, CITY OF LOVELAND"

OPTIONS:

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

DESCRIPTION:

Consideration of a legislative action to adopt an ordinance on second reading vacating portions of two drainage easements on Lots 5 and 6, Block 1, Mineral First Subdivision. The applicant is Boulder Creek Builders. The first reading of the ordinance was approved unanimously by City Council at the February 19, 2013 meeting.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

The application proposes to vacate a 14 square foot and a 15 square foot portion of two drainage easements on Lots 5 and 6, Block 1 in the Mineral First Subdivision. The Subdivision is located south of West 1st Street and east of Taft Avenue and was platted as a single family

attached development. Both lots are currently vacant and the applicant is proposing to construct a duplex that would encroach into the easement by approximately 1 foot. The easement is in place to accommodate an existing storm sewer pipe. The Stormwater Division has reviewed the vacation proposal and is supportive of the request. The ordinance was adopted on first reading by the City Council on February 19, 2013 as an item on the Consent Agenda.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

- A. Vacation ordinance
- B. Staff memorandum

FIRST READING: February 19, 2013

SECOND READING: March 5, 2013

ORDINANCE NO.

AN ORDINANCE VACATING A PORTION OF DRAINAGE EASEMENTS ON LOTS 5 & 6, BLOCK 1, MINERAL FIRST SUBDIVISION, CITY OF LOVELAND

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation of a portion of the drainage easement described on **Exhibit A** attached hereto and incorporated herein by this reference, located in Lot 5, Block 1, Mineral First Subdivision, City of Loveland, County of Larimer, State of Colorado (the “Lot 5 Vacated Drainage Easement”) and a portion of the drainage easement described on **Exhibit B** attached hereto and incorporated herein by this reference, located in Lot 6, Block 1, Mineral First Subdivision, City of Loveland, County of Larimer, State of Colorado (the “Lot 6 Vacated Drainage Easement”);

WHEREAS, the City Council finds and determines that no land adjoining the portions of the easements to be vacated is left without an established public or private easement connecting said land with another established public or private easement; and

WHEREAS, the City Council finds and determines that the portions of the drainage easements to be vacated are no longer necessary for the public use and convenience; and

WHEREAS, the City Council further finds and determines that the application filed with the Current Planning Division was signed by the owners of more than 50% of property abutting the easements to be vacated.

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

Section 1. That the City Council hereby adopts and makes the findings set forth above.

Section 2. That based on the City Council’s findings described above, the following portions of the drainage easements be and the same are hereby vacated:

- A. That portion of a drainage easement located on **Lot 5, Block 1, A, Mineral Addition First Subdivision, City of Loveland, County of Larimer, State of Colorado described on Exhibit A attached hereto and incorporated herein by this reference**, containing 15 square feet more or less; and
- B. That portion of a drainage easement located on **Lot 6, Block 1, A, Mineral Addition First Subdivision, City of Loveland, County of Larimer, State of Colorado described on Exhibit B attached hereto and incorporated herein by this reference**, containing 14 square feet more or less.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 4. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 5. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this 5th day of March, 2013.

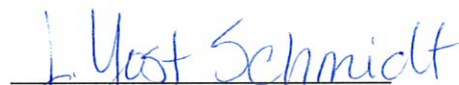
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A

VACATION OF DRAINAGE EASEMENT – LOT 5

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN LOT 5, BLOCK 1, MINERAL FIRST SUBDIVISION RECORDED WITH THE CLERK AND RECORDER OF LARIMER COUNTY ON JULY 17, 2006 AS RECEPTION NO. 2006-0053541 AND SITUATE IN THE NORTHWEST ONE-QUARTER (NW1/4) OF SECTION 23, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND LOCATED IN THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF AN EXISTING DRAINAGE EASEMENT LOCATED ALONG THE NORTHERLY LINE OF SAID LOT 5, FROM WHENCE THE SOUTHWEST CORNER OF SAID LOT 5 BEARS S65°24'32"W 68.83 FEET;

THENCE ALONG SAID EASEMENT LINE PARALLEL WITH AND 7.50' SOUTH DISTANT FROM THE NORTH LINE OF SAID LOT 5 S84°48'00"E 31.62 FEET;

THENCE S05°12'00"W 0.95 FEET;

THENCE N83°04'23"W 31.64 FEET TO THE POINT OF BEGINNING.

CONTAINING 15 SQUARE FEET.

BEARINGS USED HEREIN ARE BASED UPON THE NORTH LINE OF LOT 6, BLOCK 1, MINERAL FIRST SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED JULY 17, 2006 AS RECEPTION NO. 2006-0053541, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

DOUGLAS H. ORT III, PLS
ACCURATE ENGISURV LLC
10155 WESTMOOR DRIVE SUITE 120
WESTMINSTER, CO 80021

Note: The legal description shown hereon was prepared as a convenience only and is not intended for division and/or conveyance of land in violation of C.R.S. 30-28-101.

Prepared by: Accurate EngiSurv LLC December 5, 2012 Page 2 of 2 1BOU1307
10155 Westmoor Drive, Suite 120
Westminster, CO 80021
303-665-5505

EXHIBIT B**VACATION OF DRAINAGE EASEMENT LOT 6**

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN LOT 6, BLOCK 1, MINERAL FIRST SUBDIVISION RECORDED WITH THE CLERK AND RECORDER OF LARIMER COUNTY ON JULY 17, 2006 AS RECEPTION NO. 2006-0053541 AND SITUATE IN THE NORTHWEST ONE-QUARTER (NW1/4) OF SECTION 23, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN AND LOCATED IN THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF AN EXISTING DRAINAGE EASEMENT LOCATED ON THE SOUTHERLY PORTION OF SAID LOT 6, FROM WHENCE THE NORTHWEST CORNER OF SAID LOT 6 BEARS N58°36'55"W 77.51 FEET;

THENCE ALONG SAID EASEMENT LINE S88°08'45"E" 21.85 FEET;

THENCE S05°12'00"W 1.28 FEET;

THENCE N84°48'00"W 21.81 FEET TO THE POINT OF BEGINNING.

CONTAINING 14 SQUARE FEET.

BEARINGS USED HEREIN ARE BASED UPON THE NORTH LINE OF LOT 6, BLOCK 1, MINERAL FIRST SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED JULY 17, 2006 AS RECEPTION NO. 2006-0053541, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

DOUGLAS H. ORT III, PLS
 ACCURATE ENGISURV LLC
 10155 WESTMOOR DRIVE SUITE 120
 WESTMINSTER, CO 80021

Note: The legal description shown hereon was prepared as a convenience only and is not intended for division and/or conveyance of land in violation of C.R.S. 30-28-101.

Prepared by: Accurate EngiSurv LLC January 21, 2012 Page 4 of 2 1BOU1307
 10155 Westmoor Drive, Suite 120
 Westminster, CO 80021
 303-665-5505

**Development Services
Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

MEMORANDUM

TO: City Council
FROM: Kerri Burchett, Current Planning Division
DATE: February 19, 2013
SUBJECT: Vacation of a portion of two drainage easements on Lots 5 and 6, Block 1, Mineral First Subdivision

I. ATTACHMENTS

1. Applicant's request letter
2. Vacation Exhibit

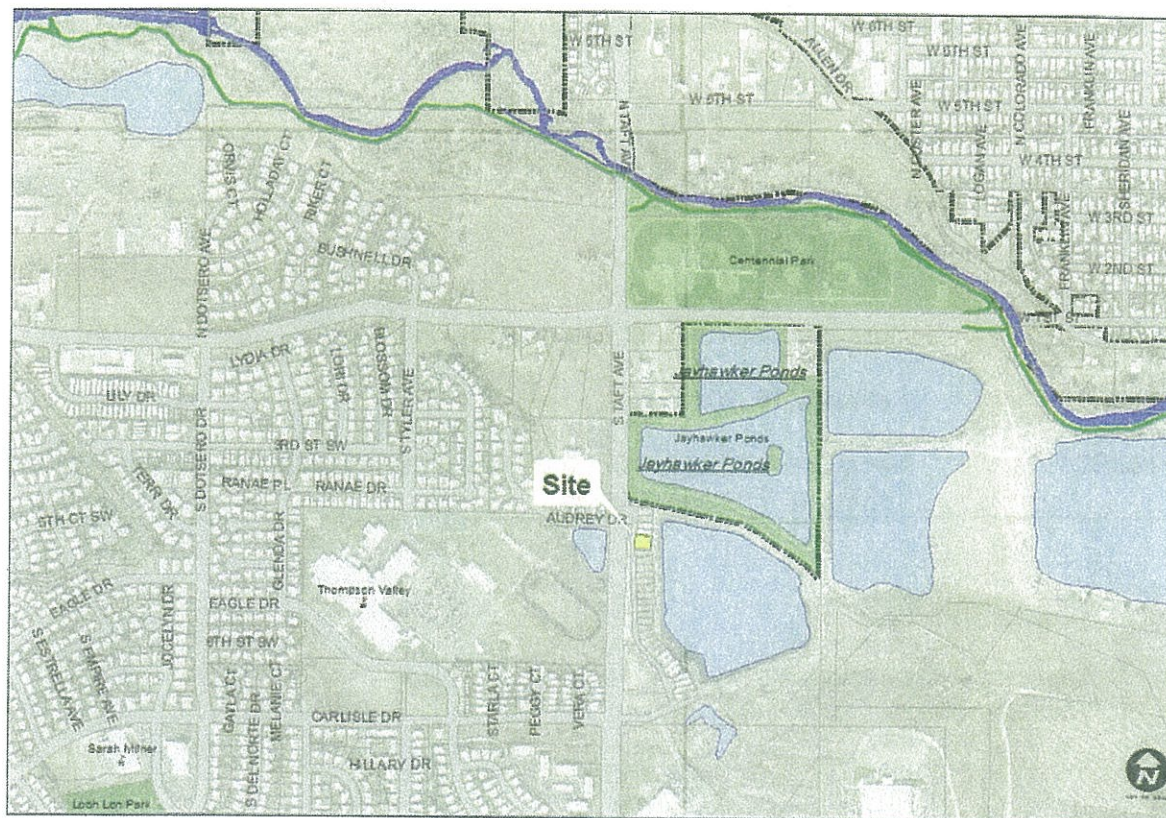
II. KEY ISSUES

Staff believes that there are no outstanding issues regarding this requested easement vacation.

III. PROJECT DESCRIPTION

The application proposes to vacate a portion of two drainage easements platted on Lots 5 and 6, Block 1 of the Mineral First Subdivision. The Subdivision is located south of West 1st Street and east of Taft Avenue and was platted as a single family attached development (see the vicinity map on page 2). Both lots are vacant and contain drainage easements that accommodate existing storm sewer pipes. The applicant is proposing to construct a duplex on these lots that would encroach into portions of the easements. The applicant is requesting to vacate 15 square feet of the drainage easement on Lot 5 and 14 square feet of the drainage easement on Lot 6. The Stormwater Division has reviewed the vacation and is supportive of the request.

IV. VICINITY MAP



V. FINDINGS and ANALYSIS

The following two findings must be met in order for the City Council to vacate the utility easement. These findings are included in section 16.36.010.B of the Loveland City Code.

1. *That no land adjoining any right-of-way to be vacated is left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement.*

Current Planning: Staff believes that this finding can be met based on the following facts:

- The easement proposed for vacation is for drainage purposes and does not involve the vacation of any existing public or private street rights-of-way.
- No land will be left without an established public or private right-of-way.



BOULDER CREEK

life and home

05 December, 2012

Kerri Burchett
C/O City of Loveland
500 E Third Street
Loveland, CO 80537

RE: Vacation of Easement
Letter of Request – Lots 5 and 6 – Mineral First subdivision

Dear Ms. Burchett:

Please accept our application for a variance request on behalf of the owners of lots 5 and 6 - Mineral First subdivision, Advantage Bank – Loveland Branch.

As we have discussed with Kevin Gingery, the storm sewer easements that are in place on both sides of this duplex squeeze the available footprint. To be able to fit our standard duplex, we encroach into the easement. The encroachment is less than 1' in both cases. We appreciate your consideration of this request as it assists our efforts to get the owners through this troubled project.

I am happy to address any questions or concerns. Thank you for your time in reviewing this application.

Sincerely,

David Gregg
Architect / Owner
Boulder Creek Builders
(303) 544-5857 x 103

2. *That the easement to be vacated is no longer necessary for the public use and convenience.*

Stormwater: Staff believes that this finding can be met due to the following fact:

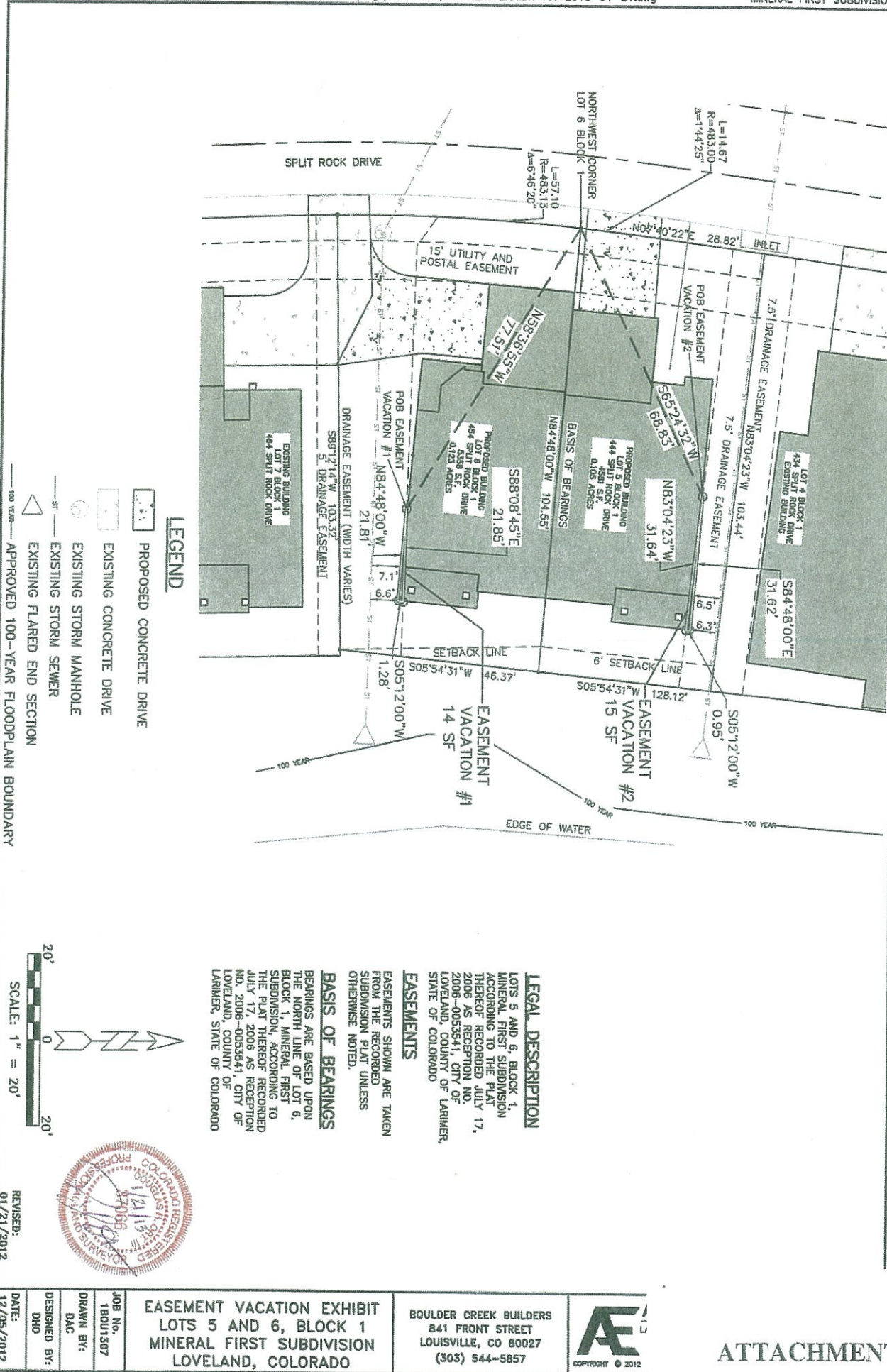
- The existing drainage easements, of which 14 square feet and 15 square feet are proposed to be vacated, will not inhibit the repair and maintenance of the storm sewer pipes within them.

VI. RECOMMENDATION

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council approve the vacation ordinance on first reading.

VII. CONDITIONS

There are no recommended conditions for this application.





CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: 6
MEETING DATE: 3/5/2013
TO: City Council
FROM: Ken Cooper, Public Works - Facilities Management
PRESENTER: Ken Cooper

TITLE:

An Ordinance on second reading Authorizing the Sale of City Property located at 905, 915, 925, 933, and 935 North Taft Avenue

RECOMMENDED CITY COUNCIL ACTION:

Adopt the Ordinance on second reading

OPTIONS:

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

DESCRIPTION:

This is an administrative matter approving the sale of approximately 5.2 acres of City-owned property located at 905, 915, 925, 933, and 935 North Taft Avenue, which were parcels acquired for the Taft Avenue widening project. The first reading of the ordinance was approved unanimously by City Council at the February 19, 2013 meeting.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
☐ Neutral or negligible
-

SUMMARY:

On February 19, 2013, City Council approved on first reading the sale of approximately 5.2 acres of City-owned property located on North Taft Avenue, just north of 8th Street.

Between 2003 and 2004, the City purchased five parcels along the west side of North Taft Avenue to allow the expansion of Taft Avenue just north of 8th Street. The addresses for the properties purchased were 905, 915, 925, 933, and 935 North Taft Avenue. Together, they comprise about 5.2 acres. As part of the project, the properties were annexed into the City of Loveland and the houses there were razed. Also included in the annexation was a 1.3 acre parcel directly north of the 5.2 acres purchased. The City already owned the 1.3 acre parcel, which runs along the old Arkins Branch railroad right-of-way. During annexation, the 6.5 acre property was zoned R2 – Developing Two Family Residential.

The road expansion project was completed in late 2005 and the 6.5 acre tract was appraised in April, 2007. The appraised value was \$847,000. The tract was then put up for sale by the City late in 2007. However, the real estate market plunged during and after the property was appraised and marketed. This resulted in almost no serious interest in the property by prospective buyers.

Late in 2009, City Council approved the sale of the 5.2 acres to local developer Joe Shrader for \$473,846. That offer had stipulations related to development and density, which ultimately created financial challenges in the project and Mr. Shrader was unable to close on the property. By early 2012, following extensions by the City and Mr. Shrader, the original purchase contract expired.

The City hired Loveland Commercial, LLC to market the property in 2012. Based on the most recent market information, an asking price of \$300,000 was established and helped generate mild public interest. Joe Shrader never lost interest in the property, and he has again extended an offer to the City for the 5.2 acres, though this offer is a cash offer for \$275,000 and will close quickly. The purchase price does still include 5 residential water taps. Mr. Shrader's plans are now to develop lower density single-family housing on the site.

The monies collected from the real estate sale will be used to reimburse Public Works Capital Expansion Fees originally used to purchase the properties for the Taft Avenue widening project.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

Ordinance
Exhibit A – Legal Description of Property
Exhibit B – Contract

FIRST READING February 19, 2013

SECOND READING March 5, 2013

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING THE SALE OF 905, 915, 925, 933, AND
935 NORTH TAFT AVENUE PURSUANT SECTION 4-7 OF THE CITY
OF LOVELAND MUNICIPAL CHARTER**

WHEREAS, the City is the owner of certain real property legally described as set forth in Exhibit A, attached hereto and incorporated herein by reference, also known by the mailing addresses of 905, 915, 925, 933, and 935 North Taft Avenue, Loveland, CO 80537 (together, the “Property”); and

WHEREAS, the City acquired the Property as part of the Taft Avenue widening project, which was completed in late 2005; and

WHEREAS, the Property is not used for parks purposes and is not needed for any governmental purpose, and has been on the real estate market since 2008; and

WHEREAS, Loveland Investments, LLC has offered to purchase the Property from the City for Two Hundred Seventy-five Thousand Dollars (\$275,000); and

WHEREAS, the City desires to sell the Property to Loveland Investments, LLC for Two Hundred Seventy-five Thousand Dollars (\$275,000) on the terms and conditions set forth in the “Contract to Buy and Sell Real Estate,” attached hereto as Exhibit B and incorporated herein by reference (“Contract”); and

WHEREAS, pursuant to Section 4-7 of the City of Loveland Municipal Charter, the City Council must act by ordinance to approve the transfer of fee ownership in real property owned by the City.

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

Section 1. That the City Council hereby finds and determines that the Property is not needed for any governmental purpose, and that the sale of the Property is in the best interest of the City of Loveland.

Section 2. That the City Manager is authorized to enter into the Contract and to execute all documents, the form of which shall be approved by the City Attorney, necessary to consummate the sale of the Property for the purchase price of Two Hundred Seventy-five Thousand Dollars (\$275,000) and to transfer the City’s interest in the Property to Loveland Investments, LLC.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form or substance of the Contract as deemed necessary to effectuate the purposes of this Ordinance or to protect the interests of the City.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

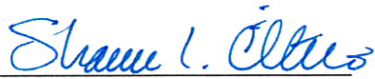
ADOPTED this 5th day of March, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Assistant City Attorney

Description:

A portion of the Northeast 1/4 of Section 15, Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado being more particularly described as follows:

Considering the East line of the Northeast 1/4 of Section 15, Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado as bearing N 00°56'37" W with all bearing contained herein relative thereto.

COMMENCE at the Southeast Corner of the Northeast 1/4 of Section 15, Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado; thence N 00°56'37" W, on the East line of the Northeast 1/4 of Section 15, a distance of 371.19 feet; thence S 89°03'23" W a distance of 103.91 feet to the POINT OF BEGINNING, said point being on the West right-of-way of North Taft Avenue and on the South line of that parcel described at Reception No. 2004-0050232, Larimer County, Colorado; thence S 89°02'13" W, on said South line, a distance of 556.09 feet to the East line of Romar Addition, City of Loveland, Colorado; thence on said East line of Romar Addition the following two (2) courses and distances:

- 1.) thence N 00°57'22" W a distance of 132.00 feet;
- 2.) thence N 00°54'57" W a distance of 336.10 feet to the South right-of-way line of the Atkins Branch of the Colorado and Southern Railroad;

thence S 78°39'32" E, on said South right-of-way line, a distance of 565.06 feet to the aforesaid West right-of-way of North Taft Avenue; thence S 01°34'28" E, on said West right-of-way, a distance of 347.71 feet to the Point of Beginning.

Containing 5.19 acres, more or less, and being subject to all easements and rights of way of record.



Loveland Commercial, LLC
 1043 Eagle Drive Loveland, CO 80537
 Nathan Klein Partner/Broker Associate
 Ph: 970-667-7000 Fax: 970-635-2514

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission (CP40-9-12) (Mandatory 1-13)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

COUNTERPROPOSAL

Date: 2/4/2013

1. This Counterproposal shall supersede and replace any previous counterproposal. This Counterproposal amends the proposed contract dated 1/11/2013 (Contract), between **City of Loveland, Colorado** (Seller), and **Loveland Investments LLC** (Buyer), relating to the sale and purchase of the following legally described real estate in the County of **Larimer**, Colorado:
Those properties commonly known as 905, 915, 925, 933, and 935 N. Taft Ave., City of Loveland, CO known as No. **905-935 N Taft Ave. Loveland CO 80537** (Property).

NOTE: If the table is omitted, or if any item is left blank or is marked in the "No Change" column, it means no change to the corresponding provision of the Contract. If any item is marked in the "Deleted" column, it means that the corresponding provision of the Contract to which reference is made is deleted.

2. **§ 3. DATES AND DEADLINES.** [NOTE: This table may be deleted if inapplicable.]

Item No.	Reference:	Event	Date or Deadline	No Change	Deleted
1	§ 4.3	Alternative Earnest Money Deadline	~~10 Days~~ ~~48 hours from MEC~~		
Title and Association					
2	§ 7.1	Record Title Deadline	10 Days from MEC		
3	§ 7.5	Exceptions Request Deadline	13 Days from MEC		
4	§ 8.1	Record Title Objection Deadline	15 Days from MEC		
5	§ 8.2	Off-Record Title Deadline	15 Days from MEC		
6	§ 8.2	Off-Record Title Objection Deadline	18 Days from MEC		
7	§ 8.3	Title Resolution Deadline	18 Days from MEC		
8	§ 7.6	Association Documents Deadline	no change	☒	
9	§ 7.6	Association Documents Objection Deadline	no change	☒	
10	§ 8.5	Right of First Refusal Deadline	no change	☒	
Sellers's Property Disclosure					
11	§ 10.1	Seller's Property Disclosure Deadline	no change	☒	
Loan and Credit					
12	§ 5.1	Loan Application Deadline	no change	☒	
13	§ 5.2	Loan Objection Deadline	no change	☒	
14	§ 5.3	Buyer's Credit Information Deadline	no change	☒	
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	no change	☒	
16	§ 5.4	Existing Loan Documents Deadline	no change	☒	
17	§ 5.4	Existing Loan Documents Objection Deadline	no change	☒	
18	§ 5.4	Loan Transfer Approval Deadline	no change	☒	
Appraisal					
19	§ 6.2	Appraisal Deadline	no change	☒	

Buyer(s) Initials OK

Seller(s) Initials WAC

20	§ 6.2	Appraisal Objection Deadline	no change		☒	
		Survey				
21	§ 9.1	Survey Deadline	no change		☒	
22	§ 9.2	Survey Objection Deadline	no change		☒	
		Inspection and Due Diligence				
23	§ 10.2	Inspection Objection Deadline	no change		☒	
24	§ 10.3	Inspection Resolution Deadline	no change		☒	
25	§ 10.5	Property Insurance Objection Deadline	no change		☒	
26	§ 10.6	Due Diligence Documents Delivery Deadline	10 Days from MEC			
27	§ 10.7	Due Diligence Documents Objection Deadline	30 Days from MEC			
28	§ 10.8	Conditional Sale Deadline CBS1, CBSF1	no change		☒	
29	§ 10.8	Environmental Inspection Objection Deadline CBS2, 3, 4			☒	
30	§ 10.8	ADA Evaluation Objection Deadline CBS2, 3, 4	no change		☒	
31	§ 11.1	Tenant Estoppel Statements Deadline CBS2, 3, 4	no change		☒	
32	§ 11.2	Tenant Estoppel Statements Objection Deadline CBS2,3,4	no change		☒	
		Closing and Possession				
33	§ 12.3	Closing Date	3/22/2013	Friday		
34	§ 17	Possession Date	Date of Closing			
35	§ 17	Possession Time	Delivery of Deed			
36	n/a	n/a	no change			
37	n/a	n/a	no change			

3. **§ 4. PURCHASE PRICE AND TERMS.** [Note: This table may be omitted if Inapplicable.]

The Purchase Price set forth below shall be payable in U. S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$275,000.00	
2	§ 4.2	Earnest Money		\$5,000.00
3	§ 4.5	New Loan		
4	§ 4.6	Assumption Balance		
5	§ 4.7	Seller or Private Financing		
6	n/a	n/a		
7	n/a	n/a		
8	§ 4.3	Cash at Closing		\$270,000.00
9		TOTAL	\$275,000.00	\$275,000.00

4. **ATTACHMENTS.** The following are a part of this Counterproposal:

no change

Note: The following disclosure forms are attached but are not a part of this Counterproposal:

no change

5. **OTHER CHANGES.**

5.1 The Contract shall be amended to remove the address at 903 N. Taft Ave. and replace it with 933 N. Taft Ave. as described above.

5.2 Section 2.5.4.5 shall be amended to clarify that Buyer shall receive credit for five (5) water taps. A credit shall be applied to 905 N. Taft Ave., 915 N. Taft Ave., 933 N. Taft Ave., 935 N. Taft Ave., and 935 1/2 N. Taft Ave. 925 N. Taft Ave. does not have a water tap credit.

5.3 Section 9.1.2 shall be amended to reflect that Buyer shall be responsible for ordering and paying for the cost of any surveys required in order for the Title Company to provide Owner's Extended Coverage title insurance.

5.4 Section 13 shall be amended to reflect that Seller will transfer the Property via Bargain and Sale Deed.

5.5 Earnest Money. Section 4.2 The Earnest Money shall be paid by cash or check and placed

14 Days

in escrow with Title Company within ~~48 hours~~ following mutual execution of the Contract.
 5.6 City Council Approval. This Contract is expressly contingent upon Loveland City Council approval and ratification prior to Closing. In the event the City Council does not approve this Contract, it shall automatically terminate, the Earnest Money shall be returned to Buyer, and neither party shall have any further obligations to one another thereafter.

5.7 Sections 15.3, 15.4, 15.5, 15.6 shall all be marked as None.

5.8 Section 22 & 23. The Seller does not agree to arbitration or mediation in the event of a dispute with the Contract.

5.9 Section 30.2 Shall be deleted. Buyer shall have the right to object to the the results of the Concept Review Team meeting with City of Loveland as part of its Due Diligence Documents Objection Deadline.

5.8 Section 2.4. The legal description of the property shall be amended as follows:

32 905 North Taft Avenue with a legal description of BEG 40 FT W & 371 FT N OF SE COR OF NE 1/4 15-5-69, LOV, TH W 620 FT, N 66 FT, E 620 FT, S 66 FT TO BEG, EX ERLY 10 FT, in the City of Loveland.

915 North Taft Avenue with a legal description of BEG 40 FT W & 437 FT N OF SE COR OF NE 1/4 15-5-69, LOV, TH W 620 FT, N 66 FT, E 620 FT, S 66 FT TO BEG, EX ERLY 10 FT, in the City of Loveland.

925 North Taft Avenue with a legal description of BEG 40 FT W & 504.62 FT N OF SE COR OF NE 15-5-69, LOV, W 620 FT, N 163.68 FT, SERLY 634 FT TO PT 129.62 FT N OF POB, S 129.62 FT TO BEG; LESS RD DESC IN 1832-729, in the City of Loveland.

933 North Taft Avenue with a legal description of PT NE 1/4 15-5-69 DESC: LOV, COM AT E 1/4 COR SD SEC, TH N 634.24 FT, W 40 FT, N 85 50' 9" W 15.04 FT TPOB, TH N 24.06 FT, N 85 50' 9" W 123.56 FT, N 65.72 FT TO PT ON S ROW LN C & S RR, TH ALG SD S ROW N 77 43' 27" W 493.25 FT TO NE COR LOT 10, BLK 1, ROMAR ADD, LOV, TH ALG E LN SD ROMAR ADD S 0 1' 17" E 159.56 FT, S 85 50' 9" E 606.75 FT TPOB (SPLIT FROM 95151-00-005), in the City of Loveland.

935 North Taft Avenue with a legal description of PAR IN NE 1/4 15-5-69: BEG AT E 1/4 COR, TH ALG E LN NE 1/4 N 634.24 FT, W 40 FT, N 85 50' 9" W 15.04 FT, N 24.06 FT TPOB, N 47.88 FT TO PT ON S ROW ARKINS BRANCH C & S RR, TH ALG SD S ROW LN N 77 43' 27" W 126.12 FT, S 65.72 FT, S 85 50' 9" E 123.56 FT TPOB, in the City of Loveland.

Additionally a small house is located on property with legal description and property address to be determined by Title Company.

33

6. **ACCEPTANCE DEADLINE.** This Counterproposal shall expire unless accepted in writing by Seller and Buyer as evidenced by their signatures below and the offering party to this document receives notice of such acceptance on or before February 6, 2013, 6:00 PM MST.

Date 14 Time

35

36 If accepted, the Contract, as amended by this Counterproposal, shall become a contract between Seller and Buyer. All other terms and conditions of the Contract shall remain the same.

37

38 Seller: William Cahill Date: 2.5.2013

City of Loveland, Colorado

39 By: William Cahill, City Manager

Address:

40

41 Seller: _____ Date: _____

42 Address: Loveland Investments LLC

43 Joseph Schrader Date: 2-13-13

44 Buyer: _____

Loveland Investments LLC

45 By: Joseph Schrader, Manager

Address:

APPROVED AS TO FORM
BY: William Cahill
ASSISTANT CITY ATTORNEY

46

47 Buyer: _____ Date: _____

48

Address: _____

- Note:** When this Counterproposal form is used, the Contract is **not** to be signed by the party initiating this Counterproposal. Brokers must complete and sign the Broker's Acknowledgments and Compensation Disclosure portion of the Contract.

CP40-9-12. COUNTERPROPOSAL

CTM eContracts - ©2012 CTM Software Corp.

Buyer(s) Initials _____



Seller(s) Initials _____



Bret Lamperes
1914 Agate Ct
Loveland, CO 80538
Phone: (970)980-9700

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.
 (CBS4-10-11) (Mandatory 1-12)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

CONTRACT TO BUY AND SELL REAL ESTATE (LAND)

(☐ Property with No Residences)
 (☒ Property with Residences-Residential Addendum Attached)

Date: **January 11, 2013**

AGREEMENT

1. AGREEMENT. Buyer, identified in § 2.1, agrees to buy, and Seller, identified in § 2.3, agrees to sell, the Property described below on the terms and conditions set forth in this contract (Contract).

2. PARTIES AND PROPERTY.

2.1. Buyer. Buyer, **Loveland Investments LLC**, will take title to the Property described below as ☐ Joint Tenants ☐ Tenants In Common ☒ Other **TBD**.

2.2. Assignability and Inurement. This Contract ☐ Shall ☒ Shall Not be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

2.3. Seller. Seller, **City of Loveland**, is the current owner of the Property described below.

2.4. Property. The Property is the following legally described real estate in the County of **Larimer**, Colorado:
5 lots and small house located between known as 903, 905, 915, 925 and 935 North Taft

known as No. <u>N/A</u>	<u>Loveland</u>	<u>CO</u>	<u>80537</u>
Street Address	City	State	Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

2.5. Inclusions. The Purchase Price includes the following items (Inclusions):

2.5.1. Fixtures. All fixtures attached to the Property on the date of this Contract.

Other Fixtures: **N/A**

If any fixtures are attached to the Property after the date of this Contract, such additional fixtures are also included in the Purchase Price.

2.5.2. Personal Property. If on the Property whether attached or not on the date of this Contract:

N/A

Other Personal Property: **All appliances and fixtures currently in the house.**

The Personal Property to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except **N/A**.
 Conveyance shall be by bill of sale or other applicable legal instrument.

2.5.3. Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

N/A

The Trade Fixtures to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance shall be by bill of sale or other applicable legal instrument.

2.5.4. Water Rights, Water and Sewer Taps.

2.5.4.1. Deeded Water Rights. The following legally described water rights:

N/A

Any water rights shall be conveyed by ☐ N/A Deed ☐ Other applicable legal instrument.

☐ 2.5.4.2. Well Rights. If any water well is to be transferred to Buyer, Seller agrees to supply required information about such well to Buyer. Buyer understands that if the well to be transferred is a Small Capacity Well or a Domestic Exempt Water Well used for ordinary household purposes, Buyer shall, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer shall complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer shall file the form with the Division within sixty days after Closing. The Well Permit # is N/A.

2.5.4.3. ☐ Water Stock Certificates:

N/A

2.5.4.4. ☒ Water Tap

☒ Sewer Tap

Note: Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the tap.

2.5.4.5. Other Rights:

ALL water taps associated with these properties to be transfered in sale

2.5.5. Growing Crops. With respect to growing crops, Seller and Buyer agree as follows:

N/A

2.6. Exclusions. The following items are excluded (Exclusions):

N/A

3. DATES AND DEADLINES.

Item No.	Reference	Event	Date or Deadline
1	§ 4.2	Alternative Earnest Money Deadline	Note until city approval on conceptual review
Title and Association			
2	§ 7.1	Record Title Deadline	January 25, 2013
3	§ 7.2	Exceptions Request Deadline	January 28, 2013
4	§ 8.1	Record Title Objection Deadline	January 29, 2013
5	§ 8.2	Off-Record Title Deadline	January 30, 2013
6	§ 8.2	Off-Record Title Objection Deadline	January 31, 2013
7	§ 8.3	Title Resolution Deadline	January 31, 2013
8	§ 7.3	Association Documents Deadline	N/A
9	§ 7.3	Association Documents Objection Deadline	N/A
10	§ 8.5	Right of First Refusal Deadline	N/A
Seller's Property Disclosure			
11	§ 10.1	Seller's Property Disclosure Deadline	N/A

		Loan and Credit	
12	§ 5.1	Loan Application Deadline	N/A
13	§ 5.2	Loan Conditions Deadline	N/A
14	§ 5.3	Buyer's Credit Information Deadline	N/A
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
16	§ 5.4	Existing Loan Documents Deadline	N/A
17	§ 5.4	Existing Loan Documents Objection Deadline	N/A
18	§ 5.4	Loan Transfer Approval Deadline	N/A
		Appraisal	
19	§ 6.2	Appraisal Deadline	N/A
20	§ 6.2	Appraisal Objection Deadline	N/A
		Survey	
21	§ 9.1	Current Survey Deadline	N/A
22	§ 9.2	Current Survey Objection Deadline	N/A
		Inspection and Due Diligence	
23	§ 10.2	Inspection Objection Deadline	N/A
24	§ 10.3	Inspection Resolution Deadline	N/A
25	§ 10.5	Property Insurance Objection Deadline	N/A
26	§ 10.6	Due Diligence Documents Delivery Deadline	February 8, 2013
27	§ 10.7	Due Diligence Documents Objection Deadline	February 15, 2013
28	§ 10.8	Environmental Inspection Objection Deadline	N/A
29	§ 10.8	ADA Evaluation Objection Deadline	N/A
30	§ 11.1	Tenant Estoppel Statements Deadline	N/A
31	§ 11.2	Tenant Estoppel Statements Objection Deadline	N/A
		Closing and Possession	
32	§ 12.3	Closing Date	March 18, 2013
33	§ 17	Possession Date	February 18, 2013
34	§ 17	Possession Time	delivery of deed
35	§ 28	Acceptance Deadline Date	January 18, 2013
36	§ 28	Acceptance Deadline Time	3:00 PM
	N/A	N/A	N/A
	N/A	N/A	N/A

Note: Applicability of Terms.

Any box, blank or line in this Contract left blank or completed with the abbreviation "N/A", or the word "Deleted" means such provision in **Dates and Deadlines** (§ 3), including any deadline, is not applicable and the corresponding provision of this Contract to which reference is made is deleted.

The abbreviation "MBC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

4. PURCHASE PRICE AND TERMS.

4.1. Price and Terms. The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$ 275,000	
2	§ 4.2	Earnest Money		\$ 2000
3	§ 4.5	New Loan		N/A
4	§ 4.6	Assumption Balance		N/A
5	§ 4.7	Seller or Private Financing		N/A
6	N/A	N/A	N/A	N/A
7	N/A	N/A	N/A	N/A
8	§ 4.3	Cash at Closing		\$275,000
9		TOTAL	\$ 275,000	\$ 275,000

4.2. Earnest Money. The Earnest Money set forth in this section, in the form of **Check**, shall be payable to and held by **Unified Title** (Earnest Money Holder), in its

trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** (§ 3) for its payment. If Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

4.2.1. Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract is as set forth as the **Alternative Earnest Money Deadline** (§ 3).

4.2.2. Return of Earnest Money. If Buyer has a Right to Terminate this Contract and timely terminates, Buyer shall be entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions, i.e., Earnest Money Release form, within three days of Seller's receipt of such form.

4.3. Form of Funds; Time of Payment; Funds Available.

4.3.1. Good Funds. All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, shall be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

4.3.2. Available Funds. All funds required to be paid at Closing or as otherwise agreed in writing between the parties shall be timely paid to allow disbursement by Closing Company at Closing **OR SUCH PARTY SHALL BE IN DEFAULT.** Buyer represents that Buyer, as of the date of this Contract, ☒ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.4. Seller Concession. Seller, at Closing, shall credit, as directed by Buyer, an amount of \$ **N/A** to assist with Buyer's closing costs (Seller Concession). Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. Seller Concession shall be reduced to the extent it exceeds the amount allowed by Buyer's lender as set forth in the Closing Statement or HUD-1, at Closing.

4.5. New Loan. OMITTED AS INAPPLICABLE.

4.6. Assumption. OMITTED AS INAPPLICABLE.

4.7. Seller or Private Financing. OMITTED AS INAPPLICABLE.

TRANSACTION PROVISIONS

5. FINANCING CONDITIONS AND OBLIGATIONS.

5.1. Loan Application. If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, shall make an application verifiable by such lender, on or before **Loan Application Deadline** (§ 3) and exercise reasonable efforts to obtain such loan or approval.

5.2. Loan Conditions. If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions and cost of such New Loan. This condition is for the benefit of Buyer. Buyer shall have the Right to Terminate under § 25.1, on or before **Loan Conditions Deadline** (§ 3), if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion. **IF SELLER DOES NOT TIMELY RECEIVE WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY SHALL BE NONREFUNDABLE**, except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

5.3. Credit Information and Buyer's New Senior Loan. If Buyer is to pay all or part of the Purchase Price by executing a promissory note in favor of Seller, or if an existing loan is not to be released at Closing, this Contract is conditional (for the benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval shall be at Seller's sole subjective discretion. In such case: (1) Buyer shall supply to Seller by **Buyer's Credit Information Deadline** (§ 3), at Buyer's expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit condition and Buyer's New Senior Loan, defined below, if any; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; (3) any such information and documents received by Seller shall be held by Seller in confidence, and not released to others except to protect Seller's interest in this transaction; and (4) in the event Buyer is to execute a promissory note secured by a deed of trust in favor of Seller, this Contract is conditional (for the benefit of Seller) upon Seller's approval of the terms and conditions of any New Loan to be obtained by Buyer if the deed of trust to Seller is to be subordinate to Buyer's New Loan (Buyer's New Senior Loan). If the Cash at Closing is less than as set forth in § 4.1 of this Contract or Buyer's New

Senior Loan changes from that approved by Seller, Seller shall have the Right to Terminate under § 25.1, at or before Closing. If Seller disapproves of Buyer's financial ability, creditworthiness or Buyer's New Senior Loan, in Seller's sole subjective discretion, Seller shall have the Right to Terminate under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline** (§ 3).

5.4. Existing Loan Review. If an existing loan is not to be released at Closing, Seller shall deliver copies of the loan documents (including note, deed of trust, and any modifications) to Buyer by **Existing Loan Documents Deadline** (§ 3). For the benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer shall have the Right to Terminate under § 25.1, on or before **Existing Loan Documents Objection Deadline** (§ 3), based on any unsatisfactory provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon Buyer's obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline** (§ 3), this Contract shall terminate on such deadline. Seller shall have the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

6. APPRAISAL PROVISIONS.

6.1. Lender Property Requirements. If the lender imposes any requirements or repairs (Requirements) to be made to the Property (e.g., roof repair, repainting), beyond those matters already agreed to by Seller in this Contract, Seller shall have the Right to Terminate under § 25.1, (notwithstanding § 10 of this Contract), on or before three days following Seller's receipt of the Requirements, based on any unsatisfactory Requirements, in Seller's sole subjective discretion. Seller's Right to Terminate in this § 6.1 shall not apply if, on or before any termination by Seller pursuant to this § 6.1: (1) the parties enter into a written agreement regarding the Requirements; or (2) the Requirements have been completed; or (3) the satisfaction of the Requirements is waived in writing by Buyer.

6.2. Appraisal Condition. The applicable Appraisal provision set forth below shall apply to the respective loan type set forth in § 4.5.3, or if a cash transaction, i.e. no financing, § 6.2.1 shall apply.

6.2.1. Conventional/Other. Buyer shall have the sole option and election to terminate this Contract if the Property's valuation is less than the Purchase Price determined by an appraiser engaged on behalf of **N/A**. The appraisal shall be received by Buyer or Buyer's lender on or before **Appraisal Deadline** (§ 3). Buyer shall have the Right to Terminate under § 25.1, on or before **Appraisal Objection Deadline** (§ 3), if the Property's valuation is less than the Purchase Price and Seller's receipt of either a copy of such appraisal or written notice from lender that confirms the Property's valuation is less than the Purchase Price.

6.3. Cost of Appraisal. Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by ☐ Buyer ☐ Seller.

7. EVIDENCE OF TITLE AND ASSOCIATION DOCUMENTS.

7.1. Evidence of Title. On or before **Record Title Deadline** (§ 3), Seller shall cause to be furnished to Buyer, at Seller's expense, a current commitment for owner's title insurance policy (Title Commitment) in an amount equal to the Purchase Price, or if this box is checked, ☐ **An Abstract** of title certified to a current date. If title insurance is furnished, Seller shall also deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract) in Seller's possession. At Seller's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. The title insurance commitment ☒ **Shall** ☐ **Shall Not** commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (effective date of commitment to date deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain this additional coverage shall be paid by ☐ Buyer ☒ Seller. **Note:** The title insurance company may not agree to delete or insure over any or all of the standard exceptions. Buyer shall have the right to review the Title Commitment, its provisions and Title Documents (defined in § 7.2), and if not satisfactory to Buyer, Buyer may exercise Buyer's rights pursuant to § 8.1.

7.2. Copies of Exceptions. On or before **Record Title Deadline** (§ 3), Seller, at Seller's expense, shall furnish to Buyer and **Agent representing the buyer**, (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a Title Commitment is required to be furnished, and if this box is checked ☒ **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not checked, Seller shall have the obligation to furnish these documents pursuant to this section if requested by Buyer any time on or before **Exceptions Request Deadline** (§ 3). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The Abstract or Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (collectively, Title Documents).

7.3. Homeowners' Association Documents. The term Association Documents consists of all owners' associations (Association) declarations, bylaws, operating agreements, rules and regulations, party wall agreements, minutes of most recent annual

owners' meeting and minutes of any directors' or managers' meetings during the six-month period immediately preceding the date of this Contract, if any (Governing Documents), most recent financial documents consisting of (1) annual balance sheet, (2) annual income and expenditures statement, and (3) annual budget (Financial Documents), if any (collectively, Association Documents).

7.3.1. Common Interest Community Disclosure. THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

7.3.2. Association Documents to Buyer.

☐ **7.3.2.1. Seller to Provide Association Documents.** Seller shall cause the Association Documents to be provided to Buyer, at Seller's expense, on or before **Association Documents Deadline** (§ 3).

☐ **7.3.2.2. Seller Authorizes Association.** Seller authorizes the Association to provide the Association Documents to Buyer, at Seller's expense.

7.3.2.3. Seller's Obligation. Seller's obligation to provide the Association Documents shall be fulfilled upon Buyer's receipt of the Association Documents, regardless of who provides such documents.

Note: If neither box in this § 7.3.2 is checked, the provisions of § 7.3.2.1 shall apply.

7.3.3. Conditional on Buyer's Review. If the box in either § 7.3.2.1 or § 7.3.2.2 is checked, the provisions of this § 7.3.3 shall apply. Buyer shall have the Right to Terminate under § 25.1, on or before **Association Documents Objection Deadline** (§ 3), based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline** (§ 3), Buyer, at Buyer's option, shall have the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date** (§ 3), Buyer's Notice to Terminate shall be received by Seller on or before three days prior to **Closing Date** (§ 3). If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory, and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.5.

8. RECORD TITLE AND OFF-RECORD TITLE MATTERS.

8.1. Record Title Matters. Buyer has the right to review and object to any of the Title Documents (Right to Object, Resolution), as set forth in § 8.3. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If Buyer objects to any of the Title Documents, Buyer shall cause Seller to receive Buyer's Notice to Terminate or Notice of Title Objection on or before **Record Title Objection Deadline** (§ 3). If Title Documents are not received by Buyer, on or before the **Record Title Deadline** (§ 3), or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment shall be delivered to Buyer. Buyer shall cause Seller to receive Buyer's Notice to Terminate or Notice of Title Objection on or before ten days after receipt by Buyer of the following documents: (1) any required Title Document not timely received by Buyer, (2) any change to the Title Documents, or (3) endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.1 (Record Title Matters), any title objection by Buyer and this Contract shall be governed by the provisions set forth in § 8.3 (Right to Object, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

8.2. Off-Record Title Matters. Seller shall deliver to Buyer, on or before **Off-Record Title Deadline** (§ 3) true copies of all existing surveys in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (such as an unrecorded easement, unrecorded lease, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of

Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 13), in Buyer's sole subjective discretion, shall be received by Seller on or before **Off-Record Title Objection Deadline** (§ 3). If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.2 (Off-Record Title Matters), any title objection by Buyer and this Contract shall be governed by the provisions set forth in § 8.3 (Right to Object, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection, on or before **Off-Record Title Objection Deadline** (§ 3), Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

8.3. Right to Object, Resolution. Buyer's right to object to any title matters shall include, but not be limited to those matters set forth in §§ 8.1 (Record Title Matters), 8.2 (Off-Record Title Matters) and 13 (Transfer of Title), in Buyer's sole subjective discretion (collectively, Notice of Title Objection). If Buyer objects to any title matter, on or before the applicable deadline, Buyer shall have the choice to either (1) object to the condition of title, or (2) terminate this Contract.

8.3.1. Title Resolution. If Seller receives Buyer's Notice of Title Objection, as provided in § 8.1 (Record Title Matters) or § 8.2 (Off-Record Title Matters), on or before the applicable deadline, and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline** (§ 3), this Contract shall terminate on the expiration of **Title Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline** (§ 3).

8.3.2. Right to Terminate – Title Objection. Buyer shall have the Right to Terminate under § 25.1, on or before the applicable deadline, based on any unsatisfactory title matter, in Buyer's sole subjective discretion.

8.4. Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

Buyer shall have the Right to Terminate under § 25.1, on or before **Off-Record Title Objection Deadline** (§ 3), based on any unsatisfactory effect of the Property being located within a special taxing district, in Buyer's sole subjective discretion.

8.5. Right of First Refusal or Contract Approval. If there is a right of first refusal on the Property, or a right to approve this Contract, Seller shall promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract shall terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract shall remain in full force and effect. Seller shall promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or Contract approval has not occurred on or before the **Right of First Refusal Deadline** (§ 3), this Contract shall then terminate.

8.6. Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property. Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract [e.g., **Record Title Objection Deadline** (§ 3) and **Off-Record Title Objection Deadline** (§ 3)].

9. CURRENT SURVEY REVIEW.

9.1. Current Survey Conditions. If the box in § 9.1.1 or § 9.1.2 is checked, Buyer, the issuer of the Title Commitment or the provider of the opinion of title if an abstract, and **N/A** shall receive a Current Survey, i.e., Improvement Location Certificate, Improvement Survey Plat or other form of survey set forth in § 9.1.2 (collectively, Current Survey), on or before **Current Survey Deadline** (§ 3). The Current Survey shall be certified by the surveyor to all those who are to receive the Current Survey.

☐ **9.1.1. Improvement Location Certificate.** If the box in § 9.1.1 is checked, ☐ Seller ☐ Buyer shall order or provide, and pay, on or before Closing, the cost of an **Improvement Location Certificate**.

☐ **9.1.2. Other Survey.** If the box in this § 9.1.2 is checked, a Current Survey, other than an Improvement Location Certificate, shall be an ☐ **Improvement Survey Plat** ☐ **N/A**. The parties agree that payment of the cost of

the Current Survey and obligation to order or provide the Current Survey shall be as follows:

N/A

9.2. Survey Objection. Buyer shall have the right to review and object to the Current Survey. Buyer shall have the Right to Terminate under § 25.1, on or before the **Current Survey Objection Deadline** (§ 3), if the Current Survey is not timely received by Buyer or based on any unsatisfactory matter with the Current Survey, notwithstanding § 8.2 or § 13.

DISCLOSURE, INSPECTION AND DUE DILIGENCE

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE, AND SOURCE OF WATER.

10.1. Seller's Property Disclosure Deadline. On or before Seller's **Property Disclosure Deadline** (§ 3), Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge, current as of the date of this Contract.

10.2. Inspection Objection Deadline. Unless otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "as is" condition, "where is" and "with all faults". Seller shall disclose to Buyer, in writing, any latent defects actually known by Seller. Buyer, acting in good faith, shall have the right to have inspections (by one or more third parties, personally, or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property, e.g. heating and plumbing, (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer shall, on or before **Inspection Objection Deadline** (§ 3):

10.2.1. Notice to Terminate. Notify Seller in writing that this Contract is terminated; or

10.2.2. Inspection Objection. Deliver to Seller a written description of any unsatisfactory physical condition that Buyer requires Seller to correct.

Buyer shall have the Right to Terminate under § 25.1, on or before **Inspection Objection Deadline** (§ 3), based on any unsatisfactory physical condition of the Property or Inclusions, in Buyer's sole subjective discretion.

10.3. Inspection Resolution Deadline. If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** (§ 3), and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline** (§ 3), this Contract shall terminate on **Inspection Resolution Deadline** (§ 3), unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline** (§ 3).

10.4. Damage, Liens and Indemnity. Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or any other work performed at Buyer's request (Work) and shall pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer shall not permit claims or liens of any kind against the Property for Work performed on the Property at Buyer's request. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this section shall survive the termination of this Contract.

10.5. Insurability. Buyer shall have the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer shall have the Right to Terminate under § 25.1, on or before **Property Insurance Objection Deadline** (§ 3), based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

10.6. Due Diligence Documents. Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline** (§ 3) to the extent such Due Diligence Documents exist and are in Seller's possession:

10.6.1. All contracts relating to the operation, maintenance and management of the Property;

10.6.2. Property tax bills for the last N/A years;

10.6.3. As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical, and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;

10.6.4. A list of all Inclusions to be conveyed to Buyer;

10.6.5. Operating statements for the past N/A years;

10.6.6. A rent roll accurate and correct to the date of this Contract;

10.6.7. All current leases, including any amendments or other occupancy agreements, pertaining to the Property (Leases);

10.6.8. A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

10.6.9. All insurance policies pertaining to the Property and copies of any claims which have been made for the past N/A years;

10.6.10. Soils reports, Surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.2);

10.6.11. Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories, and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or other toxic hazardous or contaminated substances, and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller shall warrant that no such reports are in Seller's possession or known to Seller;

10.6.12. Any *Americans with Disabilities Act* reports, studies or surveys concerning the compliance of the Property with said Act;

10.6.13. All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and

10.6.14. Other Documents: N/A.

10.7. Due Diligence Documents Conditions. Buyer shall have the right to review and object to Due Diligence Documents, zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property (Zoning), in Buyer's sole subjective discretion, or Seller's failure to deliver to Buyer all Due Diligence Documents. Buyer shall also have the unilateral right to waive any condition herein.

10.7.1. Due Diligence Documents Objection. Buyer shall have the Right to Terminate under § 25.1, on or before Due Diligence Documents Objection Deadline (§ 3), based on any unsatisfactory matter with the Due Diligence Documents in Buyer's sole subjective discretion. If, however, Due Diligence Documents are not timely delivered under § 10.6, or if Seller fails to deliver all Due Diligence Documents to Buyer, then Buyer shall have the Right to Terminate under § 25.1 on or before the earlier of ten days after Due Diligence Documents Objection Deadline (§ 3) or Closing.

10.7.2. Zoning. Buyer shall have the Right to Terminate under § 25.1, on or before Due Diligence Documents Objection Deadline (§ 3), based on any unsatisfactory zoning, in Buyer's sole subjective discretion.

10.7.3. Source of Potable Water (Residential Land and Residential Improvements Only). Buyer ☐ Does ☒ Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for the Property. Buyer ☐ Does ☒ Does Not acknowledge receipt of a copy of the current well permit. ☐ There is No Well.

Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.

10.8. Due Diligence – Environmental, ADA. Buyer shall have the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable. ☐ Seller ☐ Buyer shall order or provide ☐ Phase I Environmental Site Assessment, ☐ Phase II Environmental Site Assessment (compliant with ASTM E1527-05 standard practices for Environmental Site Assessments) and/or ☐ N/A, at the expense of ☐ Seller ☐ Buyer (Environmental Inspection). In addition, Buyer may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations shall be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the Environmental Inspection Objection Deadline (§ 3) shall be extended by N/A days (Extended Environmental Inspection Objection Deadline) and if such Extended Environmental Inspection Objection Deadline extends beyond the Closing Date (§ 3), the Closing Date (§ 3) shall be extended a like period of time.

Buyer shall have the Right to Terminate under § 25.1, on or before Environmental Inspection Objection Deadline (§ 3), or if applicable the Extended Environmental Inspection Objection Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer shall have the Right to Terminate under § 25.1, on or before ADA Evaluation Objection Deadline (§ 3), based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

10.9. Existing Leases; Modification of Existing Leases; New Leases. Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller shall not amend, alter, modify, extend or cancel any of the Leases nor shall Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

11. TENANT ESTOPPEL STATEMENTS.

11.1. Tenant Estoppel Statements Conditions. Buyer shall have the right to review and object to any Estoppel Statements. Seller shall obtain and deliver to Buyer on or before **Tenant Estoppel Statements Deadline** (§ 3), statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement) attached to a copy of such occupant's or tenant's lease and any amendments (Lease) stating:

- 11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;
- 11.1.2.** That said Lease is in full force and effect and that there have been no subsequent modifications or amendments;
- 11.1.3.** The amount of any advance rentals paid, rent concessions given, and deposits paid to Seller;
- 11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;
- 11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and
- 11.1.6.** That the Lease to which the Estoppel is attached is a true, correct and complete copy of the Lease demising the premises it describes.

11.2. Tenant Estoppel Statements Objection. Buyer shall have the Right to Terminate under § 25.1, on or before **Tenant Estoppel Statements Objection Deadline** (§ 3), based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion or if Seller fails to deliver the Estoppel Statements on or before **Tenant Estoppel Statements Deadline** (§ 3). Buyer shall also have the unilateral right to waive any unsatisfactory Estoppel Statement.

CLOSING PROVISIONS

12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.

12.1. Closing Documents and Closing Information. Seller and Buyer shall cooperate with the Closing Company to enable the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is obtaining a new loan to purchase the Property, Buyer acknowledges Buyer's lender shall be required to provide the Closing Company in a timely manner all required loan documents and financial information concerning Buyer's new loan. Buyer and Seller will furnish any additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

12.2. Closing Instructions. Buyer and Seller agree to execute the Colorado Real Estate Commission's Closing Instructions. Such Closing Instructions ☐ Are ☒ Are Not executed with this Contract. Upon mutual execution, ☒ Seller ☐ Buyer shall deliver such Closing Instructions to the Closing Company.

12.3. Closing. Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 3) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by **Buyer and Seller**.

12.4. Disclosure of Settlement Costs. Buyer and Seller acknowledge that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

13. TRANSFER OF TITLE. Subject to tender of payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient **General Warranty** deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

13.1. Those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with **Record Title Matters** (§ 8.1),

13.2. Distribution utility easements (including cable TV),

13.3. Those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with **Off-Record Title Matters** (§ 8.2) and **Current Survey Review** (§ 9),

13.4. Inclusion of the Property within any special taxing district, and

13.5. Other N/A.

14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.

15.1. Closing Costs. Buyer and Seller shall pay, in Good Funds, their respective closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2. Closing Services Fee. The fee for real estate closing services shall be paid at Closing by ☐ Buyer ☐ Seller ☒ One-Half by Buyer and One-Half by Seller ☐ Other N/A.

15.3. Status Letter and Transfer Fees. Any fees incident to the issuance of Association's statement of assessments (Status Letter) shall be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☐ None. Any transfer fees assessed by the Association including, but not limited to, any record change fee, regardless of name or title of such fee (Association's Transfer Fee) shall be paid by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller. ☐ None.

15.4. Local Transfer Tax. ☐ The Local Transfer Tax of *N/A* % of the Purchase Price shall be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☐ None.

15.5. Private Transfer Fee. Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, shall be paid at Closing by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☐ None.

15.6. Sales and Use Tax. Any sales and use tax that may accrue because of this transaction shall be paid when due by ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller ☐ None.

16. PRORATIONS. The following shall be prorated to **Closing Date** (§ 3), except as otherwise provided:

16.1. Taxes. Personal property taxes, if any, special taxing district assessments, if any, and general real estate taxes for the year of Closing, based on ☐ Taxes for the Calendar Year Immediately Preceding Closing ☒ Most Recent Mill Levy and Most Recent Assessed Valuation, or ☐ Other *N/A*.

16.2. Rents. Rents based on ☐ Rents Actually Received ☐ Accrued. At Closing, Seller shall transfer or credit to Buyer the security deposits for all Leases assigned, or any remainder after lawful deductions, and notify all tenants in writing of such transfer and of the transferee's name and address. Seller shall assign to Buyer all Leases in effect at Closing and Buyer shall assume Seller's obligations under such Leases.

16.3. Association Assessments. Current regular Association assessments and dues (Association Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association shall not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** (§ 3) by the Association shall be the obligation of ☐ Buyer ☐ Seller. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, shall be the obligation of Seller. Seller represents that the Association Assessments are currently payable at \$ *N/A* per *N/A* and that there are no unpaid regular or special assessments against the Property except the current regular assessments and *N/A*. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing Date** (§ 3) a current Status Letter.

16.4. Other Prorations. Water and sewer charges, interest on continuing loan, and *N/A*.

16.5. Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.

17. POSSESSION. Possession of the Property shall be delivered to Buyer on **Possession Date** (§ 3) at **Possession Time** (§ 3), subject to the following leases or tenancies: *N/A*

If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$ *N/A* per day (or any part of a day notwithstanding § 18.1) from **Possession Date** (§ 3) and **Possession Time** (§ 3) until possession is delivered.

GENERAL PROVISIONS

18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.

18.1. Day. As used in this Contract, the term "day" shall mean the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

18.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ Shall ☐ Shall Not be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline shall not be extended.

19. CAUSES OF LOSS, INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND INCLUSIONS AND WALK-THROUGH. Except as otherwise provided in this Contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

19.1. Causes of Loss, Insurance. In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing in an amount of not more than ten percent of the total Purchase Price (Property Damage), Seller shall be obligated to repair the same before **Closing Date** (§ 3). In the event such damage is not repaired within said time or if the damage

exceeds such sum, this Contract may be terminated at the option of Buyer. Buyer shall have the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on any Property Damage not repaired before **Closing Date** (§ 3). Should Buyer elect to carry out this Contract despite such Property Damage, Buyer shall be entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not exceed the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** (§ 3) or, at the option of Buyer, Seller shall assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance policy, but not to exceed the total Purchase Price.

19.2. Damage, Inclusions and Services. Should any Inclusion or service (including utilities and communication services), systems and components of the Property, e.g. heating or plumbing, fail or be damaged between the date of this Contract and Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion, service, system, component or fixture of the Property with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion, service, system, component or fixture is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions.

19.3. Condemnation. In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller shall promptly notify Buyer, in writing, of such condemnation action. Buyer shall have the Right to Terminate under § 25.1, on or before **Closing Date** (§ 3), based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer shall be entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit shall not include relocation benefits or expenses, or exceed the Purchase Price.

19.4. Walk-Through and Verification of Condition. Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

19.5 Risk of Loss—Growing Crops. The risk of loss for damage to growing crops by fire or other casualty shall be borne by the party entitled to the growing crops as provided in § 2.5.5 and such party shall be entitled to such insurance proceeds or benefits for the growing crops.

20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer and Seller acknowledge that the respective broker has advised that this document has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

21.1. If Buyer is in Default:

☐ **21.1.1. Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest Money (whether or not paid by Buyer) shall be paid to Seller and retained by Seller; and Seller may recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.

21.1.2. Liquidated Damages, Applicable. This § 21.1.2 shall apply unless the box in § 21.1.1. is checked. All Earnest Money (whether or not paid by Buyer) shall be paid to Seller, and retained by Seller. Both parties shall thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money shall be SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

21.2. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

22. LEGAL FEES, COST AND EXPENSES. Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date** (§ 3), the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

23. MEDIATION. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the

dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.

24. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder shall release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option and sole subjective discretion, may (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder shall be authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpleaded the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of Mediation (§ 23). The provisions of this § 24 apply only if the Earnest Money Holder is one of the Brokerage Firms named in § 33 or § 34.

25. TERMINATION.

25.1. Right to Terminate. If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination shall be effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate shall have accepted the specified matter, document or condition as satisfactory and waived the Right to Terminate under such provision.

25.2. Effect of Termination. In the event this Contract is terminated, all Earnest Money received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.

27. NOTICE, DELIVERY, AND CHOICE OF LAW.

27.1. Physical Delivery. All notices must be in writing, except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Seller, and delivered to Buyer shall be effective when physically received by Buyer, any signatory on behalf of Buyer, any named individual of Buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 27.2. Any document, including a signed document or notice, from or on behalf of Buyer, and delivered to Seller shall be effective when physically received by Seller, any signatory on behalf of Seller, any named individual of Seller, any representative of Seller, or Brokerage Firm of Broker working with Seller (except for delivery, after Closing, of the notice requesting mediation described in § 23) and except as provided in § 27.2.

27.2. Electronic Delivery. As an alternative to physical delivery, any document, including any signed document or written notice, may be delivered in electronic form only by the following indicated methods: ☒ Facsimile ☒ Email ☒ Internet ☐ No Electronic Delivery. If the box "No Electronic Delivery" is checked, this § 27.2 shall not be applicable and § 27.1 shall govern notice and delivery. Documents with original signatures shall be provided upon request of any party.

27.3. Choice of Law. This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for property located in Colorado.

28. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 27 on or before Acceptance Deadline Date (§ 3) and Acceptance Deadline Time (§ 3). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

29. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith, including but not

673 limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations** (§ 5),
 674 **Record Title and Off-Record Title Matters** (§ 8), **Current Survey Review** (§ 9) and **Property Disclosure, Inspection,**
 675 **Indemnity, Insurability, Due Diligence and Source of Water** (§ 10).

676 **ADDITIONAL PROVISIONS AND ATTACHMENTS**

677 **30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate
 678 Commission.)

679 **1. Seller agrees to work with the buyer on a 1031 exchange if the buyer decides**
to purchase with 1031 exchange money.

681 **2. Contract Contingent upon City of Loveland approval of conceptual review.**

682 **31. ATTACHMENTS.** The following are a part of this Contract:

683 **N/A**

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686 **Note:** The following disclosure forms are attached but are not a part of this Contract:

687 **N/A**

688

689

690 **SIGNATURES**

691

Buyer's Name: **Loveland Investments LLC**

Loveland Investments LLC

Joseph Shee Mgr.

1-11-13

Buyer's Signature Loveland Investments, LLC

Date

Address: **N/A**

Loveland, CO 80527

Phone No.: **N/A**

Fax No.: **N/A**

Electronic Address: **N/A**

692 **[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]**

Seller's Name: **City of Loveland**

Seller's Name: _____

Seller's Signature _____ Date

Address: _____

Phone No.: _____

Fax No.: _____

Electronic Address: _____

Seller's Name: _____

Seller's Signature _____ Date _____

Address: _____

Phone No.: _____

Fax No.: _____

Electronic Address: _____

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32. COUNTER; REJECTION. This offer is ☐ Countered ☐ Rejected.

Initials only of party (Buyer or Seller) who countered or rejected offer _____

696

END OF CONTRACT TO BUY AND SELL REAL ESTATE**33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Buyer)

Broker ☒ Does ☐ Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money shall be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Buyer as a ☒ Buyer's Agent ☐ Seller's Agent ☐ Transaction-Broker in this transaction.☐ This is a Change of Status.Brokerage Firm's compensation or commission is to be paid by ☒ Listing Brokerage Firm ☐ Buyer☐ Other N/A.Brokerage Firm's Name: **Bret Lamperes**Broker's Name: **Bret Lamperes**

Broker's Signature: _____

Date _____

Address: **1914 Agate Ct
Loveland, CO 80538**Phone No.: **(970) 980-9700**Fax No.: **N/A**Electronic Address: **N/A****34. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.**

(To be completed by Broker working with Seller)

Broker ☐ Does ☒ Does Not acknowledge receipt of Earnest Money deposit and, while not a party to the Contract, agrees to cooperate upon request with any mediation concluded under § 23. Broker agrees that if Brokerage Firm is the Earnest Money

Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder shall release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money shall be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared. Broker agrees that if Earnest Money Holder is other than the Brokerage Firm identified in § 33 or § 34, Closing Instructions signed by Buyer, Seller, and Earnest Money Holder must be obtained on or before delivery of Earnest Money to Earnest Money Holder.

Broker is working with Seller as a ☒ Seller's Agent ☐ Buyer's Agent ☐ Transaction-Broker in this transaction.
☐ This is a Change of Status.

Brokerage Firm's compensation or commission is to be paid by ☐ Seller ☐ Buyer ☐ Other N/A.

Brokerage Firm's Name:

N/A

Loveland Commercial, LLC Nathan Klein

Broker's Name:

N/A

Broker's Signature:

Date

Address:

N/A

1043 Eagle Dr.

Phone No.:

N/A

Loveland, CO 80537

Fax No.:

N/A

970 667-7000 x109

Electronic Address:

N/A

970 635-2514

nklein@lovelandcommercial.com

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**CITY OF LOVELAND****PARKS & RECREATION DEPARTMENT**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2903 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 3/5/2013
TO: City Council
FROM: Gary Havener, Parks and Recreation
PRESENTER: Keven Aggers

TITLE:

A resolution approving an Intergovernmental Agreement between the City of Loveland and Thompson School District R2-J concerning joint use of facilities

RECOMMENDED CITY COUNCIL ACTION:

Adopt a resolution and approve the Intergovernmental Agreement concerning joint use of facilities

OPTIONS:

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

DESCRIPTION:

This is an administrative action to adopt a resolution approving an Intergovernmental Agreement with Thompson R2-J School District to establish the parameters for co-use of facilities and update the Intergovernmental Agreement dated February 4, 1998.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

The City and the School District have a history of mutually beneficial, reciprocal facility use and recognize that as governmental entities, who serve a majority of the same public, it is prudent to work together for mutual gain. The agreement shall apply to all sports, athletic, and recreational facilities, auditoriums, classrooms, conference/meeting rooms, parks and areas owned and operated by either party and determined to be "available and appropriate" for the use requested. The agreement will serve to foster and encourage intergovernmental cooperation by minimizing costs to the ultimate benefit of the community. Substantive changes from the current agreement

include enhanced procedures for requesting cooperative funding of special improvements (Section 4.0); a better defined schedule for biennial review by both parties (Section 7.2); and designation of facilities from both entities that are “revenue generating” meaning they have cost recovery requirements and can carry additional rental and use fees (Section 2.7 and Appendix A). This agreement has been reviewed and approved by the Thompson R2J School Board. It has also been reviewed and recommended for approval by the Loveland Parks and Recreation Commission.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

Resolution

Intergovernmental Agreement concerning joint use of facilities

RESOLUTION # R-19-2013**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF LOVELAND AND THOMPSON SCHOOL DISTRICT
R2-J FOR JOINT USE OF FACILITIES**

WHEREAS, the City of Loveland and Thompson School District R2-J (collectively, the “Parties”) are political subdivisions of the State of Colorado duly organized and existing in accordance with Colorado law; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes authorizes intergovernmental agreements between and among political subdivisions of the State of Colorado to cooperate or contract with one another to provide functions, services or facilities lawfully authorized to each; and

WHEREAS, the Parties agree that cooperation and coordination with each other can result in better fiscal and physical management of the Parties’ respective facilities; and

WHEREAS, the Parties have a history of mutually beneficial reciprocal facility use and recognize that as governmental entities serving a majority of the same public, it is prudent to work together for mutual gain; and

WHEREAS, the Parties seek to replace and update the current Intergovernmental Agreement Concerning Joint Use of Facilities dated February 4, 1998 (the “Original Agreement”), by entering into the Intergovernmental Agreement Concerning Joint Use of Facilities attached hereto as Exhibit “A” and incorporated herein by reference (the “2013 Agreement”); and

WHEREAS, the City Council finds that it is in the best interest of its citizens to enter into and participate in the 2013 Agreement.

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

Section 1. The 2013 Agreement is hereby approved and the Original Agreement is replaced and superseded by the 2013 Agreement.

Section 2. The City Manager is hereby authorized and directed to enter into the 2013 Agreement, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

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

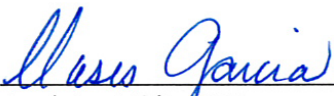
ADOPTED _____ day of March, 2013.

William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

INTERGOVERNMENTAL AGREEMENT CONCERNING JOINT USE OF FACILITIES

THIS AGREEMENT is made this ____ day of _____, 2013, between the City of Loveland, a Colorado municipal corporation ("City"), and the Thompson School District R2-J, a Colorado school district ("School District").

BACKGROUND

A. Pursuant to section 29-1-203, C.R.S., governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units of government. Any such contract may provide for the joint exercise of the function, service, or facility which is the subject of the contract.

B. The City and the School District both believe that governmental entities exist in order to serve the people and that this can be done most economically and effectively through cooperation between the parties. The parties also believe that coordination between the City and the School District can result in better fiscal and physical management of the respective facilities of the City and the School District.

C. The City and the School District have a history of mutually beneficial reciprocal facility use and recognize that as governmental entities who serve a majority of the same public, it is prudent to work together for mutual gain.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1.0 PRINCIPLES AND GOALS OF COOPERATION.

- 1.1 The parties agree that their performance under this Agreement will be guided by the following goals and principles:
 - 1.1.1 To find new ways of working together, which may include information sharing, joint planning, sharing special expertise, and other forms of intergovernmental collaboration, that will expand the parties' individual abilities to serve their constituents.
 - 1.1.2 To share their resources in a manner that will enhance their capabilities without compromising their fundamental and statutory responsibilities.
 - 1.1.3 To keep the parties' cooperative relationships as simple, direct, and flexible as possible.

- 1.1.4 To define the parties' mutual obligations and responsibilities clearly and adequately so as to minimize confusion and misunderstandings.
- 1.1.5 To communicate regularly at different levels and strive to resolve differences swiftly and amicably.
- 1.1.6 To commit to use intergovernmental collaboration to better serve the public and to minimize costs for the ultimate benefit of the community.
- 1.1.7 To encourage shared use, cooperative scheduling, and consistency in application for use of the parties' facilities.

1.2 This Agreement shall apply to all sports, athletic, and recreational facilities, auditoriums, classrooms, meeting rooms, parks and areas owned and operated by either party, and determined (to be) "available and appropriate" for the requested use (by the owner of the facility)

2.0 SCHEDULING USE OF FACILITIES.

- 2.1 Each party will be permitted priority use of its own facilities, as follows:
 - 2.1.1 **City Priority** is given to official City or City Council functions, including classes, leagues, events, open recreation uses, and meetings of boards, commissions and City departments.
 - 2.1.2 **School District Priority** is given to official School District or Board of Education functions, including meetings of administrative groups, PTA/PTOs, TEA, and other District groups, athletic and academic events, and other district-sponsored activities.
 - 2.1.3 **Facility Set-up/Tear Down and Storage** will be coordinated between the host facility and the using group. Specific instructions will be made available to the reserving representative in the form of an R2J Task Card for School District Facilities and a City Work Order or Facility Use/Reservation Receipt for City facilities.
- 2.2 To the extent a facility is not being used for a party's priority use, the other party will be given secondary priority scheduling and will be permitted to reserve the facility consistent with the facility calendar and agreed upon scheduling deadlines.
- 2.3 Requests by City for scheduling the School District facilities are to be done on FS Direct and pursuant to scheduling procedures approved by School

District. Requests by School District for scheduling City facilities are to be done on the facility owner's forms and pursuant to scheduling procedures approved by City. Where possible, both entities will strive to streamline the scheduling process by stressing communication through the exchange of procedures and contact lists on an annual or as-needed basis.

- 2.4 Requests for routine and advance use needs for School District and City facilities should be submitted no later than May 1 of each year. Reservation confirmations for sites are to be returned no later than June 15 for the succeeding school year's requests. Facility use requests will be confirmed on a yearly basis where feasible and not less than quarterly for ongoing or new requests.
- 2.5 When the scheduling parameters set forth in the previous paragraph cannot be met, requests will be handled on an "as available" basis. When conflicts of use schedules are encountered, each party will attempt to make reasonable accommodations for the requested use by looking at other facilities or sites within their respective systems and/or adjusting schedules when feasible.
- 2.6 A confirmation will be issued electronically to the requesting party for events reserved and approved by either entity. This confirmation will serve as the means of identification that the facility use was properly approved by City or School District officials and that the individual(s) named as the user(s) is/are present and in charge of the event.
- 2.7 Fees and charges for reservation of a party's facility by the other party are to be waived whenever possible unless prohibited by an ordinance or policy of the City or a policy of the School District.
 - 2.7.1 Maintenance costs incurred by a party that are related to the setup, cleanup, or security associated with the use of a facility by the other party, may be billed at the facility owner's existing rates.
 - 2.7.2 Some facilities owned or operated by both organizations can be designated as "Revenue Generating" and as such are required to recover all or a portion of the cost of operation through rental charges. The City and the School District shall recognize Revenue Generating Facilities on "Attachment A" of this agreement and will update the list and recognize rental rates and fee schedules on an annual basis, while striving to keep rates as affordable as possible. Both entities recognize that each are on different fiscal year calendars and will stress timely communication of changes to the Revenue Generating list and rates.

- 2.7.3 Some facilities may carry additional contractual or statutory requirements and limitations that could impact a use request including, but not limited to, food and beverage sales/service and consumption, vending or product sales, health department regulations, certified staffing, secure access to areas within the Fire, and Police and Courts buildings, etc. Each party will strive to coordinate use requests with requirements in an effort to meet needs where possible.
- 2.8 Adequate, adult leadership and supervision shall be required at all times for activities in which minors are participating or present. Participants and spectators shall be supervised at all times and are to remain in the area of contract rental. Failure to comply may result in current and/or future permits being revoked. This will also include the time before and after the event during which participants and spectators are on City or School District property.
- 2.9 When one party which has reserved a facility becomes aware that it no longer needs to use the facility, it should notify the owner of the facility and cancel the reservation to free up the facility for other users and to avoid any unnecessary set up and opening actions by the owner. In the event where a party fails to cancel an event and the host organization experiences costs associated with the event, those costs will be reimbursed to the host on an "actual cost" basis. Unintentional, last minute cancellations due to weather or other unanticipated causes will be considered on an individual basis.

3.0 REPAIR AND MAINTENANCE.

- 3.1 Funding of maintenance and replacement costs for facilities and equipment are to be provided by the facility owner, unless agreed upon by both parties.
- 3.2 In the event damage beyond normal wear and tear is caused to a party's facility or equipment while the other party is using the facility, and the damage is proximately caused by the actions of any agent or the employee of the using party, the using party shall be responsible for the costs of the repair.
- 3.3 Site managers, principals, and grounds maintenance crews will work cooperatively in determining areas of responsibility and mutually agreeable standards of care and maintenance for any shared facilities, equipment, and grounds. The same "level of maintenance" standards are encouraged for both parties at all facilities.

4.0 SPECIAL IMPROVEMENTS.

- 4.1 Special improvements involving both parties that are needed or recognized at specific facilities may be made by arrangement between the City and the School District. Pursuant to Section 4.3 of this agreement, the costs of such improvements will be shared as a result of a site and project specific agreement or letter of understanding approved by both parties. Economies of scale, cost sharing, cooperative development, and improvement of shared facilities are encouraged whenever feasible.
- 4.2 Recognizing that the City and School District have a mutual interest in the location and development of parks and school sites and that school playgrounds are community resources which complement City parks and facilities, the parties agree to explore opportunities for partnerships and engage in joint planning, financing, and maintenance of, parks and recreation areas adjacent to schools where feasible.
- 4.3 Joint funding of capital projects and other special improvements must be pre-approved by both the Board of Education and the City Council as a part of each organization's short and long term capital and operating plans. Requests for funding and resource support for special improvements and/or additional facilities or programs should be directed through staff members for review by both parties prior to either organization requesting funding partnerships. Once all related information is gathered and shared at the staff level of both organizations, the liaisons can request to have the project or program placed as a staff report on the agenda of the periodic Board of Education/City Council meeting for further discussion and review. The goal of this process will be to eliminate surprise requests for funding and support that are not first evaluated as a part of each organization's internal planning process.
- 4.4 In the event special improvements are needed and agreed upon at a specific facility which is used jointly by the City and School District, a site specific agreement may be generated to outline the scope of the project and each party's responsibilities. Sharing of costs shall be encouraged when feasible with resource availability, economies of scale, and cooperative development, outlined by the agreement or letter of understanding specific to that site and its improvements.

5.0 INSURANCE AND LIABILITY.

- 5.1 Both parties agree to obtain and keep in full force and effect full liability and property damage insurance, or self-insurance with limits of not less than those required by state law. A certificate of insurance will be provided at the request of either party. The parties agree to jointly explore the potential for cooperating in the placement of insurance coverage or in obtaining

endorsements to one or both of their insurance policies to add an additional insured in order to avoid the duplication of coverage and costs.

- 5.2 The parties agree that neither assumes any responsibility for providing supervision for participants, employees or volunteers of any activities under the control of, sponsored by, or conducted by the other party when using any of its facilities. During the period that any portion of a party's facility is being used by the other party in a sponsored activity or program, the using entity in each instance shall be responsible for all necessary supervisory or instructional personnel required for such programs.
- 5.3 The covenants and agreements contained in this Agreement are for the benefit of the School District and the City only, and do not create any obligations or duties to persons not parties hereto.
- 5.4 Each party agrees to notify the other of any defects or potential defects, dangerous conditions or potential dangerous conditions, claims or potential claims from damage or injury that come to its attention in connection with its usage.
- 5.5 The parties hereto understand and agree that the parties are relying on, and do not waive or intend to waive by any provision of this agreement, the monetary limitation (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, defenses, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to the parties, their officers, agents, volunteers, or their employees.

6.0 DISPUTE RESOLUTION PROCESS.

- 6.1 In the event that the City and the School District are unable to agree upon the rights and obligations of the parties with respect to this Agreement, the matter in dispute shall be reviewed in accordance with the following Dispute Resolution Process:
 - 6.1.1 The party identifying the dispute shall give notice of intent to discuss the disputed issue at a meeting to be mutually scheduled within seven (7) days and held within thirty (30) days following the notice. The notice shall contain the proposed date, time, and location of said meeting; sufficient detail to clearly and identify the problems giving rise to the dispute; and those persons whose presence at the meeting would be helpful to achieving a resolution. Both parties shall make a good faith effort to attend the meeting with the appropriate persons within the thirty (30) day time period. The City and the

School District shall strive to discuss and review disputes and allow the dispute process the opportunity to reach a resolution without comment/pressure from actual user groups or outside individuals.

- 6.1.2 After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution of the problem, the building principal and the City official responsible for the event shall attempt to negotiate a resolution of the differences between the parties. [If the representatives for the City and School District reach an impasse concerning the dispute, the Director of Parks and Recreation for the City and the Assistant Superintendent of Operational Services for the School District shall meet to facilitate a resolution.]
- 6.1.3 If the designated City Official and the Assistant Superintendent of Operational Services are unable to resolve the dispute, the City Manager and Superintendent of Schools shall meet to attempt to bring the issue to a resolution. If they are unable to do so, members of the City Council and the Board of Education of the School District designated by their respective board or council shall attempt to resolve the dispute.
- 6.1.4 If the parties reach an accord at any stage, they shall produce their agreement in writing which shall be in the form of an amendment to this Agreement with respect to the subject matter of the notice of dispute. The terms and conditions of such amendment shall not supersede the terms and conditions of this Agreement with respect to any matter other than the subject matter submitted to the Dispute Resolution Process.
- 6.1.5 This dispute resolution process shall be a condition precedent to the institution of a court action to resolve a dispute arising under this agreement.

7.0 TERM AND TERMINATION.

- 7.1 The term of this agreement shall continue for a period of one year from the date hereof and shall be automatically renewed for successive annual periods unless terminated by either party. Either party may terminate this Agreement at any time by providing six months advance written notice of termination to the other party.
- 7.2 The Agreement shall be reviewed and discussed at a joint session of the City Council and the Board of Education at least once every two years.

- 7.3 The Agreement may be modified at any time by a majority vote of the City Council and the Thompson R2J Board of Education.

8.0 MISCELLANEOUS.

- 8.1 Neither party shall extend the faith or credit of the other to any third person or entity.
- 8.2 This Agreement shall be binding upon the parties and their successors in interest.
- 8.3 Any notice required by this Agreement shall be in writing, made by hand-delivery or certified mail, return receipt requested, and addressed to the following:

**Superintendent
Thompson School District R2.J
800 South Taft Ave
Loveland, Colorado 80537**

**City Manager
City of Loveland
500 East Third Street
Loveland, Colorado 80537**

Notice given by hand-delivery shall be effective immediately and notice by mail shall be effective three days after it is deposited in the United States mail depository correctly addressed with sufficient postage for delivery.

- 8.4 The rights and obligations of the parties under this Agreement shall be interpreted and construed in accordance with Colorado law.
- 8.5 The parties represent that the individuals signing this Agreement on their behalf possess full power and authority from their respective governing boards in compliance with Colorado law.
- 8.6 No waiver of any right under this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 8.7 No provision of this Agreement shall be assigned by either party without prior written consent of the non-assigning party.
- 8.8 Each Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

- 8.9 Each provision of this Agreement shall be severable. If any provision is held invalid, contrary to, or in conflict with any law or regulation by a tribunal with competent jurisdiction, the remainder of this Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Signature Page

INTERGOVERNMENTAL AGREEMENT
CONCERNING JOINT USE OF FACILITIES
City of Loveland/Thompson R2J School District

Attachment A
Revenue Generating Facilities

As defined in section 2.7.2 of this agreement, Some facilities owned or operated by both organizations can be designated as “Revenue Generating” and as such are required to recover all or a portion of the cost of operation through rental charges. Charges can vary depending upon reservation times, use requirements, and fee categories for each facility. Both organizations agree to work with each other to limit these charges where fiscally feasible. By agreement this list and accompanying fee schedules will be updated at least once per year as dictated by the budget calendars for both organizations. Following is a listing of facilities that require a level of cost recovery beyond the parameters outlined in the IGA on Joint Use of Facilities.

Thompson R2J Revenue Generating Facilities

Roberta Price Auditorium – Thompson Valley High School
Dick Hewson Aquatics Center – Thompson Valley High School
Auditorium – Loveland high School
Swimming Pool – Loveland High School
Auditorium – Bill Reed Middle School
Auditorium – Harold Ferguson School
Sue Wall Auditorium – Mountain View High School
Mountain View Aquatic Center – Mountain View High School

City of Loveland Revenue Generating Facilities

Hatfield Chilson Recreation Center
Loveland Sports Park Championship Field
Barnes Park Batting Cages
Winona Swimming Pool
Marianna Butte Golf Course
The Olde Course at Loveland
Cattail Creek Golf Course
Rialto Theater Center
Loveland Museum and Gallery



CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 8
MEETING DATE: 3/5/2013
TO: City Council
FROM: Alison Hade, Community Partnership Office
PRESENTER: Alison Hade

TITLE:

A Resolution waiving certain development fees for the construction of eight residences by Loveland Habitat for Humanity.

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution.

OPTIONS:

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

DESCRIPTION:

This is an administrative action to approve a resolution. Loveland Habitat for Humanity is requesting waiver of all development, capital expansion, and enterprise fees for the construction of eight new single family dwellings in 2013. The total fee estimate for all eight dwellings is \$206,444.37. The requested fee waiver is \$185,796.56. Habitat for Humanity will pay the remaining \$20,647.81.

BUDGET IMPACT:

- ☐ Positive
☒ Negative
☐ Neutral or negligible

(\$65,000 was appropriated in the 2013 budget to backfill enterprise fees waived by the proposed resolution. An additional \$120,796.56 in development and capital expansion fees would be waived by the resolution and not backfilled.)

SUMMARY:

Habitat for Humanity builds and sells homes to households that earn between 30% and 60% of the area median income (AMI) (\$45,480 annually for a family of four). The City of Loveland historically has waived fees on behalf of Habitat for Humanity.

Of the eight fee waivers granted in 2012, two homes have been built and are occupied; the other six homes are in various stages of construction and will be completed in early 2013. Habitat for Humanity provides the most affordable and decent homes for low income families in Loveland. For example, a family earning 34% of the AMI would pay about \$138,500 for a home appraising at \$172,000 (3 bedrooms). Payments on the home, including PTI and any HOA dues, would be \$538 a month (Habitat for Humanity provides 0% interest loans). See **Attachment B** for more detail on the history of fee waivers for Habitat for Humanity, including the number of homes completed for each year fee waivers were received.

Habitat for Humanity currently holds 27 single family and five duplex open lots, of which eight are a part of this request for fee waivers and will be built in 2013 or early 2014. Some of the remaining 25 may also be built in 2013 without fee waiver assistance based on the number of clients eligible to start building their homes.

The Loveland Municipal Code permits City Council to waive development, capital expansion and enterprise fees on behalf of non-profit entities. However, the code requires that any enterprises fees waived be paid by the City's general fund or other appropriate fund. The 2013 City of Loveland adopted budget includes an appropriation of \$65,000 to pay the enterprise fees waived on behalf of Habitat for Humanity. The total cost of enterprise fees is \$85,647.81. Under the recommended resolution and current budget appropriation of \$65,000, Habitat for Humanity would pay the remaining enterprise fees of \$20,647.81.

REVIEWED BY CITY MANAGER:


LIST OF ATTACHMENTS:

- **Attachment A:** Resolution waiving certain development fees for Habitat for Humanity in 2013
 - **Attachment B:** History of fee waivers approved by Loveland City Councils
-

RESOLUTION #R-20-2013**A RESOLUTION WAIVING CERTAIN DEVELOPMENT FEES FOR CONSTRUCTION OF EIGHT RESIDENCES BY LOVELAND HABITAT FOR HUMANITY**

WHEREAS, Loveland Habitat for Humanity, Inc., a Colorado nonprofit corporation (“Habitat”) has requested that the City waive certain City-imposed development fees, including capital expansion and enterprise fees, for eight residences that it will construct in 2013 in Loveland, Colorado, including 7 residences located in Koldeway Industrial 3rd Subdivision at 1726, 1750, 1802, and 1886 9th Street, 873 Libra Court, 904 N. Boise Avenue, and 1916 E. 11th Street; and 1 residence located in Wards 3rd Subdivision at 1232 Raven Place, (collectively, the “Residences”); and

WHEREAS, Loveland Municipal Code Section 16.38.075 provides that the City Council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed upon new development upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, that such facilities relieve the pressures of growth on City-provided facilities, and that such facilities do not create growth or growth impacts; and

WHEREAS, Habitat is willing and able to enter into one or more development agreements with the City pursuant to which Habitat will agree to construct the Residences for the benefit of low and moderate income Loveland households.

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

Section 1. That the City Council finds that the waiver of the development fees, capital expansion fees, and enterprise fees which results from the adoption of this Resolution will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City at taxpayer expense, that such facilities relieve the pressures of growth on City-provided facilities, and that such facilities do not create growth or growth impacts.

Section 2. That capital expansion fees in a total amount not to exceed \$100,232.56 payable for the construction of the Residences are hereby waived for the purpose described above.

Section 3. That as provided in Loveland Municipal Code Section 16.38.075, when a capital related fee is waived as set forth in Section 2, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund.

Section 4. That development fees, including, but not limited to, all building permit fees, plan review fees, and any and all other fees, due and payable for construction of the Residences

between permit application and final certificate of occupancy (but not including capital expansion fees, enterprise fees such as system impact fees, raw water fees, tap fees or other enterprise fees) in a total amount not to exceed \$20,564.00 are hereby waived for the purpose described above.

Section 5. That enterprise fees, including system impact fees, raw water fees, tap fees, or any other enterprise fees, payable for construction of the Residences in a total amount not to exceed \$65,000.00 are hereby waived for the purpose described above.

Section 6. That the amount of the waived enterprise fees, in an amount not to exceed \$65,000.00 as set forth in Section 5 hereof, shall be paid by the City into the City's enterprise funds from the general fund of the City, and that such funds have been appropriated in the City's 2013 budget. It is anticipated that the enterprise fees due for the Residences will exceed the \$65,000.00 waived hereunder and the remaining balance of enterprise funds due shall be paid by Habitat.

Section 7. That the waiver of the fees described in Sections 2, 4, and 5 hereof shall be conditioned upon the City, through its City Manager, and Habitat entering into one or more development agreements, which development agreements shall provide for the waiver of said fees in exchange for the construction of the Residences, as well as such other conditions as the City Manager shall deem necessary.

Section 8. That this Resolution shall be effective as of the date of its adoption.

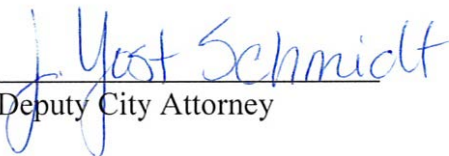
ADOPTED this 5th day of March 2013.

Cecil Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


 Deputy City Attorney



Habitat for Humanity Fee Waiver History

Year	# Units	\$ Waived	Per Unit	Gen Fund Backfill	Units Built
1995	5	\$43,338	\$8,668	\$21,140	1
1996	2	\$15,450	\$7,725	\$7,748	6
1997	5	\$51,607	\$10,321	\$21,790	1
1998	4	\$48,491	\$12,123	\$19,354	5
1999	5	\$55,908	\$11,182	\$23,962	3
2000	5	\$52,379	\$10,476	\$24,522	6
2001	5	\$66,327	\$13,265	\$28,977	7
2002	5	\$68,736	\$13,747	\$29,622	4
2003	5	\$38,876	\$7,775	\$0	6
2004	5	\$40,437	\$8,087	\$0	7
2005	5	\$41,113	\$8,223	\$0	5
2006	6	\$89,077	\$14,846	\$36,592	5
2007	6	\$136,452	\$22,742	\$64,465	5
2008	6	\$152,425	\$25,404	\$66,733	4
2009	6	\$154,642	\$25,774	\$68,254	7
2010	6	\$148,697	\$24,783	\$65,000	6
2011	6	\$151,462	\$25,244	\$65,000	4
2012	8	\$192,607	\$24,076	\$65,000	7
2013	8	\$185,797	\$23,225	\$65,000	6 from 2012
Total	103	\$1,733,821	\$21,405	\$673,159	95



PARKS AND RECREATION DEPARTMENT

Civic Center • 500 East Third Street • Loveland, Colorado 80537

AGENDA ITEM: 9
MEETING DATE: 3/5/2013
TO: City Council
FROM: Gary Havener, Parks and Recreation Department
PRESENTER: Marilyn Hilgenberg, Parks and Recreation Department

TITLE:

- A. A resolution approving an intergovernmental agreement between the City of Loveland and the State of Colorado Division of Parks and Wildlife to accept a "Fishing is Fun" grant for enhancements to the River's Edge Natural Area
- B. Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for a Federal grant from the United States Fish and Wildlife Service for construction of certain components of the River's Edge Natural Area Development Project

RECOMMENDED CITY COUNCIL ACTION:

Approve the Resolution.
Adopt the Ordinance on First Reading.

OPTIONS:

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

DESCRIPTION:

This is an administrative action. The resolution allows the City to enter into an intergovernmental agreement with the State of Colorado to accept grant funding awarded by the United States Fish and Wildlife Service, through the Colorado Fishing is Fun program. The ordinance appropriates grant funding for the River's Edge Natural Area project.

BUDGET IMPACT:

☒ Positive

- ☐ Negative
- ☐ Neutral or negligible

The grant provides funding for part of the project, originally budgeted with City funds in the 2012 Budget. The grant will reduce the amount need to be reappropriated, increasing the funding available for other projects.

SUMMARY:

The City of Loveland has been granted a \$90,000 Colorado Fishing is Fun grant, funded through the United States Fish and Wildlife Service, but administered through a subcontract with the State of Colorado. The grant funds will be used for trails, fishing access, and a handicapped accessible fishing dock at the new River's Edge Natural Area.

REVIEWED BY CITY MANAGER:

**LIST OF ATTACHMENTS:**

1. A resolution approving an intergovernmental agreement between the City of Loveland and the State of Colorado Division of Parks and Wildlife to accept a "Fishing is Fun" grant for enhancements to the River's Edge Natural Area.
2. Exhibit A to Resolution - State of Colorado Subgrant Agreement
3. An ordinance on first reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for a Federal grant from the United States Fish and Wildlife Service for construction of certain components of the River's Edge Natural Area Development Project.

RESOLUTION # R-21-2013**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND THE STATE OF COLORADO DIVISION OF PARKS AND WILDLIFE TO ACCEPT A “FISHING IS FUN” GRANT FOR ENHANCEMENTS TO THE RIVER’S EDGE NATURAL AREA**

WHEREAS, the City of Loveland (the “City”) is a home rule municipality organized and existing in accordance with Colorado law; and

WHEREAS, the Division of Parks and Wildlife is a division of the Department of Natural Resources of the State of Colorado (“DPW”); and

WHEREAS, Section 29-1-203(1) of the Colorado Revised Statutes authorizes intergovernmental agreements between the City and DPW to cooperate or contract with one another to provide any function or service lawfully authorized to each; and

WHEREAS, DPW, as part of its Fishing is Fun in Colorado program, distributes grant funds provided by the U.S. Department of Interior’s Fish and Wildlife Service to qualified entities for the purpose of improving fisheries and otherwise increasing recreational fishing opportunities; and

WHEREAS, the City has applied for and has been offered a grant of ninety thousand dollars (\$90,000.00) on a reimbursable match basis where the City will match the grant with one hundred thirty six thousand three hundred sixty dollars (\$136,360.00); and

WHEREAS, the City will use such grant funds to enhance the River’s Edge Natural Area including the development of trails to provide access to the shoreline, bank stabilization, an ADA accessible fishing dock, and a belly boat ramp as identified in the proposed subgrant agreement attached hereto as Exhibit “A” and incorporated herein by reference (the “Subgrant Agreement”); and

WHEREAS, City Council finds that it is in the best interest of the citizens of the City to approve and enter into the Subgrant Agreement.

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

Section 1. The Subgrant Agreement is hereby approved.

Section 2. The City Manager is hereby authorized and directed to enter into the Subgrant Agreement, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

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

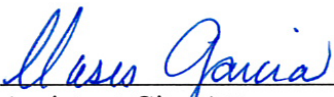
ADOPTED _____ day of March, 2013.

William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

STATE OF COLORADO
Department of Natural Resources, Colorado Division of Parks and Wildlife
Subgrant Agreement
with
City of Loveland, Colorado

1. PARTIES

This Subgrant Agreement is entered into by and between City of Loveland, Colorado, a Home Rule Municipality, whose address is 500 East Third Street, Loveland, CO 80537 (hereinafter called "Subgrantee"), and the STATE OF COLORADO, acting by and through the Department of Natural Resources, Colorado Division of Parks and Wildlife, 6060 Broadway, Denver, CO 80216 (hereinafter called the "State" or "CPW").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Subgrant Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date") but shall be effective and enforceable thereafter in accordance with its provisions. The State shall not be liable to pay or reimburse Subgrantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date, except as otherwise stated in **§5(A)**.

3. RECITALS

- A.** Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment under Contract Encumbrance No. **C108963** in the amount of **\$90,000.00**; and
- B.** The Fish and Wildlife Service of the U.S. Department of Interior ("the Service") has made federal grant funds available to the State pursuant to the Federal Aid in Sport Fish Restoration Act of 1950, (64 Stat. 430, as amended 16 USC 777-777m), and the Sport Fish Restoration Program (CFDA #: **15-605**), for fish restoration and management projects which improve fisheries and recreational fishing opportunities in Colorado ("Sportfishing Funds"); and
- C.** The Fish and Wildlife Service of the U.S. Department of Interior obligate these Sportfishing Funds to be reimbursable from the date the grant award is approved by the Service, (43 CFR 12.63 and 522 FW 25.7); and
- D.** The State desires to make the Sportfishing Funds available to the Subgrantee on a reimbursable match basis for the purpose of improving fisheries and otherwise increasing recreational fishing opportunities in Colorado as part of its "Fishing is Fun in Colorado Program"; and
- E.** The State makes the Sportfishing Funds available to Subgrantee in reliance on the representation by the Subgrantee that neither Subgrantee, nor any person or entity acting on its behalf, shall conduct activities with the Sportfishing Funds for purposes or uses prohibited or otherwise restricted under 50 CFR 80; and
- F.** Required approval, clearance and coordination have been accomplished from and with appropriate agencies.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

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

B. Evaluation

"Evaluation" means the process of examining Subgrantee's Work and rating it based on criteria established in **§6** and **Exhibit A**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Project Narrative), **Exhibit B** (Budget), **Exhibit C-1** (Project Documentation Report), **Exhibit C-2** (Itemized Work Sheet), **Exhibit C-3** (Request for Reimbursement), **Exhibit C-4** (Performance Report), **Exhibit D** (Annual Report), **Exhibit E** (Volunteer Time Tracking Sheet), and **Exhibit F** (FFATA Provisions).

D. Goods

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

E. Subgrant Agreement

"Subgrant Agreement" means this Subgrant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Subgrant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, State Fiscal Rules, and State Controller Policies.

F. Grant Funds

"Grant Funds" means available funds payable by the State to Subgrantee pursuant to this Subgrant Agreement.

G. Party or Parties

"Party" means the State or Subgrantee and "Parties" means both the State and Subgrantee. The Subgrantee's officers, agents, and assigns shall not include Subgrantee's contractors.

H. Program

"Program" means the Fishing is Fun in Colorado grant program that provides the funding for this Subgrant Agreement.

I. Review

"Review" means examining Subgrantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit A**.

J. Services

"Services" means the required services to be performed by Subgrantee pursuant to this Subgrant Agreement.

K. Subcontractor

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

L. Work

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

M. Work Product

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

5. TERM and EARLY TERMINATION**A. Grant Performance Period**

The term of this Subgrant Agreement shall commence on **February 15, 2013** and shall continue through **December 31, 2015** (the "Grant Performance Period"). However, payment for performance shall not begin until this Subgrant Agreement is approved by the State Controller, or designee (the "Effective Date"). The grant may be charged only for obligations incurred during the Grant Performance Period established upon grant award approval by the federal awarding agency (522 FW 25). This is the period of time during which federal funds are available for expenditure by the recipient (43 CFR 12.63).

B. Early Termination

This Subgrant Agreement is subject to early termination in accordance with the provisions of **§15** and other specific provisions below herein.

6. STATEMENT OF WORK**A. Completion**

- i. Subgrantee shall complete the Work and its other obligations as described herein and in **Exhibit A** during the Grant Performance Period. Subgrantee shall undertake the Scope of Work (the "Project") described in this Subgrant Agreement and **Exhibit A**. Prosecution of the Project shall be under the general supervision of the Subgrantee. The State may, at its discretion, require that a representative of the State be present at the Project location while work is being conducted. For construction projects costing more than \$100,000, the Subgrantee shall retain a registered professional engineer who shall approve Project engineering plans and specifications, approve the feasibility determination, supervise construction, and furnish a report of final inspection to the State.
- ii. The Subgrantee shall provide and maintain permanent signs on or near the Project site for the life of a Project indicating that the Project is funded in part by the Sport Fish Restoration Act (50 CFR 80.26 (a), (g), and (h); 041 FW 3 Signs)

iii. If the Project includes dam construction:

- a. Construction, enlargement, or rehabilitation of a dam is subject to the Federal standards for dam design. If the Project involves the construction, enlargement, or rehabilitation of dams subject to Federal design requirements, the Subgrantee shall provide evidence that an engineer has reviewed the design and specifications. For dam construction, the review must be by an engineer qualified in the design and construction of dams.
- b. The proposed project shall be designed to meet Federal Standards for dam design, construction and rehabilitation including, but not limited to, the Federal Guidelines for Dam Safety (June 25, 1979), Recommended Guidelines for Dam Safety-Inspection of Dam (Corps of Engineers, 1974), and any other technical requirements which may be identified in Colorado Rules and Regulations for Dam Safety and Dam Construction (2CCR 402-1).

B. Project Useful Life

- i. As per United States Department of Interior 522 FW 18.5A. Useful Life of Capital Improvements Funded by Federal Assistance Grants, the State has determined that the useful life for capital improvements is 20 years. The "useful life" of the Project shall extend 20 years beyond the Project final inspection acceptance date. Subgrantee shall operate and maintain the Project, or cause the Project to be operated and maintained, for public recreational fishing use during the "useful life" period. The "Real Property" to be operated and maintained shall include land, land improvements, structures, and appurtenances thereto, acquired or developed under this Project, excluding movable machinery and equipment. The Real Property shall be maintained by Subgrantee in a reasonable state of repair and shall be open for use by the public at all reasonable hours of the day and time of the year as required by its intended purpose.
- ii. Subgrantee shall not at anytime convert any Real Property acquired or developed pursuant to this Subgrant Agreement to other than public recreational fishing use without the prior written approval of the State. In the event the Real Property is converted (Loss of Control), Subgrantee will replace or reimburse the State the current fair market value of the Real Property. Replacement Real Property must be of equal value at current market prices and have equal benefits as the original Real Property. Non-public recreational fishing uses of the said facilities which do not materially interfere with the public recreational fishing uses shall not be deemed a conversion of such facilities within the meaning of this paragraph.
- iii. Loss of Control is when such Real Property passes from management control of the Subgrantee. The control must be fully restored to the Subgrantee or the Real Property must be replaced using non-Federal Assistance funds. Final resolution for loss of control will require approval by the Federal awarding agency.

C. Employees

All persons employed by Subgrantee or Subcontractors shall be considered Subgrantee's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Subgrant Agreement.

7. PAYMENTS TO SUBGRANTEE

The State shall, in accordance with the provisions of this **§7**, pay Subgrantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The State shall reimburse Subgrantee up to a maximum amount of **\$90,000.00**, which shall be from available Sportfishing Funds for the completion of the Project described in **Exhibit A** during the Grant Performance Period.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Subgrant Agreement or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Subgrant Agreement or such Exhibit.

Subgrantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State (Exhibit C-3). Subgrantee may request payments monthly; however, the reimbursement amount for each request shall be no less than \$1,000 unless it is a request for final payment.

Payments will be made on a reimbursement basis, based upon the Subgrantee's submittal of receipts and cancelled checks to the State evidencing allowable expenditures by the Subgrantee for services

and materials used in prosecution of the Project. Allowable expenditures shall be determined by the State.

The State shall in all cases retain ten percent (10%) of the total available Sportfishing Funds until final inspection and approval of the completed project by authorized representatives of the State. Such payments shall also be subject to inspection and approval of the completed Work by authorized representatives of the State.

ii. Preliminary or Pre-Agreement Costs

Certain preliminary costs for services, incurred by Subgrantee prior to the execution of the grant award, may be reimbursable or included as part of allowable in-kind contributions. Acceptable services may include, but are not limited to, preliminary design, feasibility surveys (both engineering and biological) and land appraisals. To be eligible, such costs shall be disclosed to the State as preliminary or pre-agreement costs in **Exhibit B**, and shall be subject to federal approval pursuant to 522 FW 1.11B (2), and shall also be subject to the following cost principles: 2 CFR 225 Appendix B sections 31 and 32 (formally Office of Management and Budget (OMB) Circular No. A-87, attachment B sections 31 and 32).

iii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Subgrantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Subgrantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Subgrantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Subgrantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Subgrant Agreement in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Subgrant Agreement shall be made only from available funds encumbered for this Subgrant Agreement and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Subgrant Agreement, the State may immediately terminate this Subgrant Agreement in whole or in part without further liability in accordance with the provisions herein.

v. Erroneous Payments

At the State's sole discretion, payments made to Subgrantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Subgrantee, may be recovered from Subgrantee by deduction from subsequent payments under this Subgrant Agreement or other Grants, grants or agreements between the State and Subgrantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget. Subgrantee may adjust budgeted expenditure amounts up to 10% within each line item of said Budget without approval of the State. Adjustments in excess of 10% shall be authorized by the State in an amendment to this Subgrant Agreement. The State's total consideration shall not exceed the maximum amount shown herein.

D. Matching Funds

- i. Subgrantee shall provide matching funds as provided in Exhibit B. Subgrantee's share of the cost of the subject Project shall be **50%**, representing a dollar value of **\$90,000.00**, all of which shall be the sole responsibility of the Subgrantee and shall not be reimbursable by the State or the Federal Government, and shall consist, at a minimum, of funds, allowable costs, and the value of third party in-kind contributions as set forth in Exhibit B. Third party in-kind contributions shall mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the Subgrantee. Cost sharing or matching shall mean the value of the third party in-kind contributions and the portion of the costs of a federally assisted grant project or program not borne by the Federal Government.
- ii. Subgrantee shall comply with all applicable federal statutes, regulations, policies, guidelines and requirements regarding all contributions, matching and cost-sharing, including, but not necessarily

limited to 43 CFR Part 12, 50 CFR Part 80, and 2 CFR 225 (formally OMB Circular No. A-87); and OMB Circulars Nos. A-102 and A-133 as they relate to the application, acceptance, and use of federal funds for this federally assisted Project.

- iii. Subgrantee shall include in any contract, subcontract, subgrant, or agreement entered into in performance of the Project, the provisions required by 43 CFR 12.76(i). Subgrantee certifies that it has read and shall comply with all of the provisions of 43 CFR 12, as applicable. Subgrantee "will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements conform to applicable Federal law and the standards in this section" as required by 43 CFR 12.76 (b). Subgrantee shall not make any award or permit any award (subgrant or contract) at any tier to any party, which is debarred or suspended under 43 CFR 12.75.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

- i. Subgrantee shall utilize and comply with the following: Exhibit C-1, Exhibit C-2, and Exhibit C-3.
- ii. If volunteer labor is part of Subgrantee's match, Subgrantee will collect and file with CPW the appropriate documentation using Exhibit E. This documentation must accompany Subgrantee's requests for reimbursement (Exhibit C-3).
- iii. Using Exhibit C-4, Subgrantee shall file quarterly progress reports with the State detailing the status of the Project and extent to which it has been completed. The first such quarterly report shall be due three (3) months after Subgrantee receives the notice to proceed, and every three (3) months thereafter until final approval of the completed Project is performed by the State. Subgrantee shall notify the State's Fishing is Fun Coordinator ("State Coordinator") in writing at least ten (10) days prior to actual completion of the Project to arrange for final inspection of the Project. Subgrantee shall submit all required final documents along with the final payment request to the State Coordinator no later than 45 days after completion of the Project or within the timeframe allowed by the Federal awarding agency.
- iv. Subgrantee shall provide to the State Coordinator color photo slides, digital photos, or color prints of the work site: 1) prior to commencement of work, 2) during construction, and 3) upon completion of the Project.
- v. After the Project is completed, Subgrantee shall file an annual report with the State on the form provided as Exhibit D. The first annual report shall be due one year following final inspection of the Project and shall be due annually thereafter during the Project Useful Life.
- vi. The State Coordinator may waive in writing any quarterly or annual performance report if deemed unnecessary, provided the State will still be able to meet its performance reporting obligations to the Federal agency.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Subgrant Agreement or which may affect Subgrantee's ability to perform its obligations hereunder, Subgrantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the Department of Natural Resources.

C. Noncompliance

Subgrantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Subgrant Agreement.

9. SUBGRANTEE RECORDS

Subgrantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Subgrantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Subgrantee shall maintain such records (the Record Retention Period) until the last to occur of the following: (i) a period of three years after the date this Subgrant Agreement is completed or terminated, or (ii) final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit

is occurring, or Subgrantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Subgrantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Subgrantee's records related to this Subgrant Agreement during the Record Retention Period for a period of three years following termination of this Subgrant Agreement or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Subgrantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Subgrant Agreement, including any extension. If the Work fails to conform to the requirements of this Subgrant Agreement, the State may require Subgrantee promptly to bring the Work into conformity with Subgrant Agreement requirements, at Subgrantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Subgrantee to take necessary action to ensure that future performance conforms to Subgrant Agreement requirements and exercise the remedies available under this Subgrant Agreement, at law or inequity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Subgrantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Subgrantee pursuant to the terms of this Subgrant Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Subgrantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Subgrantee's records for any fiscal year covering a portion of the term of this Subgrant Agreement, Subgrantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Subgrantee shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Subgrantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Subgrantee shall be immediately forwarded to the State's principal representative.

B. Notification

Subgrantee shall notify its agent, employees, Subcontractors, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Subgrantee or its agents in any way, except as authorized by this Subgrant Agreement or approved in writing by the State. Subgrantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Subgrantee or its agents, except as permitted in this Subgrant Agreement or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Subgrantee for any reason may be cause for legal action by third parties against Subgrantee, the State or their respective agents. Subgrantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Subgrantee, or its employees, agents, Subcontractors, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST

A. Definition and Appearance

Subgrantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Subgrantee's obligations hereunder. Subgrantee acknowledges that with respect to this Subgrant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Subgrantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subgrantee's obligations to the State hereunder. Subgrantee shall comply with the provisions of CRS §18-8-308 and §§24-18-101-109.

B. Specific Prohibitions

Subgrantee and its respective officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Subgrantee's potential subgrantees, or parties to sub-contracts. Subgrantee's employees, officers, agents or any permitted sub-grantees shall not participate in the selection, award, or administration of this Subgrant Agreement or any sub-grant or sub-contract, if an actual or apparent conflict of interest would occur. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- i. An employee, officer, agent, or board member;
- ii. Any member of the employee's immediate family;
- iii. An employee's partner; or
- iv. An organization, which employs, or is about to employ, any of the aforementioned.

C. Disclosure Statement

Subgrantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be considered a material default of this Subgrant Agreement and grounds for termination under the Termination for Default/Cause in Section 20 of this Subgrant Agreement.

D. Code of Performance

Subgrantee, and sub-grantees and subcontractors, if any, shall maintain a written code of standards governing the performance of their respective employees, agents, and contractors engaged in the award and administration of this Subgrant Agreement, or subcontract or subgrant, if any. Subgrantee shall provide a copy of such code to the State within 10 days of the State's written request therefore.

12. REPRESENTATIONS AND WARRANTIES

Subgrantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Subgrant Agreement.

A. Standard and Manner of Performance

Subgrantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Subgrant Agreement.

B. Legal Authority – Subgrantee and Subgrantee's Signatory

Subgrantee warrants that it possesses the legal authority to enter into this Subgrant Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Subgrant Agreement, or any part thereof, and to bind Subgrantee to its terms. If requested by the State, Subgrantee shall provide the State with proof of Subgrantee's authority to enter into this Subgrant Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Subgrantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Subgrantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Subgrant Agreement, without reimbursement by the State or other adjustment in Subgrant Agreement funds. Additionally, all employees and agents of Subgrantee performing Services under this Subgrant Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Subgrantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Subgrantee to

properly perform the terms of this Subgrant Agreement shall be deemed to be a material breach by Subgrantee and constitute grounds for termination of this Subgrant Agreement.

13. INSURANCE

Subgrantee and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Subgrant Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Subgrantee and the State.

A. Subgrantee

i. Public Entities

If Subgrantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Subgrantee shall maintain at all times during the term of this Subgrant Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Subgrantee shall show proof of such insurance satisfactory to the State, if requested by the State. Subgrantee shall require each Subgrant Agreement with Subcontractors that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subcontractor's liabilities under the GIA.

ii. Non-Public Entities

If Subgrantee is not a "public entity" within the meaning of the GIA, Subgrantee shall obtain and maintain during the term of this Subgrant Agreement insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subcontractors that are not "public entities".

B. Subcontractors

Subgrantee shall require each Subgrant Agreement with Subcontractors, other than those that are public entities, providing Goods or Services in connection with this Subgrant Agreement, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Subgrantee and Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 **each occurrence**; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Subgrantee a certificate or other document satisfactory to Subgrantee showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

Subgrantee and the State shall be named as additional insured on the Commercial General Liability policy (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Subgrantee and Subcontractors shall be primary over any insurance or self-insurance program carried by Subgrantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Subgrantee and Subgrantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Subgrantee's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Subgrant Agreement and secured and maintained by Subgrantee or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Subgrantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Subgrantee and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Subgrant Agreement. No later than 15 days prior to the expiration date of any such coverage, Subgrantee and each Subcontractor shall deliver to the State or Subgrantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Subgrant Agreement or any subgrant, Subgrantee and each Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

14. BREACH

A. Defined

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

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§16**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Subgrant Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Subgrantee is in breach under any provision of this Subgrant Agreement, the State shall have all of the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Subgrant Agreement following the notice and cure period set forth in **§14(B)**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

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

i. Obligations and Rights

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

ii. Payments

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

iii. Damages and Withholding

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

B. Early Termination in the Public Interest

The State is entering into this Subgrant Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Subgrant Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Subgrant Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Subgrant Agreement by the State for cause or breach by Subgrantee, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Subgrantee of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Subgrant Agreement.

ii. Obligations and Rights

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

iii. Payments

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

C. Remedies Not Involving Termination

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

i. Suspend Performance

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

ii. Withhold Payment

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

iii. Deny Payment

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

iv. Removal

Demand removal of any of Subgrantee's employees, agents, or Subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Subgrant Agreement is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Subgrantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Subgrant Agreement, Subgrantee shall, at the State's

option **(a)** obtain for the State or Subgrantee the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State Coordinator:

Jim Guthrie
Colorado Division of Parks and Wildlife
6060 Broadway
Denver, CO 80216
Phone: 303-291-7563
Email: jim.guthrie@state.co.us

With respect to the representative of the State, the State Coordinator shall have the authority to assure compliance with the terms of this Subgrant Agreement, inspect and reject services, approve invoices for payment, and act otherwise for the State.

B. Subgrantee:

Marilyn Hilgenberg, Business Manager
Loveland Parks and Recreation
500 East Third Street, Suite 200
Loveland, CO 80537
Phone: 970-962-2443
Email: marilyn.hilgenberg@cityofloveland.org

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Subgrantee in the performance of its obligations under this Subgrant Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Subgrantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Subgrantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Subgrantee's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE GRANT MANAGEMENT SYSTEM

If the maximum amount payable to Subgrantee under this Subgrant Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§19** applies.

Subgrantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Grant management system.

Subgrantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Subgrant Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Subgrantee's performance shall be part of the normal Grant administration process and Subgrantee's performance will be systematically recorded in the statewide Grant

Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Subgrantee's obligations under this Subgrant Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Subgrantee's obligations. Such performance information shall be entered into the statewide Grant Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Subgrant Agreement term. Subgrantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Subgrantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the CPW, and showing of good cause, may debar Subgrantee and prohibit Subgrantee from bidding on future Grants. Subgrantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Subgrantee, by the Executive Director, upon a showing of good cause.

20. GENERAL PROVISIONS

A. Assignment and Subgrants

Subgrantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or Subcontractors approved by Subgrantee or the State are subject to all of the provisions hereof. Subgrantee shall be solely responsible for all aspects of subgranting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Subgrant Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Subgrant Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Subgrant Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Subgrantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Subgrantee, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Subgrant Agreement; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Subgrant Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification, Amendment, and Budget Changes

i. Modifications

This Subgrant Agreement is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Subgrant Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Subgrant Agreement shall be

effective unless agreed to in writing by the Parties in an amendment to this Subgrant Agreement that is properly executed and approved in accordance with applicable law.

ii. Subgrantee Requests for Project Modifications

The Subgrantee shall notify the State Coordinator, in writing, of any proposed Project modifications or budget changes in the project as soon as possible, but at least 45 days prior to the expiration of the Grant Performance Period. The State's Coordinator shall determine if it is necessary to submit a request for a grant amendment with the Federal awarding agency. An amendment must be submitted to obtain the Federal awarding agency's prior approval for:

- a) Adding or deleting a project from the list;
- b) Increasing or decreasing the Federal funds obligated on the Federal Grant Agreement;
- c) Revising the rate of Federal participation shown on the Federal Grant Agreement;
- d) Modifying the Federal Grant Agreement period; or
- e) Any change to the Federal Grant or Subgrant Agreements.

Any such amendment shall also be processed as an amendment to the Subgrant Agreement, pursuant to State Fiscal Rules and Policies.

iii. Budget Changes

Budget Changes. Unless waived by the Federal awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the Federal awarding agency. Changes shall also be governed, as applicable, by the federal regulations in 43 CFR 12.70, as well as the State Fiscal Rules and Policies.

I. Order of Precedence

The provisions of this Subgrant Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Subgrant Agreement and its exhibits and attachments including, but not limited to, those provided by Subgrantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. **Exhibit F – FFATA Provisions,**
- ii. **Colorado Special Provisions,**
- iii. The provisions of the main body of this Subgrant Agreement,
- iv. **Exhibit A,**
- v. **Exhibit B,**
- vi. **Exhibits C-1 through C-4,**
- vii. **Exhibit E,**
- viii. **Exhibit D.**

J. Severability

Provided this Subgrant Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

K. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Subgrant Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Subgrantee fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Subgrantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Subgrantee for them.

M. Third Party Beneficiaries

Enforcement of this Subgrant Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Subgrant Agreement are incidental to the Subgrant Agreement, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Subgrant Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a

waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Subgrant Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

21. FEDERAL AUDIT PROVISIONS

- A.** Subgrantee shall comply with the Office of Management and Budget's (OMB) Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations which defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156).
- B.** All state and local governments and non-profit organizations expending \$500,000 or more from all sources (direct or from pass-through entities) are required to comply with the provisions of OMB Circular No. A-133. This Circular also requires pass-through entities to monitor the activities of subrecipients and ensure that subrecipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all subrecipients to notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed \$500,000.

22. GRANT ASSURANCES

This Subgrant Agreement involves the expenditure of federal funds. Therefore, Subgrantee shall at all times during the execution of this Subgrant Agreement strictly adhere to and comply with all applicable federal laws and regulations, as they currently exist and may hereafter be amended, which are subject to the terms and conditions incorporated either directly or by reference in this Subgrant Agreement. Subgrantee shall also require compliance with these statutes and regulations in subcontractor grant agreements permitted under this Subgrant Agreement. The federal laws and regulations are accessible on the internet at:

<http://wsfrprograms.fws.gov/Subpages/ToolkitFiles/toolkit.pdf> and include but are not limited to:

- Program Legislation/regulation.
- Code of Federal Regulation/Regulatory Requirements of 43 CFR 12, as applicable.
- Special terms and provisions specified in the Notice of Federal Financial Assistance Grant Award.
- Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). [All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees]
- The Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3). [All contracts and subgrants for construction or repair in excess of \$2,000]
- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). [Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers]
- Standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h), Section 508 of the Clean Water Act (33 USC 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). [contracts, subcontracts, and subgrants of amounts in excess of \$100,000]
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- Office of Management and Budget Circulars 2 CFR Parts 215 and 220 (formally A-21), 2 CFR 225 (formally A-87), 2 CFR 215 (formally A-110), 2 CFR 230 (formally A-122) and A-133, as applicable.
- The Hatch Act (5 USC 1501-1508) and Public Law 95-454, Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.
- USC 6101 *et seq.*, 42 USC 2000d, 29 USC 794, and implementing regulation, 45 CFR Part 80 *et seq.* These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.
- The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213, 47 USC 225 and 47 USC 611.

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). [If the Subgrantee is acquiring real property and displacing households or businesses in the performance of this contract]
- The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 *et seq.*).
- The Age Discrimination Act of 1975, 42 USC Sections 6101 *et seq.* and its implementing regulation, 45 CFR Part 91.
- Section 504 of the Rehabilitation Act of 1973, 29 USC 794, as amended, and implementing regulation 45 CFR Part 84.
- Title IX of the Education Amendments of 1972
- Executive Order 11987, Exotic Organisms
- Endangered Species Act of 1973
- National Environmental Policy Act of 1969 (NEPA)
- Floodplains and Wetlands Protection
- Animal Welfare Act of 1985
- National Historic Preservation Act of 1966
- Debarment and Suspension: **(1)** Executive Order 12549, Debarment and Suspension, Feb. 18, 1986; and **(2)** Department of Interior Rules, Government wide Debarment and Suspension (Nonprocurement), 43 CFR 42
- Restrictions on Lobbying **(1)** (P.L. 101-121), **(2)** 43 CFR 18
- Flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- Civil Rights Assurance. The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex, or disability. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the **RECIPIENT** on the basis of race, color, national origin, age, sex (in education activities) or disability.

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23. COLORADO SPECIAL PROVISIONS

These Special Provisions apply to all Grants except where noted in italics.

A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Subgrant Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Subgrant Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 4. INDEPENDENT CONTRACTOR

Subgrantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Subgrantee nor any agent or employee of Subgrantee shall be deemed to be an agent or employee of the State. Subgrantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Subgrantee or any of its agents or employees. Unemployment insurance benefits will be available to Subgrantee and its employees and agents only if such coverage is made available by Subgrantee or a third party. Subgrantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Subgrant Agreement. Subgrantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Subgrantee shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

E. 5. COMPLIANCE WITH LAW.

Subgrantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Subgrant Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Subgrant Agreement, to the extent capable of execution.

G. 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Subgrant Agreement or incorporated herein by reference shall be null and void.

H. 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Subgrant Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Subgrantee hereby certifies and warrants that, during the term of this Subgrant Agreement and any extensions, Subgrantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Subgrantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Subgrant Agreement, including, without limitation, immediate termination of this Subgrant Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Subgrant Agreement. Subgrantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree

with the performance of Subgrantee's services and Subgrantee shall not employ any person having such known interests.

J. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. 11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Subgrantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Subgrant Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Subgrant Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Subgrant Agreement or enter into a contract with a Subcontractor that fails to certify to Subgrantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Subgrant Agreement. Subgrantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Subgrant Agreement is being performed, (b) shall notify the Subcontractor and the granting State agency within three days if Subgrantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Subgrant Agreement, (c) shall terminate the contract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Subgrantee participates in the State program, Subgrantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Subgrantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Subgrantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Subgrant Agreement for breach and, if so terminated, Subgrantee shall be liable for damages.

L. 12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.

Subgrantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Subgrant Agreement.

SPs Effective 1/1/09

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THE PARTIES HERETO HAVE EXECUTED THIS SUBGRANT AGREEMENT

*** Persons signing for Subgrantee hereby swear and affirm that they are authorized to act on Subgrantee's behalf and acknowledge that the State is relying on their representations to that effect.**

SUBGRANTEE
City of Loveland, Colorado

By: William D. Cahill
 Title: City Manager

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
 Department of Natural Resources
 Colorado Division of Parks and Wildlife

 * Signature

 (for) Mike King, Executive Director

Date _____

Date _____

LEGAL REVIEW
 John W. Suthers, Attorney General

By _____
 Signature – Assistant Attorney General

Date _____

ALL SUBGRANT AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS 24-30-202 requires the State Controller to approve all State Grants. This Subgrant Agreement is not valid until signed and dated below by the State Controller or delegate. Subgrantee is not authorized to begin performance until such time. If Subgrantee begins performing prior thereto, the State of Colorado is not obligated to pay Subgrantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By _____
 Susan Borup, DNR Controller

Date _____

EXHIBIT A
Project Narrative

STATE: Colorado
PROJECT: F13AF00300
PROJECT TITLE: River's Edge Trails and Pier – Loveland

A. PROJECT INFORMATION:

Need: The City of Loveland purchased the 121-acre River's Edge Natural Area in 2011. The site contains three ponds (11.7 acres, 13.6 acres, and 23.2 acres) totaling 48.5 acres in surface area. The ponds were created in the 1980s from a gravel mining operation. All three ponds contain suitable habitat, water quality and depth to support warm water sport fish. The natural area is currently closed to the public, but the city plans to open the ponds and the property to public fishing in 2013.

The natural area is located within city limits, will be a high visibility project and will be easily accessible by the public. The city also anticipates hosting event such as fishing clinics, fishing derbies and Senior Fishing Days at the ponds. The proposed project will develop access to and improve fishing opportunities on the ponds.

Expected Benefits: The River's Edge Natural Area is centrally located in Loveland. Opening the property to new public access will significantly expand angling opportunities. The property's easy access from regional trails and from the city center will result in an estimated 20,000+ angler recreation days annually. The location will also make fishing clinics, derbies and other angling related events more visible in the community.

Location: River's Edge Natural Area is located close to the center of Loveland, with easy trail and road access. A map showing the location of the project site is attached.

Costs: Total project costs are estimated to be \$180,000. Of this amount, local matching funds will cover \$90,000 (50% of project cost). The remaining \$90,000 (50% of project cost) is requested in Sport Fish Restoration Program funds. A more detailed budget is attached.

Personnel:

Jim Guthrie	Colorado Division of Parks and Wildlife, Grant Coordinator	303-291-7563
Ben Swigle	Colorado Division of Parks and Wildlife, Aquatic Biologist	970-472-4364
Larry Rogstad	Colorado Division of Parks and Wildlife, Area Wildlife Manager	970-472-4461
Rob Burdine	City of Loveland, Natural Areas Manager	970-962-2728

Maintenance: Maintenance of the improvements will be the responsibility of the City of Loveland Parks and Recreation Department.

Land Control: No land control issues are associated with the project. The property is owned in fee title by the project sponsor.

B. PERFORMANCE MEASURES AND STANDARDS: As a condition of being a recipient of these federal grant funds, Subgrantee agrees to the following:

1. Timeline and deliverables: The following improvements will be completed no later than the Project Completion end date of December 31, 2015:
 - (a) Construct approximately 10,000 linear feet of crusher fine trails to facilitate public access to the three ponds;
 - (b) Stabilize and improve angling conditions along a total of approximately 500 feet of shoreline on the three ponds;
 - (c) Install one 39' x 10' ADA-accessible fishing pier; and
 - (d) Construct one belly boat access ramp at each of the ponds.

2. **Approach:** The City of Loveland has contracted with two engineering firms to design the improvements at River's Edge. The civil engineering firm of Ayers and Associates has worked on several city-run projects, including the adjacent Fairgrounds Park, which also was improved with Fishing is Fun support. Logan Simpson Design provided additional engineering for the project, and has been involved with several Parks and Recreation projects over the last several years.

The city expects to contract out for construction services and/or use city work crews for a portion of the work. Improvements planned at the project site include:

- Construct approximately 10,000 linear feet of crusher fine trails to facilitate public access to the three ponds;
- Stabilize and improve angling conditions along a total of approximately 500 feet of shoreline on the three ponds;
- Install one 39' x 10' ADA-accessible fishing pier; and
- Construct one belly boat access ramp at each of the ponds.

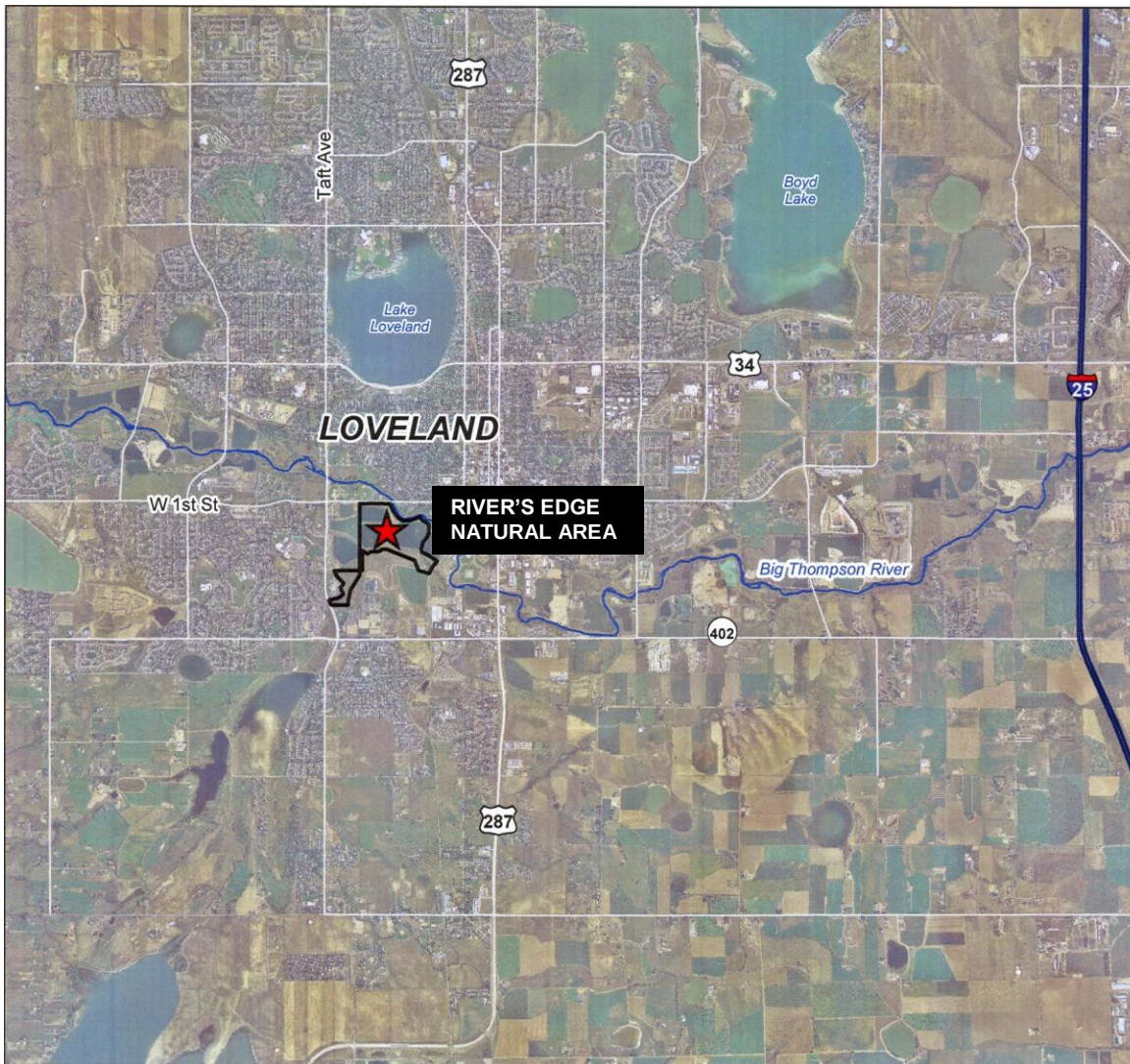
- C. REPORTING REQUIREMENTS:** As required in Section 8 of the Subgrant Agreement, reports from Subgrantee will be submitted to the State Coordinator.
- D. MONITORING REQUIREMENTS:** The State will monitor Subgrantee's performance by reviewing the quarterly reports required in Section 8 of the Subgrant Agreement. Site visit(s) will be conducted prior to making final payments on any work performed by the Subgrantee.
- E. NONCOMPLIANCE RESOLUTION:** Any problems with the project will follow the resolution process outlined below, before the remedies in Section 15 are immediately applied. In the event the State and the Subgrantee need to escalate a case regarding noncompliance, the following Resolution Team members and responsibilities have been identified.

Division of Parks and Wildlife	Subgrantee
<u>State / CPW Aquatic Biologist (Ben Swigle)</u> • Entry point contact to the resolution process • Is responsible for ascertaining the project impacts based on the information provided • Owns resolution of most issues • Responsible for contacting Fishing is Fun State Coordinator in writing for situations which cannot be resolved at project level	<u>Subgrantee / Project Manager – Natural Areas Manager, City of Loveland (Rob Burdine)</u> • Entry point contact to the resolution process • Owns resolution of most issues
<u>Resolution Project Manager – Fishing is Fun State Coordinator (Jim Guthrie)</u> • CPW advocate during the resolution process • Is responsible for ascertaining the timeline and financial impacts based on the information provided • Owns the problem and the overall action plan • Provides written notification to the Subgrantee identifying the noncompliance issue and expected actions on the part of the Subgrantee in order to remedy the situation • Obtains CPW and U.S. Fish and Wildlife Service approval for the action plan • Works to ensure that all parties are properly informed throughout the resolution • Responsible for contacting next level Resolution Manager if needed	<u>Subgrantee / Resolution Project Manager – Director of Parks and Recreation, City of Loveland (Gary Havener)</u> • Subgrantee advocate during the resolution process • Obtains additional resources, as needed • Works to ensure that Subgrantee parties are properly informed throughout the resolution • Responsible for contacting next level Resolution Manager for the Subgrantee if needed
<u>Resolution Assistant Director – Supervising Budget Analyst (Susan Hunt)</u> • Next additional level contact if needed	

Marilyn Hilgenberg, Business Manager
Loveland Parks and Recreation Department

Attachment 1: Location Maps

Map of proposed construction area HP/Agilen¹ River's Edge Natural Area, Loveland, CO



**RIVER'S EDGE
NATURAL AREA**

*LOCATION
MAP*

LEGEND

 River's Edge Natural Area

0.5 0.25 0 0.5 1
Miles

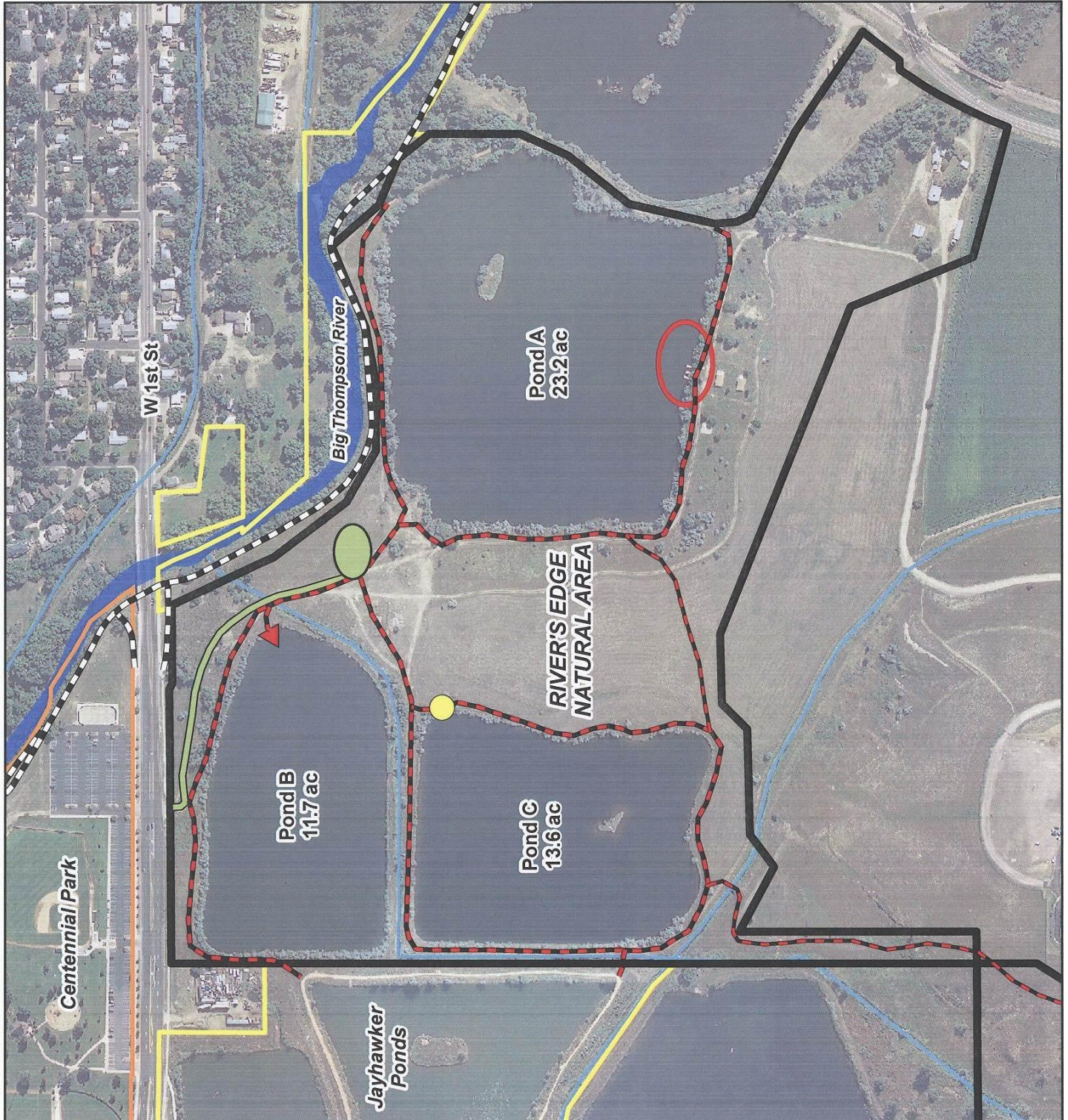
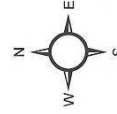


RIVER'S EDGE NATURAL AREA

Fishing Is Fun Project Map

LEGEND

- River's Edge Natural Area
- Proposed Trails
- Proposed Fishing Pier
- Proposed Belly Boat Input
- Proposed Access Road
- Proposed Parking Lot
- Existing Dock (refurbish)
- Existing Recreation Trail
- Adjacent Open Lands
- Parks
- Big Thompson River
- Ditches/Canals



CPW File No. 13-FIF-53336

CMS # 53336

EXHIBIT B
Budget

River's Edge Trails and Pier – Loveland

Item	Matching Funds (50%)	Federal Share (50%)	Total Cost (100%)
Design, engineering, permitting	\$10,000	\$0	\$10,000
Crusher fine trails	\$50,000	\$65,000	\$115,000
Bank stabilization / shoreline access	\$10,000	\$10,000	\$20,000
Fishing pier and belly boat access	\$20,000	\$15,000	\$35,000
TOTAL	\$90,000	\$90,000	\$180,000

Pre-Agreement Costs: Project sponsors may request up to \$10,000 in pre-agreement costs related to project design, engineering, and permitting. The sponsors understand that all such costs are subject to review and approval by the USFWS, must be properly documented, and must be consistent with the project as described in the application.

EXHIBIT C-1 PROJECT DOCUMENTATION REPORT

TYPES OF DOCUMENTATION REQUIRED FOR REIMBURSEMENT REQUESTS:

1. One fully itemized expenditure work sheet (see Exhibit C-2 for an example) to which the following certification must be included and signed:
“This itemization reflects only those items eligible for reimbursement as described in the Subgrant Agreement.”
2. Copies of purchase order, invoices, receipts, etc. for all expenditures listed on the itemized work sheet. Invoices must indicate the items and amounts that apply to the project. This is particularly important for invoices that include items or work for projects outside the scope of the Fishing Is Fun project.
3. Copies of cancelled checks (front and back) for the invoices. The Fishing Is Fun program is a reimbursement program, so the program coordinator needs to be able to document that payment has been made for the items used as match and for which reimbursement is requested.
4. A signed copy of the Request for Reimbursement form (Exhibit C-3).
5. If subcontractors are used in the performance of the project, all related documentation of a competitive bid process to include, but not necessarily limited to, copies of bid notices, requests for proposals, bid tabulation sheet, etc.
 - a. For municipalities, in place of the above, a certification is required that verifies use and compliance with its own bid process and rules.
6. If the project involves labor and equipment provided from in-house sources (e.g. county road crews, public works department crews), documentation of the normal hourly wage or usage rates is required. The times in which the labor and/or equipment was used on the Fishing Is Fun project should be clearly noted.
7. When requesting **PARTIAL** reimbursement, documentation must be provided for in-kind, donated or cash match at the overall cost share rate of the project.
8. For the **FINAL** reimbursement request, include one copy of the as-built site plan with the following features:
 - a. Location and identification of all facilities which were installed or constructed under the Fishing Is Fun project.
 - b. Project title and number and date of preparation of the site plan.
 - c. Project boundaries. In most cases the project boundary is the same as the property boundary.
 - d. Identification and location of all overhead utility and/or telephone lines and any other known outstanding rights, easements or other interests in the property which are held by others. If there are none, then the following statement should be printed on the site plan:
“There are no known outstanding rights, easements or other interests in the property which are held by others.”

EXHIBIT C-2

[SAMPLE] ITEMIZED WORK SHEET

PROJECT NAME: Eaton Fishing Improvements

Contract Encumbrance No. C108

Subgrant Agreement No. FIF-

	LOCAL MATCH (Cash & In-Kind) Expended	Payment Request from Subgrant	LOCAL MATCH (Cash & In-Kind) Expended	Payment Request from Subgrant	PARKING LOTS		CHECK NO.	DATE PAID
					BARRIERS			
Doe Company	\$4,500.00	\$13,500.00					126	5/16/05
Doe Company			\$1,250.00	\$3,0.00			3217	6//7/05
ABC Company			\$750.00	\$2,250.00			671	6/20/05
Smith & Son Inc.	\$125.00	\$375.00					905	7/7/05
F.Y. Volunteers	\$1,000.00						915	8/8/05
TOTAL	\$5,625.00	\$13,875.00	\$2,000.00	\$6,000.00				
TOTAL COST	\$27,500.00							

Signed

Date

Certification:

This itemization reflects only those items eligible for reimbursement as described in Subgrant Agreement.

EXHIBIT C-3
REQUEST FOR REIMBURSEMENT

P. 133

Project Name: _____		Subgrant Agreement No. <u>FIF-</u> _____ Encumbrance No. <u>C108</u> _____	
Subgrantee: _____		Address _____ _____	
Date Prepared _____			
Request No. _____	Subgrant Amount \$ _____ / % of total project _____		
	Match Amount \$ _____ / % of total project _____		
Work Period: _____ to _____		Total Contract \$ _____	

Description of Reimbursable Amounts by Work Item	Previously Requested	This Request	To Date
1)			
2)			
3)			
4)			
5)			
6)			
7)			
8)			
9)			
10)			
11)			

Net Earned Payment	\$ _____	\$ _____	\$ _____
Less Previous Payment			\$ _____
Net Payment This Request			\$ _____

% Time Elapsed	% Work Completed

Project Status:

Notice to Proceed Date: _____

Original Project Completion Date: _____

Amended Project Completion Date: _____
(if applicable)

<u>PROJECT SPONSOR USE</u> Prepared by (Signature) _____ Project Coordinator Phone: _____ Project Coordinator email: _____	<u>DPW USE ONLY</u> Administrative Review _____ <u>Verified amounts:</u> Reimbursable expenses _____ Matching expenses _____

Approved by: (Person with financial responsibility) _____ (Signature and Title) OR _____ Subgrantee: (Same as signature on Subgrant Agreement)	<u>DPW USE ONLY</u> Approved by _____ (Signature and Title)

EXHIBIT C-4
REPORT OF
SUBGRANT AGREEMENT PERFORMANCE

FISHING IS FUN			Date:		
Project Name:			Contract Encumbrance No. C108		
Subgrantee:					
Address:					
Phone: ()			Project Coordinator		
Starting Date:		Official Actual		Completion Date:	
Time Extension Approved:		# of days		Reason:	
Total Extension Accumulated:		# of days		# of Change Approved Pending Orders:	
Percent of Work Completed:		Percent of Time Elapsed:			
Description of completed work					
			Signature		
			Project Coordinator		

Exhibit D
FISHING IS FUN
Annual Report

[illegible]

Submitted by: _____
Signature/Title

Date: _____

Regional Approval: _____
Signature/Title

Date Verified:



Volunteer Time Tracking Sheet

Project Name or Location: _____

Date: _____

Printed Name	Signature	Type of Work Done	Hours Worked	Rate	Total

Project Leader Signature: _____

Date: _____

EXHIBIT E**Volunteer Time Tracking Sheet Instructions –**

Accurate recording of volunteer hours for Division of Parks and Wildlife-funded projects is an important part of administering a grant. Inadequate tracking of volunteer labor will reduce the amount of match the project sponsor can be credited for in a project, and can reduce the amount of funding the Division of Parks and Wildlife can provide. The result could be that a project sponsor has to pay for portions of a project that they were not planning on. It is strongly recommended that volunteer information be collected at the time of the work; collecting the information weeks or months is very difficult, if not impossible, to do.

The attached Volunteer Time Tracking Sheet can be used by project leaders to track volunteer time. Project leaders can use their own sign-in sheets, but they should be sure that any alternatives include the main information included in the attached sheet – name and signature of volunteer, hours worked, project identification, date and supervisor signature certifying accuracy of information.

The attached sheet is largely self-explanatory. The following addresses specific information items requested on the sheet –

- 1) Project Name or Location – This is the common name of the project which helps identify it – e.g. Clear Creek habitat improvement, Blue Lake Fishing Pier.
- 2) Type of Work Done – very short description of the work done by the volunteer – e.g. revegetation, trail construction
- 3) Rate – the hourly rate at which the volunteer labor is valued for the project. This figure can be obtained from the project contact or the Federal Assistance coordinator in the Division of Parks and Wildlife. As an example, for 2009, general labor contributed to a project is normally valued at \$20/hour. That figure may vary depending on special skills that may be donated, or reflecting a change in the value of general labor. This figure can be obtained after the work is done, and entered on the form by the project leader at that time.
- 4) Project Leader and Signature – This is the name and signature of the on-site project leader that certifies that the listed work was done.

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As
Amended
As of 10-15-10

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. "Award" means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1.** Grants;
- 1.1.2.** Contracts;
- 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4.** Loans;
- 1.1.5.** Loan Guarantees;
- 1.1.6.** Subsidies;
- 1.1.7.** Insurance;
- 1.1.8.** Food commodities;
- 1.1.9.** Direct appropriations;
- 1.1.10.** Assessed and voluntary contributions; and
- 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

- 1.1.12.** Technical assistance, which provides services in lieu of money;
- 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14.** Any award classified for security purposes; or
- 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. "Central Contractor Registration (CCR)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.bpn.gov/ccr>.

1.3. "Contract" means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.4. "Contractor" means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.5. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity.

Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.

- 1.6. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;
 - 1.6.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.6.2. A foreign public entity;
 - 1.6.3. A domestic or foreign non-profit organization;
 - 1.6.4. A domestic or foreign for-profit organization; and
 - 1.6.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.7. **"Executive"** means an officer, managing partner or any other employee in a management position.
- 1.8. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.9. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."
- 1.10. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.
- 1.11. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.12. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.
- 1.13. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's Central Contractor Registration (CCR) profile, if applicable.
- 1.14. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **"Transparency Act"** means the Federal Funding Accountability and Transparency Act of 2006

(Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **CCR.** Contractor shall maintain the currency of its information in the CCR until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update the CCR information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in CCR for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to CCR and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these supplemental provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is

subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.

7. Subrecipient Reporting Requirements. If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To CCR. A Subrecipient shall register in CCR and report the following data elements in CCR *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1** Subrecipient's DUNS Number as registered in CCR.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

9. Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

FIRST READING March 5, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR A FEDERAL GRANT FROM THE UNITED STATES FISH AND WILDLIFE SERVICE FOR CONSTRUCTION OF CERTAIN COMPONENTS OF THE RIVER'S EDGE NATURAL AREA DEVELOPMENT PROJECT

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That revenues in the amount of \$90,000 from a Fishing is Fun Grant in the Open Space Fund 202 are available for appropriation. Revenues in the total amount of \$90,000 are hereby appropriated for construction of certain components of the River's Edge Natural Area Development Project and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Open Space Fund 202**

Revenues

202-51-590-0000-32000	Federal Grant	90,000

Total Revenue		90,000

Appropriations

202-51-590-0000-49399	Other Capital	90,000

Total Appropriations		90,000

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

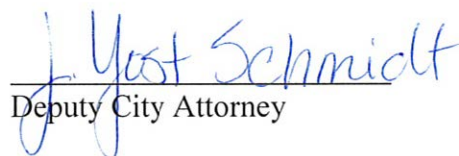
ADOPTED this ____ day of March, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney

**CITY OF LOVELAND**
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 10
MEETING DATE: March 5, 2013
TO: City Council
FROM: William D. Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:

Review and acceptance of Report of the City Council's Annual Goal-Setting Session

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion accepting and approving the Report of the City Council's Annual Goal-Setting Session held on January 26, 2013.

OPTIONS:

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

DESCRIPTION:

This is an administrative action accepting and approving the Report of the City Council's Annual Goal-Setting Session held on January 26, 2013.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

The City Council held its Annual Goal-Setting Session on January 26, 2013. This annual event is intended for the Council to set major goals and priorities for the coming year. The Council's work is contained in the Report (Attachment 2), and is further summarized in the one-page Summary (Attachment 1).

The Report provides a complete record of the proceedings of the meeting. The Summary is based on the meeting, and reflects further staff work and refinement to identify responsible lead parties for each action, as well as selection of project milestones to be achieved this year.

As an additional accountability measure, staff anticipates providing quarterly reports to the City Council concerning progress on each of the priority actions. A mid-year review will also be scheduled for August 2013 as a study session.

LIST OF ATTACHMENTS:

1. Summary of City Council Advance
 2. Report of the City Council Advance
-

REVIEWED BY CITY MANAGER:

A handwritten signature in cursive script, reading "William D. Cahill".



City of Loveland
500 East Third Street
Loveland, CO 80537

City of Loveland 2013 Council Goals and Priorities

all dates are for completion of milestones

Goals and Activities	Lead Responsibility	Schedule
Goal 1, Public Safety		
1.1 Place the Police firing range and training facility into the 10-Year Capital Improvement Plan	Police	September 2013: Adopt defined project as part of 2014 Budget
1.2 Complete and adopt a long-term Police staffing plan	Police	November 2013: City Council adoption of staffing plan
Goal 2, Economic Vitality		
2.1 Develop definition and mission description of the accelerator program	Economic Development	July 2013: City Council approval of City role in accelerator project
2.2 Continue downtown catalyst projects effort	Economic Development	December 2013: Developer selection and exclusive negotiating agreement for next catalyst project.
2.3 Move forward with allowing museum to explore expansion	Cultural Services	July 2013: City Council direction on operating finances and starting design concept
2.4 Strategy for Airport area economic development	Airport/Economic Development	November 2013: City Council approval of new strategy for Airport area development
2.5 402 Corridor Plan and Expansion of County IGA	Development Services	December 2013: City Council adoption of completed Corridor Plan
2.6 Continue efforts to restore the Pulliam Building	Economic Development	December 2013: City Council approval of a strategy to revitalize the Pulliam Building
2.7 Bring the ArtSpace Project to construction	Economic Development	August 2013: Secure tax credit funding

2.8 Evaluate the Downtown URA	Economic Development	October 2013: City Council Study Session and direction on URA
2.9 Develop a Highway 287 Corridor Plan	Development Services	December 2013: City Council adoption of completed Corridor Plan
2.10 Review current Council policies on downtown properties, downtown redevelopment process, and goals	Economic Development	August 2013: City Council Study Session and direction for downtown actions

Goal 3, Infrastructure Quality

3.1 Move forward with Airport “blended airspace”	Airport	September 2013: Agreement executed with State for inclusion in blended airspace project
3.2 Review CEFs for priorities, transition to plan approach	Development Services/Finance/Executive	December 2013: Adoption of underlying departmental plans and retention of consultant to develop CEFs plan
3.3 Work with Centerra Metro District to prioritize next regional improvements	Development Services	September 2013: City Council and Metro District adoption of necessary MFA amendments

Goals and Activities

Lead Responsibility

Schedule

Goal 4, Financial and Administrative

4.1 Budget Scenarios, methods proposed and cost allocation	Finance	June 2013: Council Study Session and direction for 2014 Budget
4.2 Discuss adding funding to the Human Services Commission Grant Program	Community Partnership	June 2013: Council Study Session and direction for 2014 Budget



City of Loveland

City Council Goal-Setting

January 26, 2013

Mayor Cecil Gutierrez
Mayor Pro Tem Daryle Klassen
Council Member Dave Clark
Council Member Phil Farley
Council Member John Fogle
Council Member Hugh McKean
Council Member Joan Shaffer
Council Member Chauncey Taylor
Council Member Ralph Trenary

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Review of the Previous Year's Goals
Goals for 2013
Governance Issues
Follow-Up and Implementation

Exhibits

1. Agenda for the Goal-Setting Session
2. 2012 City Council Goals and Priorities
3. Compendium of Possible Topics
4. Classification of Topics at January 8 Study Session

Introduction

The purpose of the Loveland City Council's annual Goal-Setting Session is to set priorities and goals for the year. This involves a review of progress on the past year's goals; identification of topic areas for discussion; ranking issues in priority order; and considering issues of meeting management and governance.

The Loveland City Council Goal-Setting Session was held January 26, 2013, at Group Publishing. Dallas Everhart served as facilitator. All Council members attended, as did members of the City's executive Management Team. The Agenda for the Goal-Setting Session is included as Exhibit 1.

The one-day Goal-Setting Session was preceded by Council and staff submittal of possible topics for discussion, and a ranking exercise at the January 8 City Council study session to narrow the list of topics to a manageable number for the January 26 discussion.

Review of The Previous Year's Goals

At the Study Session preceding the Goal-Setting Session, there was a review of last year's goals, and progress made. These are found in Exhibit 2.

Goals for 2013

Four goal areas were identified for 2013 as a result of tabulating Council priorities. Specific action items were identified for each of the four goal areas, and priorities assigned. The four goal areas are:

1. Economic Vitality
2. Public Safety
3. Infrastructure Quality
4. Financial and Administrative

The number in parentheses following each item is the number of Council votes each received in the January 26 Goal-Setting Session. Goals without numbers are carried over from a previous year.

Goal 1, Public Safety

1.1 Place the Police Firing Range and Training Facility into the 10-Year Capital Improvement Plan (7)

The current location has a number of problems. An interdepartmental team has been developing a tentative concept for a new location, with alternative locations under consideration (including the Airport, or the City-owned property across the street from the Police and Courts building). Police are also inquiring of other law enforcement agencies in the region as to their interest in participating.

1.2 Complete and Adopt a Long-Term Police Staffing Plan

This item is carried forward from 2012. Two phases of the plan have been accomplished with two phases left to complete. This would result in a ten-year strategy for staffing and resources for the Police Department.

Goal 2, Economic Vitality

2.1 Develop definition and mission description of the accelerator program: timing to begin, composition, potential cost, desired results. (6)

City staff and a group of community leaders have been discussing the “Stone Soup” approach to a business accelerator project to be located at the Rocky Mountain Center for Innovation and Technology. The roles of the sector and the City need to be discussed and clarified, and a business plan created if this project is to go forward.

2.2 Continue Downtown Catalyst projects effort. (5)

The City has approved the Brinkman project as a “north” catalyst project. A second “catalyst” project is intended for Third Street, and an additional project for the north side of Fourth Street. Developer and tenant interest needs to be recruited, property assembly complete, and development agreements negotiated.

2.3 Move forward with allowing museum to explore expansion. (5)

A vision has been described for a transformed Museum to become a major cultural and economic destination for northern Colorado. Total project cost is currently estimated at \$15 million. The Council did not approve proceeding with conceptual design or fundraising in 2012. Recent discussion has focused on the possibility of a new taxing district to support expanded and continued Museum operation.

2.4 Strategy for Airport area economic development. (7)

This item is carried forward from 2012, but the recent departure of Allegiant has focused more attention and effort on Airport development, and how it integrates with the area around it. More deliberately and specifically include this area in the City's economic development planning and strategy. There are significant land holdings and development opportunities surrounding the Airport, which need to be aggressively pursued.

2.5 402 Corridor Plan and Expansion of County IGA.

This item is carried forward from 2012; efforts so far have focused on discussion with Johnstown about land use overlap areas. State Highway 402 will be the primary access and gateway to the new Rocky Mountain

Center for Innovation and Technology. The development of a corridor plan for State Highway 402 and expansion of the City's IGA with Larimer County (IGA) is now even more important. The County has never adopted the Loveland Overlay Zone for a large portion of the south east quadrant of the Loveland Growth Management Area, including the State Highway 402 corridor extending west from I-25 to approximately South St. Louis Avenue. This planning effort involves a public outreach component and collaboration effort with property owners in the study area, the Larimer County Commissioners and planning staff, the Low Point Sanitation District, Johnstown Town Board, CDOT and the Little Thompson Water District.

2.6 Continue efforts to restore the Pulliam Building. (2)

This item is carried forward from 2012. Initial conceptual studies have been done to restore the Pulliam Building, and repurpose it to a multiple-use auditorium. Total project cost is currently estimated at about \$3 million. Project proponents have developed a draft business plan intended to reduce reliance upon the City's General Fund for operational costs. Community fundraising is proceeding. The project would be a collaboration between a nonprofit board and the City.

2.7 Bring the ArtSpace Project to construction.

This item is carried forward from 2012. Artspace has applied twice for tax credit funding for a 35-unit residential complex for artists centered on the Feed & Grain property and has the property under contract. A third application is planned for March 1, and ArtSpace has requested a \$300,000 loan from the City to complete project financing. Total project cost is currently estimated at about \$9 million.

2.8 Evaluate the Downtown URA. (7)

The downtown URA has generated little property tax increment (currently about \$50,000 annually). The Lincoln Place project was accomplished through removal of a portion of the Downtown URA, creating a more specific URA, and that URA has been amended now for the Brinkman Partners project. Study for evaluation of the Downtown URA, and whether it should continue in its current form could provide a basic building block in downtown revitalization.

2.9 Develop a Highway 287 Corridor Plan. (1)

This item is carried forward from 2012. Create a plan for the Highway 287 corridor to guide its development and improve the quality of development along the length of the corridor. Such a plan would call for effort and participation by Development Services, Economic Development, Public Works, Water & Power, and other City staff.

2.10 Rontinue current Council policies on properties downtown, downtown redevelopment process, and goals. (7)

Council needs to review and discuss current downtown direction, including goals, parameters, property acquisition, desired types of development, costs, resources and timeframes. The existing Downtown Strategy provides an adopted framework for review.

Goal 3, Infrastructure Quality

3.1 Move forward with “Blended Airspace” project at the airport. (7)

With the departure of Allegiant, air traffic control methods are being looked at. Besides the traditional air traffic control tower, there's a new technology-driven method being developed called “blended airspace,”

which allows air traffic control from a remote location at a lower cost. The State Aeronautics Division has invited Loveland and Fort Collins to participate in the development of the next phase of the concept, and both cities have expressed interest. This may be a 2 to 3 year effort.

3.2 Review CEFs for priorities (possible eliminations, reductions, or increases), and transition from the current “Buy-In” model to a “Plan” approach.

Every five years, the City updates the Capital Expansion Fee system to take into account the additions of capital improvements and shifts in the economic base of the community. This was done in 2012, with one of the outcomes being Council direction to reconsider the basis of the CEF model itself. As previously described to Council, this will be a major effort to create plans for each of the functions receiving CEFs, and then base the CEF model and plan on the underlying master plans. It's expected that the “underlying plans” part will take the majority of 2013, and the CEF plan revision would not be complete until later in 2014.

3.3 Work with Centerra Metro District to prioritize next regional improvements. (7)

The listing of regional improvements for Centerra could be updated and modified. Projects for discussion include the extension of Kendall Parkway under I-25, Boyd Lake Avenue North, and Highway 34 widening.

Goal 4, Financial and Administrative

4.1 Budget Scenarios, methods proposed, and cost allocations. (2)

The budget's assumptions, conditions and guiding principles are a critical point in the budget development process where the senior leadership of an organization has great influence. Completion of the cost allocation system is expected in 2013, and consideration of “Priority-Based Budgeting” methods. Priority-based budgeting is not proposed for full implementation on 2013 for the 2014 budget, but a Council Study Session to learn about the system will be valuable.

4.2 Discuss adding funding to the Human Services Commission Grant Program. (6)

The Human Services Commission has made a request for increased funding, and the Council will consider and address this request.

Governance Issues

The Council discussed possible revisions to the Council's rules and procedures for operation. There was a general consensus that the rules should be flexible enough for smooth operation, and reflect the actual procedures now in use. The concept of time limits on meetings should not be included in the rules. Revised rules will be brought back to a Council Study Session.

Follow-Up and Implementation

The following specific measures will be carried out to implement the goals and priorities from the Goal-Setting Session.

1. Publish this Report of the Goal-Setting Session, and present it to the City Council Study Session for ratification.
2. Create periodic reports to Council on the goals and priorities established.
3. Hold a Mid-Year Review to monitor the results to date on the goals, and make any necessary mid-course corrections.

Exhibit 1: Agenda for the Goal-Setting Session



City Council Goal-Setting Session Agenda January 26, 2013 8:00 – 5:00 Group Publishing

8:00	Mayor Gutierrez opens the meeting Introductions and Expectations (commit to commit)
8:15	Staff Report on 2012 Projects (recognize success) Project update; identify outstanding items & lessons learned
9:30	Challenges for the next 10 years (be prepared)
9:45	Morning Break
10:00	Review draft list of activities (understanding) <u>Staff</u> provides interpretation of activity, status, and outcomes Council and Staff discuss background & initial resource requirements
11:15	Draft activity priorities (CC votes 1 dot per priority) Give each Council member dots (estimate 25% of projects) Initial identification of highest priorities
Noon	Brief break for lunch, fresh air, and time to consider trends
12:30	Council discussion of their top priorities, Council perspective
1:30	Staff confirms background, current issues, potential unintended consequences, problem statement, resources and deliverables for highest priority items.
2:30	Afternoon Break
2:45	Modify council priority to current list of activities by core goals Eliminate low priority items with few votes, final reallocation of council dots (reallocation of council dots to open items) Seek majority support for priorities Identify deliverable, champion, resources and deadlines
3:45	Governance
4:30	Commitments to new outcomes as a team

Exhibit 2: 2012 City Council Goals and Priorities



City of Loveland
500 East Third Street
Loveland, CO 80537

Summary: City of Loveland 2012 Council Goals and Priorities

Goals and Activities	Lead Responsibility	Schedule
Goal 1, Economic Vitality		
1.1 Develop a Highway 287 business corridor development plan	Development Services/Economic Development	Draft Work Plan Scope by December 2012
1.2 Market Loveland aggressively for economic development	Economic Development	Marketing for primary employers, retail, downtown, visitation and creative sector operational by September 2012
1.3 Move forward with expansion for the Loveland Museum	Cultural Services	Secure architect and launch capital campaign by August 2012
1.4 Airport area economic development planning	Airport/Economic Development	Development plan to Airport Steering Committee by December 2012
1.5 Highway 402 Corridor Plan and expansion of County IGA	Development Services	IGAs with affected jurisdictions by September 2012; Draft Corridor Plan by December 2012
1.6 Continue efforts to restore the Pulliam Building	Economic Development	Operating plan and finance applications by December 2012
1.7 Carry out a signage program to direct visitors and residents to important Loveland destinations	Economic Development	Complete placement of 1st phase signs by October 2012
Goal 2, Public Safety		
2.1 Develop a long-term funding plan for Police and Fire, including a long-term Police staffing plan	Police, Fire	Police staffing plan conceptually approved by September 2012; draft safety funding plan to Council by December 2012
2.2 Plan for Fire Station 2 and acquire property	Fire	Land acquisition and conceptual review approval by December 2012

Goals and Activities

Goal 3, Infrastructure Quality

3.1 Accelerate the undergrounding of existing power lines	Water and Power	Council direction by June 2012 to incorporate into 2013 budget
3.2 Power infrastructure needs: short - long term strategies	Water and Power	Council direction on transmission and distribution by July 2012
3.3 Water infrastructure needs: short - long term strategies	Water and Power	Council direction on infrastructure and financing by June 2012
3.4 Carry out a cross connection / backflow control program	Water and Power	Council approval of program by April 2012
3.5 Develop a more stable funding stream for street maintenance	Public Works	Street maintenance funding concept to Council by June 2012
3.6 Plan for Public Works Service Center expansion	Public Works	Conceptual design complete by August 2012

Goal 4, Financial and Administrative

4.1 Capital Expansion Fees Study	Development Services	Draft study to Council by August 2012

Implementation

CC.1 Review City Council meeting procedures and guidelines	City Attorney and City Manager	Council consideration of amended procedures by August 2012

Continued Actions for 2011

11.1.1 Regional Crime Lab	Police	Project launch by June 2012
11.2.1 Economic Development Strategy	Economic Development	Council adoption by March 2012
11.2.2 Downtown Catalyst Project	Economic Development	Project agreement by June 2012
11.2.8 Artspace Project	Economic Development	Project financing by December 2012
11.4.2 Raw Water Master Plan	Water and Power	Council adoption by June 2012
11.5.5 Transportation Master Plan	Public Works	Council adoption by October 2012

Exhibit 3: Compendium of Possible Topics

This is a listing of all topics suggested for priority setting as presented at the January 8 Study Session. Some were eliminated from further consideration during the tabulation of priorities. The number in parentheses preceding each item is the number of Council votes each received in the January 8 Study Session.

Public Safety

(7) Plan the Police Firing Range for Implementation. The current location has a number of problems. An interdepartmental team has been developing a tentative concept for a new location, with two locations under consideration (the Airport, or the Coty-owned property across the street from the police and Courts building). Police are also inquiring of other law enforcement agencies in the region as to their interest in participating.

(0) Develop a Long-Term Funding Plan for Police and Fire. (carried forward) This item is carried forward from 2012. Two phases of the plan have been accomplished with two phases left to complete. This would result in a ten-year strategy for staffing and resources for the Police Department.

Economic Vitality

(6) Current Council policies on properties downtown, downtown redevelopment process, and goals. Council needs to review and discuss current downtown direction, including goals, parameters, property acquisition, desired types of development, costs, resources and timeframes. The existing Downtown Strategy provides an adopted framework for review.

(4) Evaluate the Downtown URA for its effectiveness and possible restructuring. The downtown URA has generated little property tax increment (currently about \$50,000 annually). The Lincoln Place project was accomplished through removal of a portion of the Downtown URA, creating a more specific URA, and that URA has been amended now for the Brinkman Partners project. Study for evaluation of the Downtown URA, and whether it should continue in its current form could provide a basic building block in downtown revitalization.

(4) Develop definition and mission description of the accelerator program, timing to begin, composition, potential cost, desired results. City staff and a group of community leaders have been discussing the "Stone Soup" approach to a business accelerator project to be located at the Rocky Mountain Center for Innovation and Technology. The roles of the sector and the City need to be discussed and clarified, and a business plan created if this project is to go forward.

(3) Continue work of filling "Black Boxes". Several of these buildings are being addressed through current activities and proposals (Former HP/Agilent property; former Davidson's Chevrolet; former Metrolux theaters). Some remain with little interest shown in the market. Identify those that need to be redeveloped; recruit interest in them; work with owners to fill these properties.

(4) Continue Downtown catalyst projects effort. The City has approved the Brinkman project as a "north" catalyst project. A second "catalyst" project is intended for Third Street, and an

additional project for the north side of Fourth Street. Developer and tenant interest needs to be recruited, property assembly complete, and development agreements negotiated.

(0)Bring the Artspace project to construction (carried forward). This item is carried forward from 2012. Artspace has applied twice for tax credit funding for a 35-unit residential complex for artists centered on the Feed & Grain property and has the property under contract. A third application is planned for March 1, and ArtSpace has requested a \$300,000 loan from the City to complete project financing. Total project cost is currently estimated at about \$9 million.

(0)Develop a Highway 287 Corridor plan. (carried forward). This was carried forward from 2012 at the direction of the Council, to create additional time to deal with the oil and gas issue. Create a plan for the Highway 287 corridor to guide its development and improve the quality of development along the length of the corridor. Such a plan involves effort and participation by Development Services, Economic Development, Public Works, Water & Power, and other City staff.

(2) Strategy for airport area economic development planning. This item is carried forward from 2012, but the recent departure of Allegiant has focused more attention and effort on Airport development, and how it integrates with the area around it. More deliberately and specifically include this area in the City's economic development planning and strategy. There are significant land holdings and development opportunities surrounding the Airport, which need to be aggressively pursued.

(0)402 Corridor Plan and Expansion of County IGA. (carried forward). This item is carried forward from 2012; efforts so far have focused on discussion with Johnstown about land use overlap areas. State Highway 402 will be the primary access and gateway to the new Rocky Mountain Center for Innovation and Technology. The development of a corridor plan for State Highway 402 and expansion of the City's IGA with Larimer County (IGA) is now even more important. The County has never adopted the Loveland Overlay Zone for a large portion of the south east quadrant of the Loveland Growth Management Area, including the State Highway 402 corridor extending west from I-25 to approximately South St. Louis Avenue. This planning effort involves a public outreach component and collaboration effort with property owners in the study area, the Larimer County Commissioners and planning staff, the Low Point Sanitation District, Johnstown Town Board, CDOT and the Little Thompson Water District.

(4)Move forward with allowing the Museum to explore expansion. A vision has been described for a transformed Museum to become a major cultural and economic destination for northern Colorado. Total project cost is currently estimated at \$15 million. The Council did not approve proceeding with conceptual design or fundraising in 2012. Recent discussion has focused on the possibility of a new taxing district to support expanded and continued Museum operation.

(0)Continue efforts to restore the Pulliam Building. (carried forward). This item is carried forward from 2012. Initial conceptual studies have been done to restore the Pulliam Building, and repurpose it to a multiple-use auditorium. Total project cost is currently estimated at about \$3 million. Project proponents have developed a draft business plan intended to reduce reliance upon the City's General Fund for operational costs. Community fund raising is proceeding. The project would be a collaboration between a nonprofit board and the City.

Infrastructure Quality

(4)Discussion with management team about the capital plan. Items may need to be added to the Capital Plan and others modified. The Council needs discussion of capital projects with management. A Study Session is customarily scheduled in the budget process for this discussion, and could be earlier in the year (in 2012, it was August 14).

(2)Work with Centerra MetroDistrict to prioritize next regional improvements. The listing of regional improvements for Centerra could be updated and modified. One project that has been mentioned in various discussions is the extension of Kendall Parkway under I-25.

(5)Move forward with the “Blended Airspace” project at the airport. With the departure of Allegiant, air traffic control methods are being looked at. Besides the traditional air traffic control tower, there’s a new technology-driven method being developed called “blended airspace,” which allows air traffic control from a remote location at a lower cost. The State Aeronautics Division has invited Loveland and Fort Collins to participate in the development of the next phase of the concept, and both cities have expressed interest. This may be a 2 to 3 year effort.

(5)Review CEFs for priorities (possible eliminations, reductions, or increases), and transition from the current “Buy-In” model to a “Plan” approach. Every five years, the City updates the Capital Expansion Fee system to take into account the additions of capital improvements and shifts in the economic base of the community. This was done in 2012, with one of the outcomes being Council direction to reconsider the basis of the CEF model itself. As previously described to Council, this will be a major effort to create plans for each of the functions receiving CEFs, and then base the CEF model and plan on the underlying master plans. It’s expected that the “underlying plans” part will take the majority of 2013, and the CEF plan revision would not be complete until later in 2014.

Quality of Life

(2)Consider a plan to work on our “Urban Forest”. Focus more efforts on planning and maintaining Loveland's tree stock.

Sustainability Plan. Review drafts and adopt a sustainability plan. In 2008, staff began developing a draft plan to bring forward to Council for consideration on the topic of environmental sustainability; the Council has previously reviewed a draft sustainability plan in 2011 at a Study Session. The City is already doing many things but has not adopted a formal policy statement. The plan is built around already existing concepts in existing City plans, and then combines that with a strategy to identify the City's role in guiding and supporting sound environmental decision-making.

Financial and Administrative

(5)Budget Scenarios, methods proposed, and cost allocations. The budget's assumptions, conditions and guiding principles are a critical point in the budget development process where the senior leadership of an organization has great influence. Council guidance was re-introduced in 2012 (May 2 Study Session). Completion of the cost allocation system is expected in 2013, and consideration of “Priority-Based Budgeting” methods. Priority-based budgeting is not proposed for full implementation on 2013 for the 2014 budget, but a Council Study Session to learn about the system may be valuable.

(4)Structure of the municipal court vis-à-vis employee supervision. Municipal court employees are under the jurisdiction of the City Manager according to the Charter, but work closely with the Municipal Judge. Reporting relationships for these employees has recently been changed, so they now report to the City Clerk. With 2013 being a year for a municipal election, the Council may consider whether a Charter amendment may be scheduled on the ballot in the fall.

(3)Discuss adding funding to the Human Services Commission Grant Program. The Human Services Commission has made a request for increased funding, and the Council should consider and address this request.

Exhibit 4: Classification of Topics at January 8 Study Session

Topics Listing for City Council Consideration 2013

1. Mandatory or nearly so	2. Staff will do anyway, based on previous direction	3. Long term; Council participation critical to the item	4. Discretionary

Public Safety

		Police Firing Range/Training Center on 10Yr Capital Improvement Plan	

	Police Staffing		

Economic Vitality

		Current Council policies on properties downtown, downtown redevelopment and goals	

	Continue Downtown catalyst projects effort		

	Develop definition and mission description of the accelerator program, timing to begin, composition, potential cost, desired results		

		Evaluate the Downtown URA for its effectiveness and possible restructuring	

	Continue work of filling "Black Boxes"		

	Artspace		

	Airport strategy for economic development plan		

	1. Mandatory or nearly so	2. Staff will do anyway, based on previous direction	3. Long term; Council participation critical to the item	4. Discretionary
<i>Economic Vitality Continued</i>				
		Continue highway 402 Corridor Plan and Expansion of County IGA		
		Develop a Highway 287 Corridor Plan		
<i>Infrastructure Quality</i>				
			Move forward with "Blended Airspace" project at the airport	
			Discussion with Management Team about the capital plan	
				Work with Centerra MetroDistrict to prioritize next regional improvements
<i>Quality of Life</i>				
		Continue efforts to restore the Pulliam Building		
<i>Financial and Administrative</i>				
			Budget scenarios, methods proposed, and cost allocations	
			Structure of the municipal court vis-à-vis employee supervision	
	1. Mandatory or nearly so	2. Staff will do anyway, based on previous direction	3. Long term; Council participation critical to the item	4. Discretionary

**Financial and
Admin. Continued**

Re-prioritization of CEFs in order,
elimination(s), reduction(s), or
increase(s), AND Capital
Expansion Fees: Transition from
the current "Buy-In" to a "Plan"
approach

Discuss adding funding to the
Human Services Commission Grant
Program

Governance Issues

Discussion of assignment of agenda
items

**Informational
Requests**

Sustainability Draft Plan

Look at a plan that works on our
"Urban Forest"

Schedule "Community Disruptors
Training"

Develop and implement a Building
Abatement Policy

Discuss opportunities for Open
Lands partnering with HOA's to
improve "open spaces" owned by
HOA's through a grant program

**CITY OF LOVELAND****CITY CLERKS OFFICE**

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

AGENDA ITEM: 11
MEETING DATE: 3/5/2013
TO: City Council
FROM: Terry Andrews, City Clerk
PRESENTER: Terry Andrews

TITLE:

A Resolution Amending the City of Loveland Handbook for Boards and Commissions

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt the Resolution amending the City of Loveland Handbook for Boards and Commissions.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)

DESCRIPTION:

This is an administrative action to adopt an amended Handbook for Boards and Commissions. The proposed amendments to the Handbook are primarily clean up in nature.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

SUMMARY:

The proposed amendments to the Handbook are primarily clean up in nature. The amendments include:

- Addition of language to authorize the appointment of Board or Commission Alternates and to specify the length of such appointments.
- Changes to language regarding member recruitment to reflect the current process.
- Changes to language regarding attendance requirements.

In addition, the list of Boards and Commissions has been updated to reflect the dissolution of the Communications Technologies Commission and the creation of the Community Marketing Commission and the Creative Sector Development Advisory Commission.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution
2. City of Loveland Handbook for Boards and Commissions (Exhibit A to Resolution)



City of Loveland

*Handbook for
Boards and Commissions*

Revised ~~July 2008~~ March 2013

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INTRODUCTION

The public is playing an ever increasing role in local government. Citizens concerned about quality of life for themselves and their families, taxes and governmental services are speaking out as never before, and are shaping local government in a way that meets their needs. Indeed, the governing body of a city like Loveland is composed of citizens elected by their fellow citizens to set policy and to guide and direct city government.

In order to assist it in setting direction for the city, the City Council considers the advice of its various boards and commissions. Citizens who serve on boards and commissions, therefore, play an important part in translating ideas into programs and suggestions and concerns into change. They also expand the knowledge and experience base of the elected decision makers.

The City Council has engaged more and more citizens in the process of government by creating new ~~advisory~~ boards ~~and commissions~~ when the need arises. At present, the City of Loveland has the following ~~advisory~~ ~~bodies~~ boards and commissions:

Affordable Housing Commission (AHC)
 Citizens' Finance Advisory Commission (CFAC)
~~Communications Technologies Commission~~
~~Community Marking Commission (CMC)~~
 Construction Advisory Board (CAB)
Creative Sector Development Advisory Commission (CSDAC)*
 Cultural Services Board (CSB)
 Disabilities Advisory Commission (DAC)
 Fire & Rescue Advisory Commission (FRAC)
 Golf Advisory Board (GAB)
 Historic Preservation Commission (HPC)
 Human Services Commission (HSC)
 Library Board (LB)
 Loveland Utilities Commission (LUC)
 Open Lands Advisory Commission (OLAC)
 Parks and Recreation Commission (PRC)
 Planning Commission (PC)
 Police ~~Department~~-Citizen Advisory Board (PDCAB)
 Senior Advisory Board (SAB)
 Transportation Advisory Board (TAB)
 Visual Arts Commission (VAC)
 Youth Advisory Commission (YAC)

*In accordance with City Code Section 2.60.290, the CSDAC shall expire on December 31, 2013 unless extended by ordinance of the City Council.

In addition to the above, the City Council is responsible for making appointments to several boards and commissions whose powers and duties are defined under state law, and whose functions go beyond advising and making recommendations to the City Council. Those boards and commissions are:

Employees' Pension Board
 Housing Authority
 Local Licensing Authority
 Police Pension Board of Trustees
 Volunteer Firefighters' Pension Board of Trustees

PURPOSE

The purpose of this Handbook for Boards and Commissions is to explain the role of boards and commissions in advising the City Council and to set forth guidelines to assist members in carrying out their work.

CITY STRUCTURE

In order to be more effective in fulfilling their purpose, board and commission members should understand the organizational structure of the city. The City of Loveland is a home rule municipality operating pursuant to the City of Loveland Charter, adopted by the citizens of Loveland in May, 1996. The citizens have chosen a council-manager form of government. Under this form, the citizens elect eight council members, two from each ward, and one mayor at large. The entire City Council elects the mayor pro tem.

The City Council sets the goals and policies for city government, and annually adopts a budget in support of city activities. City staff, under the direction of the City Manager, is responsible for carrying out the direction of the City Council in implementing programs and services. The municipal judge, City Manager, and City Attorney report directly to the City Council. Department directors and their staffs are under the direction of the City Manager.

As the city's chief executive officer, the City Manager oversees responsibilities for the day-to-day administrative affairs of the city, including assigning staff liaisons to ~~assist~~ boards and commissions to assist them in carrying out their responsibilities. The City Manager is responsible for conveying and implementing City Council policy.

BOARD MEMBER EXPECTATIONS

Attendance

The effective operation of a board depends upon regular attendance of the members at meetings. ~~As a result, for boards which meet monthly, a member may be removed from the position prior to expiration of a term when that member is absent from 3 consecutive meetings, or 4 meetings in a year, for reasons other than illness, unless prior arrangements have been made with the board for the absence. For boards that meet more frequently than monthly, a member may be removed when that member is absent from more than 25% of the meetings, unless prior arrangements have been made with the board for the absences. Members shall be required to attend a minimum of seventy percent of meetings each calendar year. If a member is unable to attend a meeting, he or she should contact the chairperson or staff liaison at least twenty-four hours in advance of the meeting, when possible. If a member has three unexcused absences in a row, the member could lose his or her position on the board or commission. For the purposes of this rule, "unexcused absences" shall be all absences other than for illness, family emergency, or participation in other City of Loveland business.~~

~~The chairperson of the board shall be responsible for calling those board members who are not regularly attending the board's meetings in order to encourage them to attend. If a board member's attendance does not improve after being so contacted by the chairperson, the chairperson shall inform the board member in writing that the board will be considering a recommendation to Council regarding the member's possible removal from the board.~~

~~If a member is unable to attend a meeting, the secretary or chairperson of the board should be notified at least 24 hours in advance of the meeting. Repeated absences, even if not consecutive, may also be cause for removal.~~

~~Board members are encouraged to give the chairperson of the board as much advance notice as possible, preferably 90 days' advance notice, of the board member's intention to resign from the board and to advise the chairperson of the intended date of such resignation.~~

The chairperson shall provide attendance information to the City Clerk's Office upon request. Each calendar year, the City Clerk shall report to the City Council attendance information for every board and commission to include the number of meetings held by each board and commission and the number of meetings attended by each member.

Conflicts of Interest

~~The objective of City Council is that the appointed m~~Members must ~~avoid~~s any conflicts of interest. A member should also ~~carefully consider for himself or herself avoiding~~avoid even the appearance of ~~impropriety~~a conflict. ~~Since~~Because there may be areas where ~~board~~ members are unsure or unaware that a conflict exists, the following guidelines should be considered.

If a ~~board~~ member has acquired confidential information in the course of official duties, ~~that~~ information cannot be used to substantially further the member's personal financial interests.

Occasionally gifts are offered to ~~board~~ members. Rules regarding acceptance of gifts are set forth in Chapter 2.73 of the City Code.

State law provides that a ~~board~~ member shall not hold an interest in a business or undertaking that may possibly be directly and substantially economically affected by any official action of the member's board or commission. A ~~board~~ member shall not perform an official act causing an economic ~~benefit~~detriment to the member's business or economic detriment to the member's business ~~personal~~ competitors.

For ~~6~~six months following termination of office, a ~~board~~ member should not obtain employment in which a direct advantage, unavailable to others, will be gained in matters with which the ~~board~~ member was directly involved.

A ~~board~~ member shall not engage in a substantial financial transaction for private business purposes with a person under the direction of that member's board or commission.

If a member has a personal or private interest in any matter before the board or commission, the member must disclose the interest to the board or commission, must not vote on the matter, and must refrain from

attempting to influence the other ~~board~~ members in voting on the matter. However, if that member's participation is necessary to obtain a quorum or to otherwise enable the board or commission to act, the member may vote if, prior to acting, the interested member discloses the nature of his private interest. The disclosure shall be made in writing to the Secretary of State, listing the amount of his financial interest, if any; the purpose and duration of his services rendered, if any; and the compensation received for the services, and such other information as is necessary to describe his interest. Following this procedure, if the interested member then proceeds to vote, the member shall state for the record that the member has an interest and shall summarize the nature of the interest. The member should consider not only his or her financial interests and investments, but also those of the member's spouse and children.

If ~~you are a member is~~ unsure of ~~your~~this or her legal responsibilities on any matter coming before ~~your advisory body, the board or commission, you~~the member should seek the advice of the City Attorney's Office ~~as soon as possible~~ before the meeting.

Training for New Board Members

Recognizing that a newly--appointed board or commission member will need a basic foundation of knowledge concerning the subject matter having to do with the particular board or commission, the city will provide informal and/or formal training opportunities for each newly--appointed member. The Council liaison, staff liaison, and chairperson of the board or commission shall work cooperatively to establish a training process ~~which~~that will provide to the new member a basic foundation of knowledge concerning the subject matter having to do with the particular board or commission. Where appropriate, in-service training should be provided which may include presentations on the responsibility of board and commission members, parliamentary procedure, conflicts of interest, specific board or commission mission, consensus and decision making model, city administration overview, open meetings, and language of local government and commonly used abbreviations and acronyms.

Board and commission members should be invited to in-service opportunities offered by the city. Board and commission members should be encouraged to identify in-service opportunities ~~which~~that would be specifically beneficial to their particular board or commission. When possible, exit interviews should be conducted with departing board and commission members to determine areas in which the city can be more helpful to the board or commission. The city should provide funding for appropriate in-service training for board and commission members

Board Responsibilities

Each ~~advisory~~ board and commission is responsible to investigate and make thoughtful recommendations to the City Council and city staff on issues coming before it. Such recommendations are often most useful if they include alternatives that were considered and an analysis of the pros and cons of the alternatives.

Matters upon which a board or commission makes recommendations can come from the City Council, from city staff, from the citizens of Loveland, and from the ~~board~~ members themselves. The City Council does not wish to impose a rigid structure upon the thoughts and ideas of any board or commission, but instead believes that creative and innovative ideas can come from many different sources. Often, however, ideas will originate with the consideration and adoption of goals by the City Council, and boards and commissions will be asked to consider such goals.

The normal channels for communication between the City Council and the boards and commissions are through the City Council liaison ~~to the board~~ and city staff in the affected department. Such persons will report to the Council the deliberations and recommendations of the board or commission. The boards and commissions, and their individual members, are always free to communicate directly with the City Council on any matter concerning their areas of responsibility.

In considering recommendations from boards and commissions, the City Council will attempt to balance the many diverse interests in our community.

ORGANIZATION OF THE BOARD

Each board or commission shall choose a chairperson and a vice chairperson. Additional offices may be created by the board or commission from time--to--time as necessary. If a city staff person is not made available to serve as recording secretary, ~~athe~~ board or commission shall ~~also~~ choose a recording secretary.

Chairperson

The chairperson serves as the presiding officer over all meetings. It is the responsibility of the chairperson to conduct meetings, keep the discussion on track, encourage the input of ideas, and facilitate the overall decision process. The chairperson should clarify ideas as they are discussed and should repeat motions to ensure that all members fully understand the wording of the item upon which they are voting. It is also the chairperson's responsibility to sign all documents on behalf of the board or commission, see that all of the decisions of the board or commission are carried out properly, and perform any other duties and functions requested by the board or commission.

The chairperson, working with the recording secretary, is responsible for preparing an agenda for each meeting, and assuring its circulation in advance to all members ~~of the board~~ and other persons who have requested notification and to ensure public notice of ~~the board's regular and, if any, special~~ meetings.

Vice Chairperson

The vice chairperson shall perform the duties of the chairperson in the absence of the chairperson. The vice chairperson shall also perform any other duties assigned to his office by the board or commission. The vice chairperson may request the assistance of other members ~~of the board~~ in carrying out the duties of the office.

Recording Secretary

The recording secretary ~~keeps the record of the board~~, is responsible for taking the minutes of the meeting, and ~~for keep~~sing a record of the proceedings of the board or commission. The secretary also performs any additional duties or functions that the board or commission may assign. The secretary prepares an agenda in advance of each meeting. Minutes from meetings shall be recorded as soon as possible. A copy of the approved minutes from each meeting shall be deposited with the Loveland city clerk. ~~Minutes from meetings shall be recorded as soon as possible.~~

Officers' Terms of Office

The term of office for the chairperson and the vice chairperson shall be ~~1~~one year. Each officer shall be eligible for reelection. However, chairpersons are encouraged not to serve for more than ~~2~~two consecutive years so that other board or commission members may gain experience as a chairperson. Officers shall be elected at the next regular meeting following the month of the year in which the terms of office of the members of the board expire.

Council Liaison

The City Council liaison assigned to a board or commission shall serve the following roles:

1. Communicate with the board or commission when City Council communication is needed and to serve as the primary two-way communications channel between the City Council and the board or commission.
2. Participate in filling vacancies, reviewing applications, and interviewing candidates for the board or commission.
3. Serve as the primary informal City Council contact.
4. Help ~~resolve~~answer questions the board or commission may have about the role of the City Council, municipal government, and the board or commission.
5. Establish formal or informal contact with the chairperson of the board or commission and effectively communicate the role of the liaison.
6. Provide procedural direction and relay the City Council's position to the board or commission, ~~and to communicate to the board or commission that the liaison's role is not to direct the board in its activities or work.~~
7. Serve as City Council contact rather than an advocate for or ex-officio member of the board or commission.

CONDUCT OF MEETINGS

Open Public Meetings

All meetings at which any public business is discussed where a quorum of the board is present are public meetings open to the public at all times. No board or commission shall conduct any closed meeting without first consulting with the City Attorney's Office concerning its propriety.

Quorum

The majority of all of the members of a board or commission shall constitute a quorum. In order to conduct business at any meeting, a quorum shall be present. No action shall be taken in the absence of a quorum, except to adjourn the meeting to a future date.

Special Meetings

A special meeting may be called by the chairperson or vice chairperson, or upon the written request of ~~3~~three members of the board or commission. Notice should be given to each of the ~~board~~ members by personally serving them or by leaving notice at their usual place of residence. Notice of special meetings should be given as much in advance as possible. The notice of a special meeting shall set forth the time, place, date, and purpose of the meeting. Attendance at a special meeting constitutes a waiver of the notice of the meeting.

Public Notice

Public notice of all meetings where the board or commission may take any formal action or at which a majority or quorum of the board or commission is expected to attend shall be given. The public notice shall be given no less than ~~24~~twenty-four hours in advance of the meeting and shall be posted at a location designated by the City Council, including the bulletin board outside the City Council Chambers. The public notice should also be posted on the City's website. The notice ~~shall~~should contain a specific agenda if possible, and be in the format specified by the City Clerk.

Rules of Order

Generally, meetings can be held in any manner that assures an orderly and focused discussion, and facilitates the input of all members ~~of the board~~. When necessary, in order to effectively conduct business, as determined by a majority vote of those present, Robert's Rules of Order shall be in effect.

Public Hearings

Occasionally, a board or commission will be called upon to conduct a public hearing on a matter coming before it. A public hearing is a process by which official input on a matter coming before a board or commission is received from all those wishing to present testimony. It is a matter of fundamental due process that decisions made as a result of the public hearing are based solely upon the evidence presented at the public hearing, and no prior investigation or discussion should be conducted by any member. If members have acquired information from outside the hearing, they should state during the hearing what the information is and allow public comment.

The chairperson should declare the public hearing open, and after hearing public testimony, declare the hearing closed. Following the public hearing, ~~board~~ members should discuss the matter among themselves (still in open meeting), and reach a decision by adopting a motion that sets forth the basis for the decision. Any such decision should be set out in the minutes of the meeting.

Further information regarding the conduct of public hearings is available from the City Attorney's Office.

APPOINTMENT AND VACANCIES

Unless otherwise provided by state law or by the ordinance establishing the particular board or commission, the following guidelines will be used in dealing with appointments and vacancies to boards and commissions.

Whenever a vacancy occurs on a board or commission, whether by expiration of term of office, removal of a member, or resignation, the following steps shall be taken unless otherwise stated herein or directed by the City Council:

~~Whenever a vacancy occurs in a board or commission, whether by expiration of term of office, removal of a member, resignation or other reason, the following steps will be taken unless otherwise directed by the City Council:~~

1. The chairperson shall notify the City Manager's Office of the vacancy.
2. ~~The City Council should be notified of the vacancy through the City Manager's Office.~~ Upon notice of the vacancy or not less than ~~75-seventy-five~~ days prior to the expiration of a term, whichever is applicable, the City Manager's Office will notify the City Council of the vacancy and ~~cause at least one advertisement for~~ notify the public of the availability of the position. ~~to be placed in a newspaper of general circulation within the city and will advise all City Council members of the vacancy or anticipated vacancy.~~ The City Manager's Office shall establish ~~an end of month~~ a closing date for the receipt of applications, which date shall be not less than ~~30thirty~~ days from the date of the first newspaper advertisement notification to the public. Applications received after the closing date shall not be considered by the interview committee.
 - a. ~~Send letters of recruitment to:~~
 - ~~• Civic organizations.~~
 - ~~• Employers, large and small.~~
 - ~~• Past applicants for boards and commissions.~~
 - b. ~~Do the following:~~
 - ~~• Design and distribute fliers.~~
 - ~~• Post in supermarkets, convenience stores and other public areas.~~
 - ~~• Direct mail with the City Council newsletter.~~
 - ~~• Post in city volunteer office and distribute to current volunteers.~~
 - ~~• Post on bulletin boards throughout city buildings.~~
 - ~~• Distribute whenever city forms, such as building permits, business licenses, job applications, animal licenses, voter registration, etc., are given out.~~
 - c. ~~Set up recruitment booths:~~
 - ~~• Police Fair~~
 - ~~• Chilson Center~~
 - ~~• Food Fest~~
 - ~~• Corn Roast~~
 - ~~• Earth Day~~
 - ~~• Athletic events, community and local high schools.~~
 - d. ~~Take advantage of public information sources:~~
 - ~~• Utility bills stuffer~~
 - ~~• Employee newsletters~~
 - ~~• Local radio spots~~

- ~~Community entryway signs~~
- ~~Cable TV message board during breaks in City Council meetings~~
- ~~Press releases (in addition to Dateline)~~
- ~~Guest editorials by the Mayor or City Council members~~
- ~~Internet~~

- ~~23.~~ The chairperson ~~of the board with the vacancy~~ should announce the vacancy at the first ~~board~~ meeting after being notified of the vacancy and urge ~~other board the~~ members to solicit qualified candidates.
- ~~34.~~ ~~Applications for the position should be obtained from and filed with the City Manager's Office.~~ Applications shall be in a form ~~as~~ determined by the City Manager, but shall include, without limitation, a question related to the applicant's current service on other city boards and commissions.
- ~~45.~~ Private interviews for the ~~vacant~~ position shall occur within ~~the first 15 days of the month~~ a reasonable time following the closing date for receipt of applications and shall be scheduled by the ~~City Manager's Office~~ staff liaison. The interview committee shall consist of the following ~~4 members~~ persons: the City Council liaison; the staff liaison; and the chairperson.
- ~~a.~~ 1 member of the City Council selected by the City Council, who shall serve as chairperson of the interview committee; a second member of the City Council shall be selected by the City Council as an alternate to the chairperson to serve when the chairperson is not available or when the board or commission does not have a City Council liaison;
 - ~~b.~~ 1 City Council liaison to the board or commission (selected by the Mayor if the board/commission has more than one Council liaison);
 - ~~c.~~ The staff liaison, or designee of the City Manager if the staff liaison is unable to participate;
 - ~~d.~~ The chairperson of the board or commission, or designee of the board or commission if the chairperson is unable to participate; and
 - ~~e.~~ The City Manager if his or her schedule permits.
- ~~56.~~ Immediately following the interviews, the ~~chairperson of the~~ interview committee shall advise the City Manager's Office of its recommendation, ~~and the~~ The City Manager's Office will endeavor to place the matter on the next available City Council agenda for consideration of the appointment. If an alternate is selected by the interview committee, the appointment of the alternate also shall be placed on the agenda for consideration.
- ~~67.~~ The recommendation of the interview committee and the appointment by the City Council shall be based upon qualification, experience, knowledge, interest, willingness to serve, ward residency, the need for a diverse cross-section of the community, past and current service on other city boards and commissions, and other factors deemed relevant by the City Council. The recommendation of the interview committee shall be considered but shall not be binding upon the City Council.
- ~~78.~~ The City Manager's Office shall forward a letter of appointment and a Handbook for Boards and Commissions to the newly ~~appointed~~ member.

Members shall serve for their appointed term as specified in the City Code. Alternate appointments shall be effective until the first day on which the term of any member of the board or commission expires. Alternates shall assume unexpired terms in instances of resignation or removal, but shall not be appointed to serve where a vacancy is created by expiration of a term. However, in such circumstances, alternates are encouraged to apply for the position.

There shall be no term limits for board and commission members unless the term limits for the board or commission are specifically set forth in state law or in the City Charter or Code. In addition, board and commission members may not serve on more than one board and commission at a time, unless: (i) the member is the only qualified applicant for the position; or (ii) the member resigns his or her position on the first board or commission prior to or upon appointment to the second board or commission.

Any person who has served less than 50%~~fifty percent~~ of a full term will be eligible for consecutive reappointment for a full term, pursuant to the following process:

1. 90Ninety calendar days prior to the partial term expiration, a letter will be sent by the City Manager's Office to the member advising the member that he or she must notify the City Manager's Office in writing within 15fifteen calendar days of the date of the letter if the member desires to be reappointed to the board or commission. If the member provides such notification and if the member remains otherwise eligible to serve on the board or commission, the member shall be recommended to the City Council for reappointment without the need for solicitation of applicants and interviews.
2. If the member does not provide timely notification as set forth in paragraph 1, the member will not be eligible for reappointment without the solicitation of applicants and interviews.

~~In the event that a vacancy occurs on a board or commission within 1 year of the date the City Council appointed a member of that board or commission, and the interview committee believes that a qualified alternate, who was selected in the most recent interview process prior to the vacancy, is available to serve on the board or commission and thereby eliminating the need to recommence the interview process, the interview committee may recommend such qualified alternate to the City Council without the need for the solicitation of applicants and interviews.~~

Unless otherwise provided by state law or by the City Charter or Code, a person shall not be eligible for appointment to a board or commission unless either: (a) such person resides within or has substantial ties within the corporate limits of the city; or (b) where the City Council determines that the duties and functions of a board or commission impact, or are likely to impact, areas beyond the corporate limits, such person resides within or has substantial ties to the affected area. Factors ~~which-that~~ may be considered in determining whether a person has substantial ties to the city or an affected area are property ownership, employment, conduct of a business or profession, or other factors deemed relevant by the City Council. Any person who ceases to reside in, or have substantial ties to, the area which was determined to be the basis for appointment may be removed from the board or commission by the City Council ~~after a hearing~~.

Further, unless otherwise provided by state law or by the City Charter or Code, no appointment of a person to any board or commission shall have the effect of increasing the number of nonresident members on that board or commission to more than 50%~~fifty percent~~ of the total membership of the board or commission.

A person shall not be eligible for appointment to any city board or commission if that person's spouse, parent, sibling, or child (whether related by blood, marriage, or adoption) is a city employee who in his or

her capacity as a city employee regularly appears before or advises that board or commission. This does not prohibit such person from being eligible for appointment to any other city board or commission not affected by this eligibility limitation.

EXPENSE REIMBURSEMENT

The city will reimburse any member of a board or commission who incurs expense for travel, lodging, registration fees, and the like where such expenses have been provided for in the budget of the department with which the board or commission is connected. To make sure that an anticipated expense is authorized, all subject expenditures must be cleared in advance through the City Manager's Office.

LIABILITY

When performing the function for which a member is appointed, such member is an authorized volunteer of the City of Loveland, and is entitled to the protection of the Governmental Immunity Act. The Act, generally speaking, protects the board member from personal liability for any action within the scope of such appointment, except where the act is willful or wanton. Many homeowners' insurance policies provide some coverage for acts undertaken as a volunteer. Please consult your insurance agent regarding any such coverage. The City Attorney's Office is available for further discussions regarding liability.

LANGUAGE OF LOCAL GOVERNMENT

~~A list of often-used definitions and acronyms relating to local government can be obtained at the City Manager's Office, the City Clerk's Office, or the Loveland Public Library.~~

BOARDS AND COMMISSIONS

For ~~a complete list of specific information regarding~~ the City's boards and commissions and a description of their ~~specific~~ membership requirements and duties, please see City Code Chapter 2.60, available online at: <http://www.ci.loveland.co.us/cityclerks/municipalcode/Title02.pdf>, www.cityofloveland.org, or contact the City Manager's Office at (970) 962-2303, or the City Clerk's Office at (970) 962-2322.

RESOLUTION #R-22-2013

**A RESOLUTION AMENDING THE CITY OF LOVELAND HANDBOOK
FOR BOARDS AND COMMISSIONS**

WHEREAS, Section 2.60.010 of the Loveland Municipal Code authorizes the City Council to adopt a Handbook for Boards and Commissions to guide the City of Loveland's advisory boards and commissions regarding policy and procedures; and

WHEREAS, the City Council desires to amend the previously-adopted Handbook for Boards and Commissions.

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

Section 1. That the Handbook for Boards and Commissions (revised June 2008) is hereby repealed and replaced by the Handbook for Boards and Commissions (revised March 2013), a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

Section 2. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 5th day of March, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



City of Loveland

*Handbook for
Boards and Commissions*

Revised March 2013

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INTRODUCTION

The public is playing an ever increasing role in local government. Citizens concerned about quality of life for themselves and their families, taxes and governmental services are speaking out as never before and are shaping local government in a way that meets their needs. Indeed, the governing body of a city like Loveland is composed of citizens elected by their fellow citizens to set policy and to guide and direct city government.

In order to assist it in setting direction for the city, the City Council considers the advice of its various boards and commissions. Citizens who serve on boards and commissions, therefore, play an important part in translating ideas into programs and suggestions and concerns into change. They also expand the knowledge and experience base of the elected decision makers.

The City Council has engaged more and more citizens in the process of government by creating new boards and commissions when the need arises. At present, the City of Loveland has the following boards and commissions:

- Affordable Housing Commission (AHC)
- Citizens' Finance Advisory Commission (CFAC)
- Community Marking Commission (CMC)
- Construction Advisory Board (CAB)
- Creative Sector Development Advisory Commission (CSDAC)*
- Cultural Services Board (CSB)
- Disabilities Advisory Commission (DAC)
- Fire & Rescue Advisory Commission (FRAC)
- Golf Advisory Board (GAB)
- Historic Preservation Commission (HPC)
- Human Services Commission (HSC)
- Library Board (LB)
- Loveland Utilities Commission (LUC)
- Open Lands Advisory Commission (OLAC)
- Parks and Recreation Commission (PRC)
- Planning Commission (PC)
- Police Citizen Advisory Board (PDCAB)
- Senior Advisory Board (SAB)
- Transportation Advisory Board (TAB)
- Visual Arts Commission (VAC)
- Youth Advisory Commission (YAC)

*In accordance with City Code Section 2.60.290, the CSDAC shall expire on December 31, 2013 unless extended by ordinance of the City Council.

In addition to the above, the City Council is responsible for making appointments to several boards and commissions whose powers and duties are defined under state law, and whose functions go beyond advising and making recommendations to the City Council. Those boards and commissions are:

- Employees' Pension Board
- Housing Authority
- Local Licensing Authority

Police Pension Board of Trustees
Volunteer Firefighters' Pension Board of Trustees

PURPOSE

The purpose of this Handbook for Boards and Commissions is to explain the role of boards and commissions in advising the City Council and to set forth guidelines to assist members in carrying out their work.

CITY STRUCTURE

In order to be more effective in fulfilling their purpose, board and commission members should understand the organizational structure of the city. The City of Loveland is a home rule municipality operating pursuant to the City of Loveland Charter, adopted by the citizens of Loveland in May, 1996. The citizens have chosen a council-manager form of government. Under this form, the citizens elect eight council members, two from each ward, and one mayor at large. The entire City Council elects the mayor pro tem.

The City Council sets the goals and policies for city government and annually adopts a budget in support of city activities. City staff, under the direction of the City Manager, is responsible for carrying out the direction of the City Council in implementing programs and services. The municipal judge, City Manager, and City Attorney report directly to the City Council. Department directors and their staffs are under the direction of the City Manager.

As the city's chief executive officer, the City Manager oversees responsibilities for the day-to-day administrative affairs of the city, including assigning staff liaisons to boards and commissions to assist them in carrying out their responsibilities. The City Manager is responsible for conveying and implementing City Council policy.

BOARD MEMBER EXPECTATIONS

Attendance

The effective operation of a board depends upon regular attendance of the members at meetings. Members shall be required to attend a minimum of seventy percent of meetings each calendar year. If a member is unable to attend a meeting, he or she should contact the chairperson or staff liaison at least twenty-four hours in advance of the meeting, when possible. If a member has three unexcused absences in a row, the member could lose his or her position on the board or commission. For the purposes of this rule, "unexcused absences" shall be all absences other than for illness, family emergency, or participation in other City of Loveland business. The chairperson shall provide attendance information to the City Clerk's Office upon request. Each calendar year, the City Clerk shall report to the City Council attendance information for every board and commission to include the number of meetings held by each board and commission and the number of meetings attended by each member.

Conflicts of Interest

Members must avoid conflicts of interest. A member should also avoid even the appearance of a conflict. Because there may be areas where members are unsure or unaware that a conflict exists, the following guidelines should be considered.

If a member has acquired confidential information in the course of official duties that information cannot be used to substantially further the member's personal financial interests.

Occasionally gifts are offered to members. Rules regarding acceptance of gifts are set forth in Chapter 2.73 of the City Code.

State law provides that a member shall not hold an interest in a business or undertaking that may possibly be directly and substantially economically affected by any official action of the member's board or commission. A member shall not perform an official act causing an economic benefit to the member's business or economic detriment to the member's business competitors.

For six months following termination of office, a member should not obtain employment in which a direct advantage, unavailable to others, will be gained in matters with which the member was directly involved.

A member shall not engage in a substantial financial transaction for private business purposes with a person under the direction of that member's board or commission.

If a member has a personal or private interest in any matter before the board or commission, the member must disclose the interest to the board or commission, must not vote on the matter, and must refrain from attempting to influence the other members in voting on the matter. However, if that member's participation is necessary to obtain a quorum or to otherwise enable the board or commission to act, the member may vote if, prior to acting, the interested member discloses the nature of his private interest. The disclosure shall be made in writing to the Secretary of State, listing the amount of his financial interest, if any; the purpose and duration of his services rendered, if any; and the compensation received for the services, and such other information as is necessary to describe his interest. Following this procedure, if the interested member then proceeds to vote, the member shall state for the record that the member has an interest and shall summarize the nature of the interest. The member should consider not only his or her financial interests and investments, but also those of the member's spouse and children.

If a member is unsure of his or her legal responsibilities on any matter coming before the board or commission, the member should seek the advice of the City Attorney's Office before the meeting.

Training for New Board Members

Recognizing that a newly-appointed board or commission member will need a basic foundation of knowledge concerning the subject matter having to do with the particular board or commission, the city will provide informal and/or formal training opportunities for each newly-appointed member. The Council liaison, staff liaison, and chairperson of the board or commission shall work cooperatively to establish a training process that will provide to the new member a basic foundation of knowledge concerning the subject matter having to do with the particular board or commission. Where appropriate, in-service training should be provided which may include presentations on the responsibility of board and commission members, parliamentary procedure, conflicts of interest, specific board or commission mission, consensus and decision making model, city administration overview, open meetings, and language of local government and commonly used abbreviations and acronyms.

Board and commission members should be invited to in-service opportunities offered by the city. Board and commission members should be encouraged to identify in-service opportunities that would be specifically beneficial to their particular board or commission. When possible, exit interviews should be conducted with

departing board and commission members to determine areas in which the city can be more helpful to the board or commission. The city should provide funding for appropriate in-service training for board and commission members

Board Responsibilities

Each board and commission is responsible to investigate and make thoughtful recommendations to the City Council and city staff on issues coming before it. Such recommendations are often most useful if they include alternatives that were considered and an analysis of the pros and cons of the alternatives.

Matters upon which a board or commission makes recommendations can come from the City Council, from city staff, from the citizens of Loveland, and from the members themselves. The City Council does not wish to impose a rigid structure upon the thoughts and ideas of any board or commission, but instead believes that creative and innovative ideas can come from many different sources. Often, however, ideas will originate with the consideration and adoption of goals by the City Council, and boards and commissions will be asked to consider such goals.

The normal channels for communication between the City Council and the boards and commissions are through the City Council liaison and city staff in the affected department. Such persons will report to the Council the deliberations and recommendations of the board or commission. The boards and commissions, and their individual members, are always free to communicate directly with the City Council on any matter concerning their areas of responsibility.

In considering recommendations from boards and commissions, the City Council will attempt to balance the many diverse interests in our community.

ORGANIZATION OF THE BOARD

Each board or commission shall choose a chairperson and a vice chairperson. Additional offices may be created by the board or commission from time-to-time as necessary. If a city staff person is not made available to serve as recording secretary, the board or commission shall choose a recording secretary.

Chairperson

The chairperson serves as the presiding officer over all meetings. It is the responsibility of the chairperson to conduct meetings, keep the discussion on track, encourage the input of ideas, and facilitate the overall decision process. The chairperson should clarify ideas as they are discussed and should repeat motions to ensure that all members fully understand the wording of the item upon which they are voting. It is also the chairperson's responsibility to sign all documents on behalf of the board or commission, see that all of the decisions of the board or commission are carried out properly, and perform any other duties and functions requested by the board or commission.

The chairperson, working with the recording secretary, is responsible for preparing an agenda for each meeting, and assuring its circulation in advance to all members and other persons who have requested notification and to ensure public notice of meetings.

Vice Chairperson

The vice chairperson shall perform the duties of the chairperson in the absence of the chairperson. The vice chairperson shall also perform any other duties assigned to his office by the board or commission. The vice chairperson may request the assistance of other members in carrying out the duties of the office.

Recording Secretary

The recording secretary is responsible for taking the minutes of the meeting and for keeping a record of the proceedings of the board or commission. The secretary also performs any additional duties or functions that the board or commission may assign. The secretary prepares an agenda in advance of each meeting. Minutes from meetings shall be recorded as soon as possible. A copy of the approved minutes from each meeting shall be deposited with the Loveland city clerk.

Officers' Terms of Office

The term of office for the chairperson and the vice chairperson shall be one year. Each officer shall be eligible for reelection. However, chairpersons are encouraged not to serve for more than two consecutive years so that other board or commission members may gain experience as a chairperson. Officers shall be elected at the next regular meeting following the month of the year in which the terms of office of the members of the board expire.

Council Liaison

The City Council liaison assigned to a board or commission shall serve the following roles:

1. Communicate with the board or commission when City Council communication is needed and to serve as the primary two-way communications channel between the City Council and the board or commission.
2. Participate in filling vacancies, reviewing applications, and interviewing candidates for the board or commission.
3. Serve as the primary informal City Council contact.
4. Help answer questions the board or commission may have about the role of the City Council, municipal government, and the board or commission.
5. Establish formal or informal contact with the chairperson of the board or commission and effectively communicate the role of the liaison.
6. Provide procedural direction and relay the City Council's position to the board or commission.
7. Serve as City Council contact rather than an advocate for or ex-officio member of the board or commission.

CONDUCT OF MEETINGS

Open Public Meetings

All meetings at which any public business is discussed where a quorum of the board is present are public meetings open to the public at all times. No board or commission shall conduct any closed meeting without first consulting with the City Attorney's Office concerning its propriety.

Quorum

The majority of all of the members of a board or commission shall constitute a quorum. In order to conduct business at any meeting, a quorum shall be present. No action shall be taken in the absence of a quorum, except to adjourn the meeting to a future date.

Special Meetings

A special meeting may be called by the chairperson or vice chairperson, or upon the written request of three members of the board or commission. Notice should be given to each of the members by personally serving them or by leaving notice at their usual place of residence. Notice of special meetings should be given as much in advance as possible. The notice of a special meeting shall set forth the time, place, date, and purpose of the meeting. Attendance at a special meeting constitutes a waiver of the notice of the meeting.

Public Notice

Public notice of all meetings where the board or commission may take any formal action or at which a majority or quorum of the board or commission is expected to attend shall be given. The public notice shall be given no less than twenty-four hours in advance of the meeting and shall be posted at a location designated by the City Council, including the bulletin board outside the City Council Chambers. The public notice should also be posted on the City's website. The notice should contain a specific agenda if possible, and be in the format specified by the City Clerk.

Rules of Order

Generally, meetings can be held in any manner that assures an orderly and focused discussion and facilitates the input of all members. When necessary, in order to effectively conduct business, as determined by a majority vote of those present, Robert's Rules of Order shall be in effect.

Public Hearings

Occasionally, a board or commission will be called upon to conduct a public hearing on a matter coming before it. A public hearing is a process by which official input on a matter coming before a board or commission is received from all those wishing to present testimony. It is a matter of fundamental due process that decisions made as a result of the public hearing are based solely upon the evidence presented at the public hearing, and no prior investigation or discussion should be conducted by any member. If members have acquired information from outside the hearing, they should state during the hearing what the information is and allow public comment.

The chairperson should declare the public hearing open, and after hearing public testimony, declare the hearing closed. Following the public hearing, members should discuss the matter among themselves (still in open meeting) and reach a decision by adopting a motion that sets forth the basis for the decision. Any such decision should be set out in the minutes of the meeting.

Further information regarding the conduct of public hearings is available from the City Attorney's Office.

APPOINTMENT AND VACANCIES

Unless otherwise provided by state law or by the ordinance establishing the particular board or commission, the following guidelines will be used in dealing with appointments and vacancies to boards and commissions.

Whenever a vacancy occurs on a board or commission, whether by expiration of term of office, removal of a member, or resignation, the following steps shall be taken unless otherwise stated herein or directed by the City Council:

1. The chairperson shall notify the City Manager's Office of the vacancy.
2. Upon notice of the vacancy or not less than seventy-five days prior to the expiration of a term, whichever is applicable, the City Manager's Office will notify the City Council of the vacancy and notify the public of the availability of the position. The City Manager's Office shall establish a closing date for the receipt of applications, which date shall be not less than thirty days from the date of the first notification to the public. Applications received after the closing date shall not be considered by the interview committee.
3. The chairperson should announce the vacancy at the first meeting after being notified of the vacancy and urge the members to solicit qualified candidates.
4. Applications shall be in a form determined by the City Manager, but shall include, without limitation, a question related to the applicant's current service on other city boards and commissions.
5. Private interviews for the position shall occur within a reasonable time following the closing date for receipt of applications and shall be scheduled by the staff liaison. The interview committee shall consist of the following persons: the City Council liaison; the staff liaison; and the chairperson.
6. Immediately following the interviews, the interview committee shall advise the City Manager's Office of its recommendation. The City Manager's Office will endeavor to place the matter on the next available City Council agenda for consideration of the appointment. If an alternate is selected by the interview committee, the appointment of the alternate also shall be placed on the agenda for consideration.
7. The recommendation of the interview committee and the appointment by the City Council shall be based upon qualification, experience, knowledge, interest, willingness to serve, ward residency, the need for a diverse cross-section of the community, past and current service on other city boards and commissions, and other factors deemed relevant by the City Council. The recommendation of the interview committee shall be considered but shall not be binding upon the City Council.

8. The City Manager's Office shall forward a letter of appointment and a Handbook for Boards and Commissions to the newly-appointed member.

Members shall serve for their appointed term as specified in the City Code. Alternate appointments shall be effective until the first day on which the term of any member of the board or commission expires. Alternates shall assume unexpired terms in instances of resignation or removal, but shall not be appointed to serve where a vacancy is created by expiration of a term. However, in such circumstances, alternates are encouraged to apply for the position.

There shall be no term limits for board and commission members unless the term limits for the board or commission are specifically set forth in state law or in the City Charter or Code. In addition, board and commission members may not serve on more than one board and commission at a time, unless: (i) the member is the only qualified applicant for the position; or (ii) the member resigns his or her position on the first board or commission prior to or upon appointment to the second board or commission.

Any person who has served less than fifty percent of a full term will be eligible for consecutive reappointment for a full term, pursuant to the following process:

1. Ninety calendar days prior to the partial term expiration, a letter will be sent by the City Manager's Office to the member advising the member that he or she must notify the City Manager's Office in writing within fifteen calendar days of the date of the letter if the member desires to be reappointed to the board or commission. If the member provides such notification and if the member remains otherwise eligible to serve on the board or commission, the member shall be recommended to the City Council for reappointment without the need for solicitation of applicants and interviews.
2. If the member does not provide timely notification as set forth in paragraph 1, the member will not be eligible for reappointment without the solicitation of applicants and interviews.

Unless otherwise provided by state law or by the City Charter or Code, a person shall not be eligible for appointment to a board or commission unless either: (a) such person resides within or has substantial ties within the corporate limits of the city; or (b) where the City Council determines that the duties and functions of a board or commission impact, or are likely to impact, areas beyond the corporate limits, such person resides within or has substantial ties to the affected area. Factors that may be considered in determining whether a person has substantial ties to the city or an affected area are property ownership, employment, conduct of a business or profession, or other factors deemed relevant by the City Council. Any person who ceases to reside in, or have substantial ties to, the area which was determined to be the basis for appointment may be removed from the board or commission by the City Council.

Further, unless otherwise provided by state law or by the City Charter or Code, no appointment of a person to any board or commission shall have the effect of increasing the number of nonresident members on that board or commission to more than fifty percent of the total membership of the board or commission.

A person shall not be eligible for appointment to any city board or commission if that person's spouse, parent, sibling, or child (whether related by blood, marriage, or adoption) is a city employee who in his or her capacity as a city employee regularly appears before or advises that board or commission. This does not prohibit such person from being eligible for appointment to any other city board or commission not affected by this eligibility limitation.

EXPENSE REIMBURSEMENT

The city will reimburse any member of a board or commission who incurs expense for travel, lodging, registration fees, and the like where such expenses have been provided for in the budget of the department with which the board or commission is connected. To make sure that an anticipated expense is authorized, all subject expenditures must be cleared in advance through the City Manager's Office.

LIABILITY

When performing the function for which a member is appointed, such member is an authorized volunteer of the City of Loveland and is entitled to the protection of the Governmental Immunity Act. The Act, generally speaking, protects the board member from personal liability for any action within the scope of such appointment, except where the act is willful or wanton. Many homeowners' insurance policies provide some coverage for acts undertaken as a volunteer. Please consult your insurance agent regarding any such coverage. The City Attorney's Office is available for further discussions regarding liability.

BOARDS AND COMMISSIONS

For specific information regarding the City's boards and commissions and a description of their membership requirements and duties, please see City Code Chapter 2.60, available online at www.cityofloveland.org, or contact the City Manager's Office at (970) 962-2303, or the City Clerk's Office at (970) 962-2322.



CITY OF LOVELAND
HUMAN RESOURCES DEPARTMENT
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2371 • FAX (970) 962-2919 • TDD (970) 962-2620

AGENDA ITEM: 12
MEETING DATE: 3/5/2013
TO: City Council
FROM: Fire Retirement Board
PRESENTER: Julia Holland, Director of Human Resources

TITLE:

A resolution amending the scheduled meeting dates of the City Of Loveland Fire Retirement Plan Board

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution.

OPTIONS:

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

DESCRIPTION:

The Fire Retirement Plan Board voted and approved a request to change the regularly scheduled Board meetings to allow the new provider, ICMA-RC, sufficient time in which to prepare quarterly review reports. This will allow the Board to review current fund data regarding the plan, thus better meeting their fiduciary responsibility for the plan.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

This resolution request is to change the regularly scheduled Fire Retirement Board meetings in order to allow sufficient time for the vendor to supply quarterly reports. This action would change the meetings from January, April, July and October to the first Friday of March, June, September and December each year.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

Resolution

RESOLUTION #R-23-2013**A RESOLUTION AMENDING THE SCHEDULED MEETING DATES OF THE
CITY OF LOVELAND FIRE RETIREMENT PLAN BOARD**

WHEREAS, on December 18, 2012, City Council adopted Resolution #R-87-2012 setting forth the 2013 meeting dates for the City's boards and commissions, including the City of Loveland Fire Retirement Plan Board (the "Board"); and

WHEREAS, the Board meeting dates are currently set on the third Friday of January, April, July and October at 10:00 a.m., in the Administrative Conference Room, 2nd Floor, Fire Administration Building, 410 East Fifth Street, Loveland, Colorado (the "Original Meeting Dates"); and

WHEREAS, in order to timely review the quarterly and annual statements for the Fire Retirement Plan, the Board at a special meeting on February 7, 2013, unanimously approved a motion to recommend that City Council change the Board meeting dates; and

WHEREAS, the Board desires to move the Board's meeting dates to the first Friday of March, June, September and December at 10:00 a.m., in the Administrative Conference Room, 2nd Floor, Fire Administration Building, 410 East Fifth Street, Loveland, Colorado (the "Revised Meeting Dates").

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

Section 1. That the meeting dates adopted in Resolution #R-87-2012 are hereby amended to change the Board's meeting dates from Original Meeting Dates to the Revised Meeting Dates.

Section 2. That Resolution #R-87-2012, as amended herein and by prior resolutions, shall remain in full force and effect.

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

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

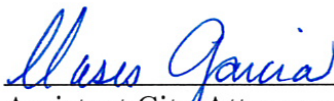
ADOPTED this ____ day of March, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A RESOLUTION AMENDING THE SCHEDULED MEETING DATES OF THE CITY OF LOVELAND FIRE RETIREMENT PLAN BOARD



CITY OF LOVELAND
WATER & POWER DEPARTMENT
200 North Wilson • Loveland, Colorado 80537
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: 13
MEETING DATE: 3/5/2013
TO: City Council
FROM: Steve Adams, Water & Power
PRESENTER: Jim Lees

TITLE:

A resolution on second reading concerning funding for the Water Enterprise to improve the Water Treatment Plant and undertake a comprehensive water line replacement program

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution on second reading.

OPTIONS:

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

DESCRIPTION:

This is an administrative action to adopt a resolution that provides funding mechanisms for the Water Enterprise through external and internal loans, a series of rate increases, and an annual transfer of funds from the General Fund to the Water Enterprise. This funding will be used to improve the Water Treatment Plant and undertake a comprehensive water line replacement program. This resolution was approved on first reading at the February 19, 2013 City Council meeting with five Councilors voting in favor and three against.

BUDGET IMPACT:

- ☒ Positive
☒ Negative
☐ Neutral or negligible

The Water Enterprise will be positively affected by the receipt of cash for capital projects. The General Fund will be negatively affected due to its contribution of \$750,000 per year for 8 years to the Water Enterprise, limiting the ability of the General Fund to fund other General Fund needs.

SUMMARY:

Staff has been to three City Council study sessions in 2012 for input on the Water and Wastewater cost-of-service rate study. Funding the needs of the Water Enterprise has been the primary focus of these study sessions. Staff now returns with a resolution for Council consideration to carry out direction from the Council at the November 27, 2012 study session, in the following areas:

- 1) Pursue a 20-year external loan for \$10 million
- 2) Pursue an 8-year internal loan for \$6 million
- 3) Have the General Fund contribute \$750,000 per year for 8 years to pay for the principal portion of the internal loan
- 4) Implement the following series of rate increases to provide adequate cash flow to fund the needs of the Water Utility:

2014: 13%

2015-2019: 9% per year

2020-2022: 8% per year

This resolution is intended to be the guiding document for funding the needs of the Water Enterprise through 2022. The attached Staff Report, Financing Scenarios Table, and PowerPoint presentation, explain the specifics of the components of the resolution, as well as providing additional background information. The Appendix Report and Appendix PowerPoint present other background materials that have been developed over the course of the last several months for City Council study sessions.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Staff Report
2. PowerPoint presentation
3. A Resolution concerning funding for the Water Enterprise to improve the Water Treatment Plant and to undertake a comprehensive water line replacement program
4. Table summarizing financing scenarios from the latter stages of the process
5. Appendix Report on financing scenarios from the latter stages of the process
6. Appendix PowerPoint presentation on financing scenarios from the latter stages of the process



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TO: City Council

THROUGH: Bill Cahill, City Manager
Steve Adams, Water and Power Director

FROM: Jim Lees, Utility Accounting Manager
Chris Matkins, Water Utilities Manager
Alan Krcmarik, Executive Fiscal Advisor

DATE: March 5, 2013

SUBJECT: Staff Report on Water Utility Financing Proposal: Recommendations On How To Carry Out Direction From City Council

Through the course of the Water and Wastewater cost-of-service rate study begun in February of last year, the focus has been on how best to fund the needs of the Water Utility. Several funding options have been considered, and Staff received input from the Loveland Utilities Commission (LUC) at six meetings in 2012 and at the January 16, 2013 meeting, from the Citizens' Finance Advisory Commission (CFAC) at their November 14, 2012 meeting, and from City Council at three Study Sessions during 2012, including the final one on November 27, 2012, where specific direction was received. After considering this feedback, Staff is now seeking for City Council to adopt a resolution that will 1) indicate support for a preferred borrowing option; and 2) provide for a series of annual funds transfers and rate increases to meet future needs of the Water Utility. Today, Staff will present specific actions to carry out the consensus direction from City Council that were developed from guidance received at the November 27, 2012 Study Session.

Update for Second Reading: On First Reading, Council passed the Staff and LUC-recommended resolution by a vote of 5-3. For Second Reading, the presentation will consist of just one slide, which summarizes the four components of the resolution. All of the other slides that were presented on First Reading can now be viewed in the Appendix Slides file. In response to input from Council at First Reading, two new slides have been developed. These are slides that show the projection of a Residential customer's total utility bill over the next ten years. The two new slides include assumed rate increases of 3.14% per year for the electric bill for the outer five years from 2018-2022. The 3.14% annual increase is based on the average wholesale power rate increases from PRPA over the last ten years. These new two slides can be found as slide numbers 2 and 3 in the Appendix Slides file. With the 3.14% increase built into the electric bill for 2018-2022, the average annual increase in the total utility bill over the ten years for a Residential customer is 5.4%.

Direction from November 27, 2012 City Council Study Session. At this meeting, the governing body gave consensus direction to meet the financing needs of the Water Utility through four specific instructions:

- 1) Pursue a 20-year external loan for \$10 million
- 2) Pursue an 8-year internal loan for \$6 million
- 3) Have the General Fund contribute \$750,000 per year for 8 years to pay for the principal portion of the internal loan
- 4) Implement the following series of rate increases to provide adequate cash flow to fund the needs of the Water Utility:
 - 2014: 13%
 - 2015-2019: 9% per year
 - 2020-2022: 8% per year
 This series of rate increases represents the lower of the two series of rate increases that were presented to Council at this Study Session.

These four components were represented by Scenario D at the Study Session, and an important reason this scenario garnered support from Council was that it provided funding for \$17.5 million of water line replacements over the ten year period from 2013-2022. This represents 74% of the Staff-recommended level of line replacements, which Staff views as adequate.

One of the scenarios that was presented at the Study Session was Scenario B, which featured a \$12 million external loan for 20 years, no internal loan, and no contribution from the General Fund. In follow-up to a request after the Study Session, Staff prepared a Scenario B-1, with the change of making the \$12 million external loan a 10-year loan instead of a 20-year loan. The annual debt service for Scenario B-1 was \$1.2 million, and the result of this high debt service was that there was only \$6.5 million available for line replacements, and no funds available for line replacements until 2020. Based on Council's dismissal of another scenario because it provided only \$7.9 million of funding for line replacements, Staff concluded that Scenario B-1 would also not fulfill what Council wanted to accomplish.

Next, using the same numbering convention as above, is a more detailed discussion of the four instructions from City Council's direction to be incorporated into the resolution:

- 1) \$10 Million, 20-Year External Loan.** City staff has identified three external funding options:
 - A. A loan from a bank to the City of Loveland Water Utility Enterprise;
 - B. A loan from the Colorado Water Resources and Power Development Authority ("CWRPDA" or the "Authority") to the Water Utility Enterprise; and
 - C. Issuance of water revenue bonds by the City of Loveland through its Water Utility Enterprise

Each of these techniques is described in more detail in the Appendix Report. Staff is actively pursuing the three options to determine how to best meet objectives at the lowest overall cost. At a future City Council meeting, Staff will present loan documents to Council for its consideration and approval.

- 2) **\$6 Million, 8-Year Internal Loan.** At the November Study Session, as was mentioned above, Scenario D was the scenario that received consensus support from City Council. Scenario D assumes that the \$6 million internal loan would come from the General Fund. After further investigation, Staff has discovered a noteworthy drawback to having the source of the \$6 million internal loan be the General Fund. In total, Scenario D features a combination of the \$10 million external loan for 20 years, and the \$6 million internal loan for 8 years from the General Fund. This scenario has level (P&I) payments that total \$1.5 million per year, but the General Fund would contribute \$750,000 per year toward the \$1.5 million total annual debt service, or, more accurately, the General Fund would forgive and give the Water Utility credit for the \$750,000 annual payment against the \$6 million loan. If the internal loan is made in 2013, this approach would cause the Water Utility to lose its status as an Enterprise Fund in 2014, but it would regain that status in 2015. The Enterprise Fund status is lost for one year under this scenario because the substance of this loan transaction, rather than its form, contemplates that the Water Utility will not be paying back the \$6 million. Therefore the City Attorney, in consultation with bond counsel, advises that this \$6 million loan will be considered under TABOR to be a grant of \$6 million to the Water Utility in 2013 resulting in its loss of enterprise status in 2014, but regaining it in 2015.

To further clarify, if in 2013 bonds are issued by the Water Utility and a grant is made from the City's General Fund to the Water Utility that is 10% or greater than the Water Utility's annual revenues, under TABOR, the Water Utility will lose its enterprise status the following year, 2014. And assuming that no grant of 10 % or greater is received by the Water Utility from the General Fund in 2014, the Water Utility will regain its enterprise status under TABOR in 2015.

The City's TABOR spending base would ratchet up by the amount of the Water Utility's 2014 annual revenues if enterprise status is lost, and then ratchet back down in 2015 by the amount of those revenues in 2015.

There are several drawbacks that are worth noting in regard to the Water Utility losing its enterprise status:

- a) The Water Utility would not be able to issue bonds or issue any other multi-year debt in 2014 without a vote of the citizens. If some unanticipated large funding need arose in 2014 for the Water Utility, and being able to meet that need depended on a public vote, the Utility would be at some risk. The Water Utility would be able to issue multi-year debt without a vote in 2015 when it regains its enterprise status.
- b) There could be an adverse effect on the awarding of multi-year contracts. If, for example, enterprise status is lost in 2014, then the City Council would not be able to award a multi-year contract without the limitation that the contract is subject to the City Council's annual appropriation of funds to pay the contract. This would make the contract more uncertain to potential construction contractors, and could lead to a higher bid price for the project. Staff currently expects that the Water Treatment Plant construction contract may not be awarded until 2014, and would need to be a two year contract. Loss of enterprise status in 2014 is therefore a significant issue.

- c) Loss of enterprise status could limit the structure of an external loan. We have received some interest from a lender willing to disburse the external loan proceeds as needed, over time, rather than an initial lump sum. This could save substantial interest costs and be advantageous. However, if enterprise status is lost after 2013 due to an excessive General Fund transfer, then the utility may not be able to accept distributions from such a loan, because the utility would not have authority to create new debt or obligation without a vote of the citizens, and distributions on a loan may be regarded as new debts. A loss of enterprise status therefore limits the structure of an external loan in a way that could be costly to the utility.

For these reasons, Staff opposes an approach that results in the loss of enterprise status, and has developed another internal loan option. Instead of having the General Fund be the source for the \$6 million internal loan, the Power Utility would be the source. Staff has done an analysis of the 10-Year Financial Plan for Power, and with the proposed 8-year payback schedule, Power would be able to provide the \$6 million for the loan in 2013 and still complete all of the capital projects in the 10-Year Financial Plan. The General Fund could still contribute \$750,000 per year for 8 years toward the \$1.5 million of annual debt service. But since the amount of the annual General Fund contribution would be less than 10% of the Water Utility's annual revenues, the Water Utility would not lose its enterprise status. Since getting the loan from the General Fund comes with a certain amount of risk associated with losing enterprise status, Staff recommends getting the internal loan from the Power Utility, where that same risk would not come into play.

3 & 4) \$750,000 Annual General Fund Contribution and Series of Rate Increases.

For these financing options to succeed, an annual transfer of \$750,000 from the General Fund to the Water Utility and the series of rate increases referenced in #4 above must be implemented. The current Council cannot bind a future Council to adopt annual transfers from the General Fund to the Water Utility or a series of rate increases. However, by adopting this resolution, Council can put into place a plan for an annual transfer of \$750,000 from the General Fund to the Water Enterprise and the multi-year rate increases referenced in #4 above. The resolution would ensure that these General Fund transfers and rate increases would occur automatically every year as set forth in the resolution unless and until the Council determines otherwise by a future resolution or ordinance.

Utility Bill Projections. In a subsequent public meeting after the November 27, 2012 Study Session, City Council requested to see what a total City utility bill would look like over the next 10 years, taking into account projected rate increases for all of the services. PowerPoint slide 9 illustrates how an average Residential water bill would change over the next 10 years based on the current series of rate increases. Slides 10-13 specifically address the Council inquiry illustrating average total City utility bill projections over the next 10 years for Residential and Commercial customers. These figures show an average annual increase in the Residential utility bill of 4.8% and 5.6% for the average annual increase in the Commercial bill.

Staff Recommendation. In reviewing the four key components of the consensus direction given by Council at the November 27, 2012 Study Session, Staff's recommendation for each of them is to adopt a resolution to:

- 1) **\$10 Million, 20-Year External Loan:** Direct the City Manager to seek out the most advantageous financing package
- 2) **\$6 million, 8-Year Internal Loan:** Establish the Power Enterprise as the source of the internal loan. With Power being the source of the loan, there would be no loss of enterprise status for the Water Enterprise. This is the most risk-averse choice for internal borrowing.
- 3) **General Fund Annual Contribution:** Establish an annual appropriation in the General Fund of \$750,000 to be transferred to the Water Enterprise. The Water Enterprise would then, in turn, use those funds to pay the principal portion of the internal loan from the Power Enterprise.
- 4) **Series of Rate Increases:** Approve the following series of rate increases to provide adequate cash flow to fund the needs of the Water Utility:
 2014: 13%
 2015-2019: 9% per year
 2020-2022: 8% per year

Given City Council's considerable support for the Utility's needs and measured guidance on rate increase limitations, Staff is comfortable with these four recommendations. Staff believes this course of action will increase investment in the Water Utility significantly with provisions for returning to a self-funding Water Utility Enterprise within a 10 year planning horizon.

At their January 16, 2013 meeting, the LUC voted 7-1 to recommend to City Council for the approval of the 4-component Staff Recommendation shown above.

Attached for informational purposes is a table summarizing the financing scenarios that have been developed over the latter stages of the process, the PowerPoint slides that will be presented to the Council at this meeting, an Appendix Report that gets into more detail regarding the financing scenarios developed from November until now, and an Appendix PowerPoint presentation which also provides more information on the financing scenarios.

RECOMMENDATION:

Have City Council adopt a resolution to:

- 1) Direct the City Manager to secure for City Council's future consideration and approval a \$10 million, 20-year external loan to the Water Enterprise on the most advantageous terms available.
- 2) Authorize and approve the Power Enterprise loaning \$6 million to the Water Enterprise in 2013, to be repaid in 8 annual payments.
- 3) Direct the City Manager, in each year during the 8-year term of the \$6 million loan from the Power Enterprise to the Water Enterprise referenced in #2 above, to include in the City's annual budget and appropriation ordinances the transfer of \$750,000 from the General Fund to the Water Enterprise to be used to pay the annual principal portion of the loan from the Power Enterprise
- 4) Have Staff, prior to each calendar year, present a resolution for consideration and adoption by the City Council approving a revised Schedule of Rates, Charges and Fees for services provided by the Water and Power Department that incorporates the following increases in water rates:
 2014: 13%
 2015-2019: 9% per year
 2020-2022: 8% per year

Water Finance Action Requested: Adopt Resolution on Second Reading

At the February 19, 2013 Regular Meeting, City Council, by a 5-3 Vote, Approved a Resolution Identifying the Following Funding Sources:

- 1) 20-year External Loan for \$10M with most advantageous financing package
- 2) 8-year Internal Loan for \$6M from Power Enterprise to Water Enterprise
- 3) Annual transfer of \$750K for 8 years from the General Fund to the Water Enterprise
- 4) Series of rate increases

2014:	13%
2015 – 2019:	9% per year
2020 – 2022:	8% per year

FIRST READINGFebruary 19, 2013**SECOND READING**March 5, 2013**RESOLUTION #R-16-2013****A RESOLUTION CONCERNING FUNDING FOR THE WATER ENTERPRISE TO IMPROVE THE WATER TREATMENT PLANT AND UNDERTAKE A COMPREHENSIVE WATER LINE REPLACEMENT PROGRAM**

WHEREAS, for well over one hundred years, the City of Loveland Water Utility has provided the Loveland community with a safe and reliable source of potable water at some of the lowest rates in the State of Colorado; and

WHEREAS, the Water Utility is now facing significant financial challenges due to escalating regulatory requirements, increasing operation and maintenance costs, aging infrastructure, and water treatment plant capacity limitations; and

WHEREAS, to meet these challenges and provide for the City's future economic growth and development, the Water Utility must improve the water treatment plant and undertake a comprehensive water line replacement program; and

WHEREAS, the City Council desires to secure adequate funding for the Water Utility to meet these project needs through a combination of sources, specifically external borrowing, internal borrowing, General Fund transfer, and water rate increases, designed to equitably distribute the financial impacts between current and future Water Utility customers and the citizens of Loveland who will benefit from the City's future economic growth and development; and

WHEREAS, Section 13-3(b) of the Loveland Municipal Charter provides that loans from one utility account to another shall be allowed with the City Council's approval, but shall require the affirmative vote of a majority of the entire City Council; and

WHEREAS, the Loveland Municipal Charter and Code provide that all utility rates, charges, and fees shall be set by the City Council by resolution adopted upon two readings.

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

Section 1. That the City Council hereby directs the City Manager to secure for the City Council's future consideration and approval as the Board of the City's Water Utility Enterprise a twenty-year amortized loan from an external source (or sources) to the Water Enterprise, on the most advantageous terms available as determined by the City Manager, in consultation with the City Attorney and the City's Executive Fiscal Advisor, in the principal

amount necessary to pay all financing costs and establish any required reserves to achieve net loan proceeds of Ten Million Dollars (\$10,000,000).

Section 2. That the City Council hereby authorizes and approves the Power Enterprise loaning to the Water Enterprise in 2013 Six Million Dollars (\$6,000,000) to be repaid by the Water Enterprise to the Power Enterprise in eight annual, fully-amortized principal and interest payments with the interest to be determined and accrue at the variable rate and in the manner required by Loveland Municipal Charter Section 13-3(b).

Section 3. That the City Council hereby directs that, in each year during the eight-year term of the loan contemplated in Section 2 above, the City Manager shall include in the City's annual budget and appropriation ordinances for each of those years the transfer of Seven Hundred Fifty Thousand Dollars (\$750,000) from the General Fund to the Water Enterprise to be used by the Water Enterprise to pay the principal due on the Six Million Dollar (\$6,000,000) loan from the Power Enterprise.

Section 4. That the City Council hereby adopts the following rate increases across all Water Utility customer classes for each of the next nine years as listed below, said rate increases to take effect beginning with billings mailed on or after January 1 of the then-current year:

2014	13% increase
2015	9% increase
2016	9% increase
2017	9% increase
2018	9% increase
2019	9% increase
2020	8% increase
2021	8% increase
2022	8% increase

The rate increases adopted herein shall be in addition to, and not in lieu of, any other rate increases for water service that may hereafter be adopted by the City Council to more accurately reflect the cost of providing water service to the Water Utility's customers.

Section 5. That this Resolution shall be effective as of the date of its adoption on second reading as provided in the Loveland Municipal Code.

ADOPTED this 5th day of March, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Shawn L. Oltus
Assistant City Attorney

Scenario	Rate Track	Loan Amount	Loan Type/General Fund Assistance	Interest Rate	Annual Debt Service	Total Interest Payments	Level of Funding Provided for WTP	Level of Funding Provided for Line Replacements	% of Line Replacements Funded	First Year of Line Replacements	Loss of Enterprise Fund Status
A	A	\$16M	30 Year External Loan	3.4% fixed	\$820K	\$9.0M	Fully Funded (\$27.4M)	Fully Funded (\$23.5M)	100%	2013	NO
B	B	\$12M	20 Year External Loan	3.05% fixed	\$800K	\$4.0M	Fully Funded (\$27.4M)	\$12.8M	54%	2013	NO
B-1	B	\$12M	10 Year External Loan	1.55% fixed	\$1.5M	\$1.2M	Fully Funded (\$27.4M)	\$6.5M	28%	2020	NO
C	B	\$10M	10 Year Internal Loan	1.7% variable	\$1.1M	\$1.0M (assuming 1.7%)	Fully Funded (\$27.4M)	\$7.9M	34%	2020	NO
D	B	\$10M - \$6M -	20 Year External Loan 8 Year Internal Loan* *General Fund pays \$750K per year principal for internal loan and Water Utility pays up to \$94K of interest per year	3.05% fixed 1.5%-4.0% variable	\$675K + ~~\$843K~~ \$1.5M	\$4.1M	Fully Funded (\$27.4M)	\$17.5M	74%	2013	YES
D-1	B	\$10M - \$6M -	20 Year External Loan 8 Year Internal Loan from Power* *General Fund pays \$750K per year principal for internal loan and Water Utility pays up to \$94K of interest per year	3.05% fixed 1.5%-4.0% variable	\$675K + ~~\$843K~~ \$1.5M	\$4.1M	Fully Funded (\$27.4M)	\$17.5M	74%	2013	NO

NOTES:

1.

- Rate Track A: 17% in 2014; 18% per year 2015-2018; 4% per year 2019-2022

- Rate Track B: 13% in 2014; 9% per year 2015-2019; 8% per year 2020-2022

2. Scenario A is the only scenario that continues the transfer of a portion of Water Sales to the Raw Water Fund throughout the 10 year period through 2022. All other scenarios discontinue this transfer for the years from 2018-2022. During that five year period, 100% of Water Sales would stay in the Water Fund. The elimination of this transfer reduces the revenue stream into the Raw Water Fund starting in 2018, but the justification is that the needs of the Water Utility are greater and more immediate than the near-term needs to acquire and store more raw water.

3. External loan interest rates and length of loan could vary depending on what type of loan vehicle is used.

4. Current Water/Wastewater inflation rate is 4.2%



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TO: City Council

THROUGH: Bill Cahill, City Manager
Steve Adams, Water and Power Director

FROM: Jim Lees, Utility Accounting Manager
Chris Matkins, Water Utilities Manager
Alan Krcmarik, Executive Fiscal Advisor

DATE: March 5, 2013

SUBJECT: Appendix Report on Water Utility Financing Update: Recommendations On How
To Carry Out Direction From City Council

DESCRIPTION:

This Appendix Report is included to provide Council with more background information on the four funding scenarios that were presented at the November 27, 2012 Study Session (Scenarios A-D) as well as two other scenarios that have been developed by Staff since then (Scenarios B-1 and D-1). Scenario B-1 was developed in response to a request after the November 27, 2012 Study Session as an alternative to Scenario B. Scenario B-1 is the same as Scenario B with the exception that Scenario B-1 features an external \$12 million loan for 10 years instead of the \$12 million, 20 year loan duration of Scenario B. Scenario D-1 was developed as an alternative to Scenario D, with the only change being that the funding source for the \$6 million, 8 year internal loan is the Power Utility Fund in Scenario D-1 instead of the General Fund in Scenario D. There is also more detailed information on the three financing alternatives that Staff is exploring for the \$10 million, 20 year external loan.

SUMMARY:

NOTE: All of the financial information discussed in the “Summary of Funding Scenarios” and “Pros and Cons of Financing Scenarios” sections below is summarized in the table that is labeled Attachment 4 to the Cover Letter and in slides 5-7 of the Appendix PowerPoint presentation.

Summary of Funding Scenarios. All of the funding scenarios have two common elements:

- 1) All generate an adequate level of funding for projects at the Water Treatment Plant (WTP) over the next 10 years.
- 2) All proceeds from borrowing (whether external or internal loans) would be received and available to spend in 2013.

The key differences between the scenarios are:

- 1) The rate increases necessary to fund Scenario A are:

2014: 17%

2015-2018: 18% per year

2019-2022: 4% per year

The rate increases necessary to fund all of the other scenarios (B through D1) are:

2014: 13%

2015-2019: 9% per year

2020-2022: 8% per year

- 2) Scenario A provides funding for 100% of the Staff-recommended water line replacements over the next 10 years. Scenarios B through D1 provide reduced waterline replacement funding (<100%).
- 3) Scenario A is the only scenario that continues the transfer of a portion of Water Sales to the Raw Water Fund throughout the 10-year period through 2022. All other scenarios discontinue this transfer for the years from 2018-2022. During that five-year period, 100% of Water Sales would stay in the Water Fund. The elimination of this transfer reduces the revenue stream into the Raw Water Fund starting in 2018, but the justification is that the needs of the Water Utility are greater and more immediate than the near-term needs to acquire and store more raw water.
- 4) Scenarios A, B, B-1 and C do not include any contributions from the General Fund, while Scenarios D and D-1 do incorporate General Fund contributions.

Scenario A – features a \$16 million external loan for 30 years, and has level principal and interest (P&I) payments of \$820,000 per year. This loan assumes a fixed interest rate of 3.4%, and requires \$9.0 million of interest payments over the life of the loan.

Scenario B – features a \$12 million external loan for 20 years, and has level P&I payments of \$800,000 per year. This loan assumes a fixed interest rate of 3.05%, and requires \$4.0 million of interest payments over the life of the loan.

Scenario B-1 – features a \$12 million external loan for 10 years and has level P&I payments of \$1.5 million per year. This loan assumes a fixed interest rate of 1.55%, and requires \$1.2 million of interest payments over the life of the loan.

Scenario C – features a \$10 million internal loan for 10 years, and has level P&I payments of \$1.1 million per year. This loan assumes a fixed interest rate of 1.7% (varies with the City's investments return), and requires \$1.0 million of interest payments over the life of the loan.

Scenario D – features a combination of a \$10 million external loan for 20 years, and a \$6 million internal loan for 8 years. The \$6 million loan would come from the City's General Fund. This scenario has level P&I payments that total \$1.5 million per year, but

the General Fund would contribute \$750,000 per year toward the \$1.5 million total annual debt service, or, more accurately, the General Fund would forgive and give the Water Utility credit for the \$750,000 annual payment against the \$6 million loan. If the internal loan is made in 2013, this approach would cause the Water Utility to lose its status as an Enterprise Fund in 2014, but it would regain that status in 2015. The Enterprise Fund status is lost for one year under this scenario because the substance of this loan transaction, rather than its form, contemplates that the Water Utility will not be paying back the \$6 million. Therefore, the City Attorney, in consultation with bond counsel, advises that this \$6 million loan will be considered under TABOR to be a grant of \$6 million to the Water Utility in 2013 resulting in its loss of enterprise status in 2014, but regaining it in 2015.

Scenario D-1 – features a combination of a \$10 million external loan for 20 years, and a \$6 million internal loan from the Power Utility Fund for 8 years. This scenario has level P&I payments of \$1.5 million per year, but requires the General Fund to contribute \$750,000 per year toward the \$1.5 million total annual debt service. In contrast to Scenario D, this scenario would **not** cause the Water Utility to lose its status as an Enterprise Fund.

Pros and Cons of Financing Scenarios

The Pros for Scenario A (\$16 million external loan for 30 years) are:

- A) Provides full funding (\$23.5 million) for line replacements over the 10 year timeframe.
- B) This is the only scenario preserving the transfer of a portion of Water Sales to the Raw Water Fund throughout the period from 2013-2022.
- C) Does not deplete General Fund surplus dollars
- D) Promotes intergenerational equity – aligns the service life of the improvement with the customer base that's paying for it.

The Cons for Scenario A are:

- A) Requires largest rate increases
- B) Requires longest repayment period and the most interest over the life of the loan
- C) Utility must meet additional financial requirements, such as minimum debt service coverage

The Pros for Scenario B (\$12 million external loan for 20 years) are:

- A) Provides \$12.8 million (54% of Staff-recommended level) of funding for line replacements. This is less than Scenario A, but more than Scenario C.
- B) Offers lower rate increases than Scenario A
- C) No General Fund subsidy required
- D) Promotes intergenerational equity

The Cons for Scenario B are:

- A) Longer amortization period and higher total interest paid compared to some of the other alternatives.
- B) Additional financial requirements, same as Scenario A

The Pros for Scenario B-1 (\$12 million external loan for 10 years) are:

- A) It has a shorter loan repayment period
- B) Offers lower rate increases than Scenario A

- C) No General Fund subsidy is required
- D) Promotes some intergenerational equity

The Cons for Scenario B-1 are:

- A) No line replacements funded until 2020, and other capital projects must be cut in 2018-2019.
- B) A total of only \$6.5 million (28% of Staff-recommended level) of line replacement projects funded in this scenario, only in the last three years of the timeframe.

The Pros for Scenario C (\$10 million internal loan for 10 years) are:

- A) Shorter amortization period
- B) Lower rate increases compared to Scenario A
- C) No additional financial requirements triggered by external borrowing
- D) Loan interest is paid to the City

The Cons for Scenario C are:

- A) No line replacement funding until 2020, and other capital projects would be cut in 2018-2019. \$7.9 million of line replacement projects funded only in the last three years.
- B) It could adversely impact the General Fund's ability to address emergency situations. Staff is developing plans to borrow this money without impacting General Fund capital programs. However, this scenario reduces flexibility for the City to meet unforeseen needs, or costs arising from a natural weather event
- C) If the City's investment return increases above 1.7%, the annual debt service payment for Water would also increase.

The Pros for Scenario D (\$10 million external loan for 20 years, \$6 million internal loan from non-utility funds for 8 years) are:

- A) Provides \$17.5 million (74%) of line replacements.
- B) Requires lower rate increases compared to Scenario A
- C) Promotes intergenerational equity

The Cons for Scenario D are:

- A) The Water Utility would lose its status as an Enterprise Fund for one year.
- B) The City's spending base under TABOR would change.
- C) Water Utility couldn't issue multiyear debt without a vote of Loveland citizens in year when enterprise status lost
- D) An adverse impact on the awarding of contracts
- E) Could limit the structure of an external loan
- F) General Fund dollars would be depleted.
- G) A longer repayment period and more interest over the life of the loan versus Scenario C
- H) Additional financial requirements

The Pros for Scenario D-1 (\$10 million external loan for 20 years, \$6 million internal loan from Power Fund for 8 years) are:

- A) Provide \$17.5 million of funding for line replacements which represents 74% of the Staff-recommended line replacements.
- B) Offers lower rate increases compared to Scenario A
- C) Retains Enterprise Fund status
- D) Promotes intergenerational equity

The Cons for Scenario D-1 are:

- A) General Fund dollars would be depleted which could be used for other General Fund needs.
- B) A longer repayment period and more interest over the life of the loan
- C) Additional financial requirements

Feedback from November 27, 2012 Study Session. Council indicated consensus support for Scenario D, although at the time, they were not aware of the possibility of the Water Utility losing its status as an enterprise fund. There also was some Council support for Scenario A and some for Scenario B. There was no Council support for Scenario C.

External Financing Options. City staff has identified three external funding options:

- A. A loan from a bank to the City of Loveland Water Utility Enterprise;
- B. A loan from the Colorado Water Resources and Power Development Authority ("CWRPDA" or the "Authority") to the Water Utility Enterprise; and
- C. Issuance of water revenue bonds by the City of Loveland through its Water Utility Enterprise

Each of the techniques is described briefly below.

1. Loan from a Bank

Staff has contacted regional, state, and national banks to determine the feasibility of a direct bank loan. Several banks have indicated interest in preparing a financing option for the City to consider. Based on the bank's review of the Utility's financial position and projections, a bank could provide a loan to fund the project. Banks may elect to perform their own credit assessment risk and not to require a formal rating from Standard & Poor's, Moody's, or Fitch.

Some banks expressed an inability to extend credit for the anticipated 20-year payback period, but were interested in a loan duration of 15 years and shorter. Others indicated that 20 years is feasible, but may require higher interest rates. Based on recent Council interactions, the annual loan debt service should be limited to about \$675,000 . Current low interest rates make this option viable.

The advantages of a loan from a bank include: a) relatively simple loan and debt service documents; b) quick loan terms determination; c) competitive interest rates; d) financing benefits local or Colorado banks; and e) potential greater flexibility in setting the rate, prepayment options, and re-financing terms if interest rates decrease.

2. A Loan from the Colorado Water Resources and Power Development Authority (the Authority).

The State of Colorado offers financing programs for water utility projects. Staff has been investigating one program with the Authority and the Colorado Department of Public Health and Environment.

Under this program, the Authority issues bonds that provide loans for the Water Utility. The Authority has a triple-A credit rating (the highest available) and the rates on the bonds

would be lower than if the City Water Utility issued bonds. The Authority's program also uses federal dollars to reduce interest rates approximately 30%.

The use of federal money requires prevailing wages on the funded projects, which could increase construction costs. Based on a 2011 study, the State Department of Transportation concluded that the prevailing wage requirement did not add significant costs to projects. Staff is evaluating whether this program offers the lowest net cost to the City.

The Authority groups financing needs of several communities into one bond issuance to save on administrative costs. In discussions with the Authority, their financial staff believes the Authority's board would allow the City of Loveland Water Utility to proceed on the first-round schedule. The advantage would that we would be able to proceed immediately through the financing process. While there is a chance that another utility could be combined with Loveland, the financing could be tailored to Loveland's specific needs.

This borrowing technique is fairly complex, requires the longest amount of time to complete, and requires the highest administrative/reporting/overhead requirements of all borrowing options. The Water Utility would work closely with the Authority to accomplish all of the requirements and may have to coordinate with other jurisdictions in the process.

3. City Water Utility Bond Issuance

This option proposes that the City Water Utility Enterprise would issue revenue bonds to fund \$10 million of improvements, as previously discussed with the Loveland Utility Commission and the Council. This could be completed within two months. The City and its Water Utility have strong financial positions and have detailed long-term financial plans in place. The Water Utility Enterprise would obtain a credit rating from at least one of the three major credit rating agencies. This is a very detailed process and requires assistance of the City's bond counsel and an external financial advisor. For a \$10 million bond issue, Staff has estimated \$200,000 of issuance costs. The bond issue would also require a debt service reserve account to be funded. This can be done from the issuance of bonds or from other available Water Utility funds. Interest earned on money held in the debt service reserve reduces carrying costs over the term of the bond issue.

The advantage of this approach is that the water utility bond issue would be designed solely for its own use. Interest rates on the bonds are not likely to be as low as the Authority financing approach. At the time of issuance, the call features on the bonds would have to be determined, allowing the bonds to be called prior to the final 20-year maturity. Typical call features are at the tenth year with no premium for call. Shorter call terms required a premium.

A water utility revenue bond process could be completed more quickly than the Authority approach, but would still require a considerable amount of staff time. A water utility bond issue would require an extensive set of documents.

Staff is actively pursuing the three options to determine how to best meet objectives at the lowest overall cost.

Water Utility Financing Proposal:

Recommendations on How to Carry Out Direction from City Council
(Appendix Slides)

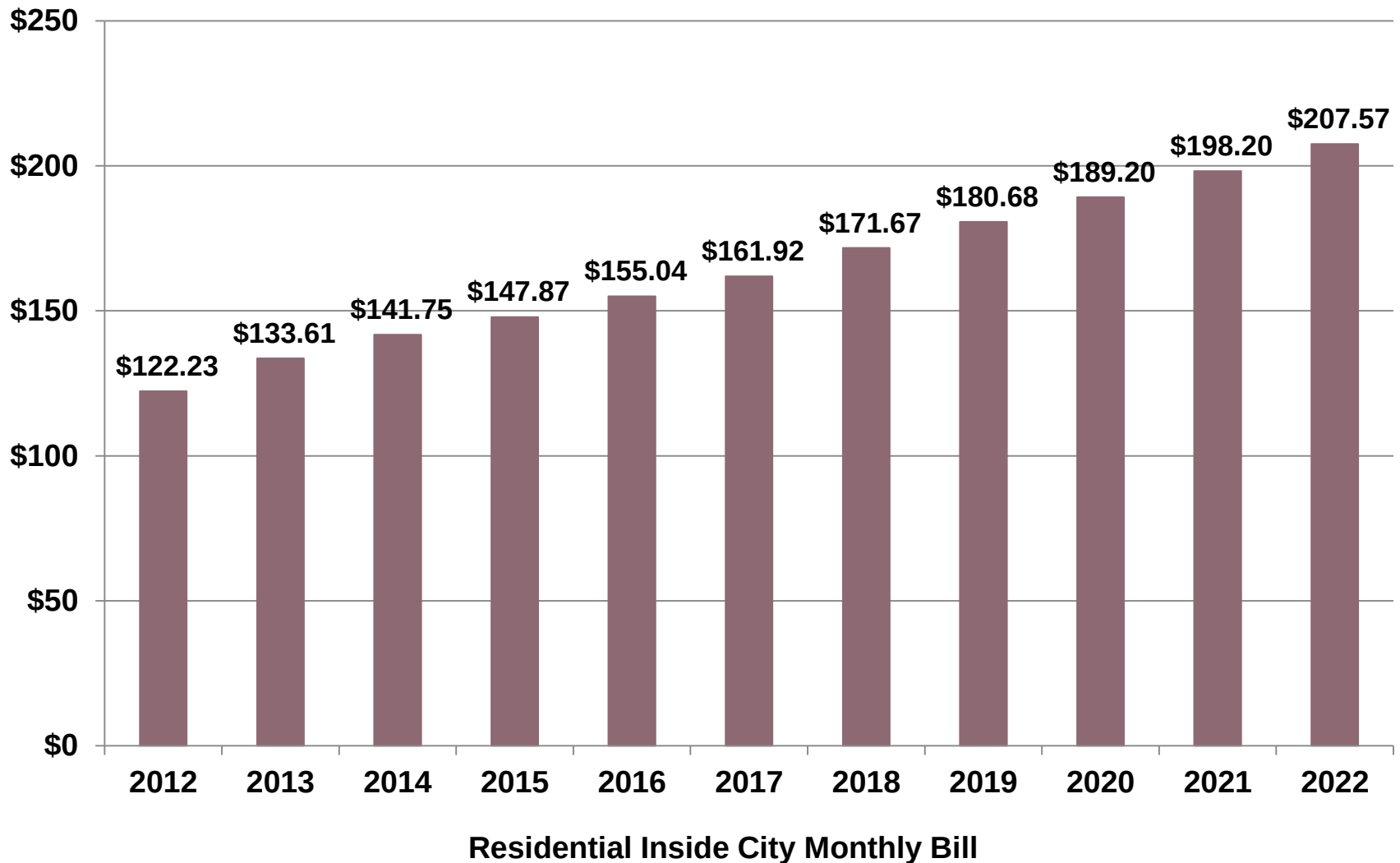
City Council Presentation

March 5, 2013



Projection of Customer's Total Monthly Utility Bill 2012-2022

Residential Inside City with Updated Electric Bill Projections for 2018-2022



Projection of Customer's Total Monthly Utility Bill 2012-2022

Residential Inside City with Updated Electric Bill Projections for 2018-2022

P. 218

Utility Total Monthly Bill Per Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Water	\$19.69	\$24.25	\$27.40	\$29.87	\$32.56	\$35.49	\$38.68	\$42.16	\$45.54	\$49.18	\$53.11
Wastewater	\$15.72	\$18.84	\$20.91	\$23.21	\$25.76	\$28.60	\$31.74	\$33.96	\$36.34	\$38.88	\$41.60
*Electric	\$60.38	\$63.88	\$65.95	\$65.95	\$66.86	\$66.86	\$68.96	\$71.12	\$73.36	\$75.66	\$78.04
Storm Drainage	\$8.30	\$8.30	\$9.10	\$9.97	\$10.93	\$11.98	\$12.99	\$14.08	\$14.54	\$14.80	\$15.07
Street Maintenance	\$1.67	\$1.87	\$1.92	\$1.97	\$2.03	\$2.09	\$2.15	\$2.21	\$2.27	\$2.33	\$2.40
Solid Waste Management	\$15.67	\$15.67	\$15.67	\$16.10	\$16.10	\$16.10	\$16.30	\$16.30	\$16.30	\$16.50	\$16.50
Mosquito Control	\$.80	\$.80	\$.80	\$.80	\$.80	\$.80	\$.85	\$.85	\$.85	\$.85	\$.85
Total Residential Inside City	\$122.23	\$133.61	\$141.75	\$147.87	\$155.04	\$161.92	\$171.67	\$180.68	\$189.20	\$198.20	\$207.57
% Inc/(Dec) to Prior Year		9.31%	6.09%	4.31%	4.85%	4.44%	6.02%	5.25%	4.72%	4.76%	4.73%

*Electric bill for 2018-2022 inflated at 3.14% per year, based on the average wholesale power rate increases from PRPA over the last 10 years.

Overview

- Recap of Gathering Input
- Direction from November 27, 2012 City Council Study Session
- Resolution to Accomplish Council Direction
- Water Monthly Utility Bill Projections
- Total City Monthly Utility Bill Projections
- Staff and LUC Recommendation
- Discussion and Decision

Recap of Gathering Input

- Rate study begun in February, 2012
- Feedback from City Council and Advisory Groups
 - 3 Study Sessions with City Council
 - 7 Meetings with LUC
 - 1 Meeting with CFAC

Direction From November 27, 2012 City Council Study Session

1. Pursue a 20-year External Loan for \$10M
2. Pursue an 8-year Internal Loan for \$6M
3. General Fund contribution to Water Utility of \$750K per year for 8 years
4. Series of rate increases

2014:	13%
2015 – 2019:	9% per year
2020 – 2022:	8% per year

Resolution to Accomplish Council Direction

1. \$10M, 20-year External Loan

- Direct City Manager to find best External Financing Option
 - A. Bank Loan
 - B. Colorado Water Resources and Power Development Authority
 - C. Water Utility Bonding
- Loan document to be presented to Council for approval

Resolution to Accomplish Council Direction

2. \$6M, 8-year Internal Loan

- Authorize Internal Loan for Water Utility

Two Potential Funding Sources:

A. General Fund

- Water Utility would lose enterprise status

B. Power Utility

- Water Utility would not lose enterprise status

Impact of Losing Enterprise Fund Status

- Would lose status for one year and regain it the next
- City's spending base under TABOR would ratchet up, then down
- Water Utility couldn't issue multi-year debt without a vote of Loveland citizens
- Adverse impact on awarding of contracts
- Could limit structure of external loan

Resolution to Accomplish Council Direction

3. Annual transfer of \$750K for 8 years from the General Fund to the Water Utility

- \$750K to be used for annual principal payment on Internal Loan

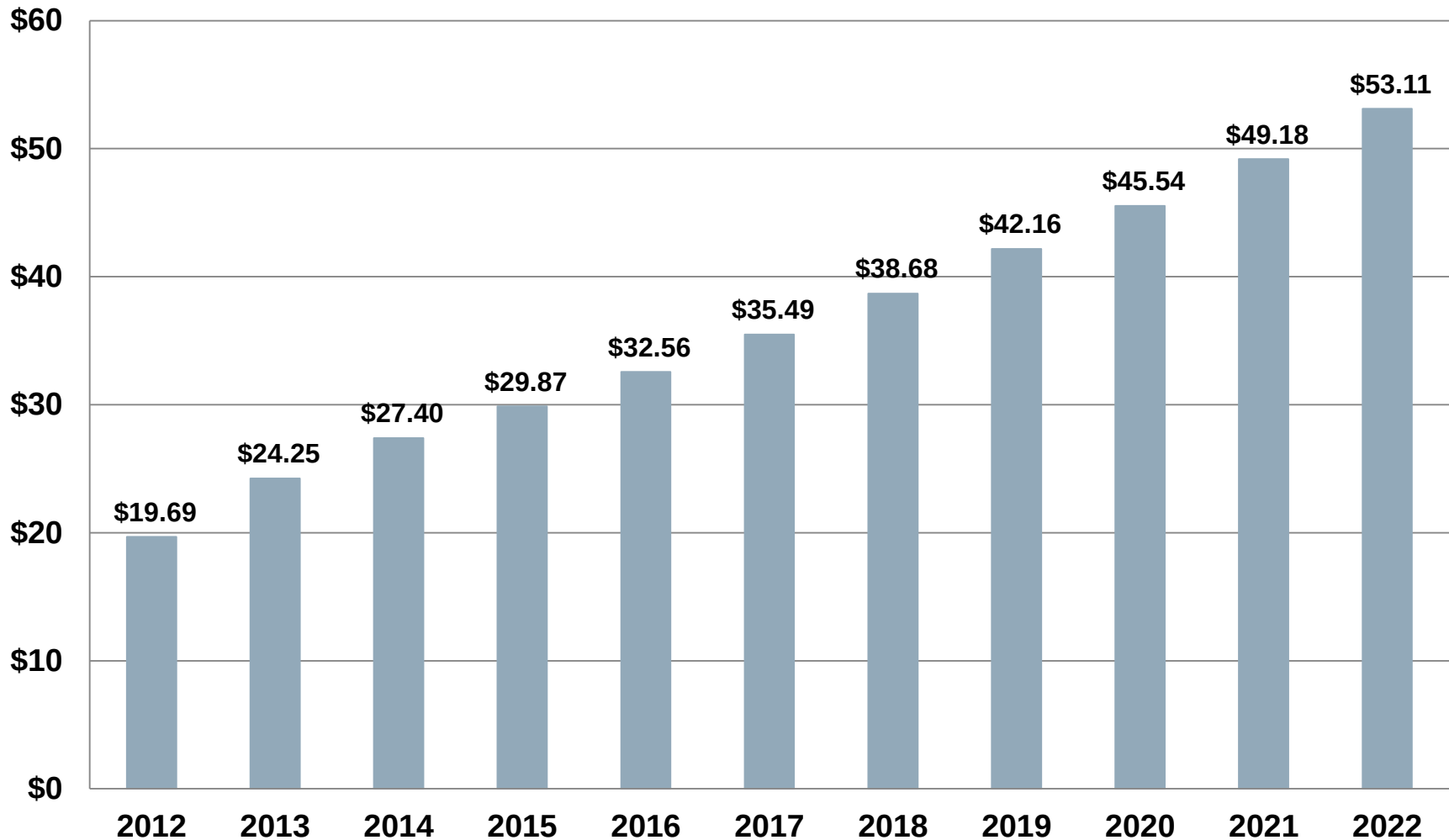
4. Series of rate increases:

2014:	13%
2015 – 2019:	9% per year
2020 – 2022:	8% per year

- Annual transfers and rate increases would occur automatically unless directed otherwise by future Council

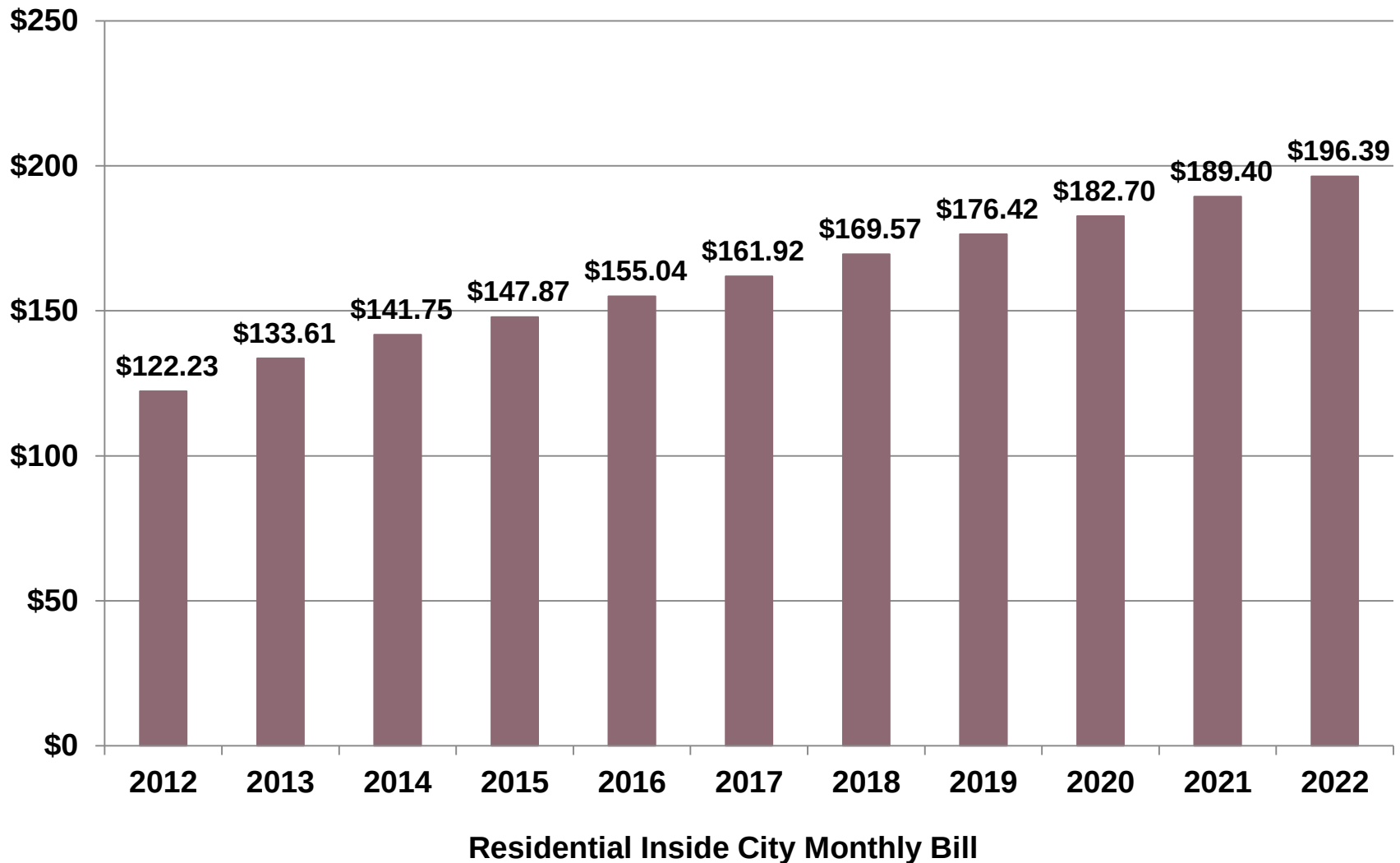
Projected Average Monthly Residential Water Bill 2012-2022^{P 226}

(8,100 gallons per month) –
Based on Current Series of Rate Increases



Projection of Customer's Total Monthly Utility Bill 2012-2022

Residential Inside City



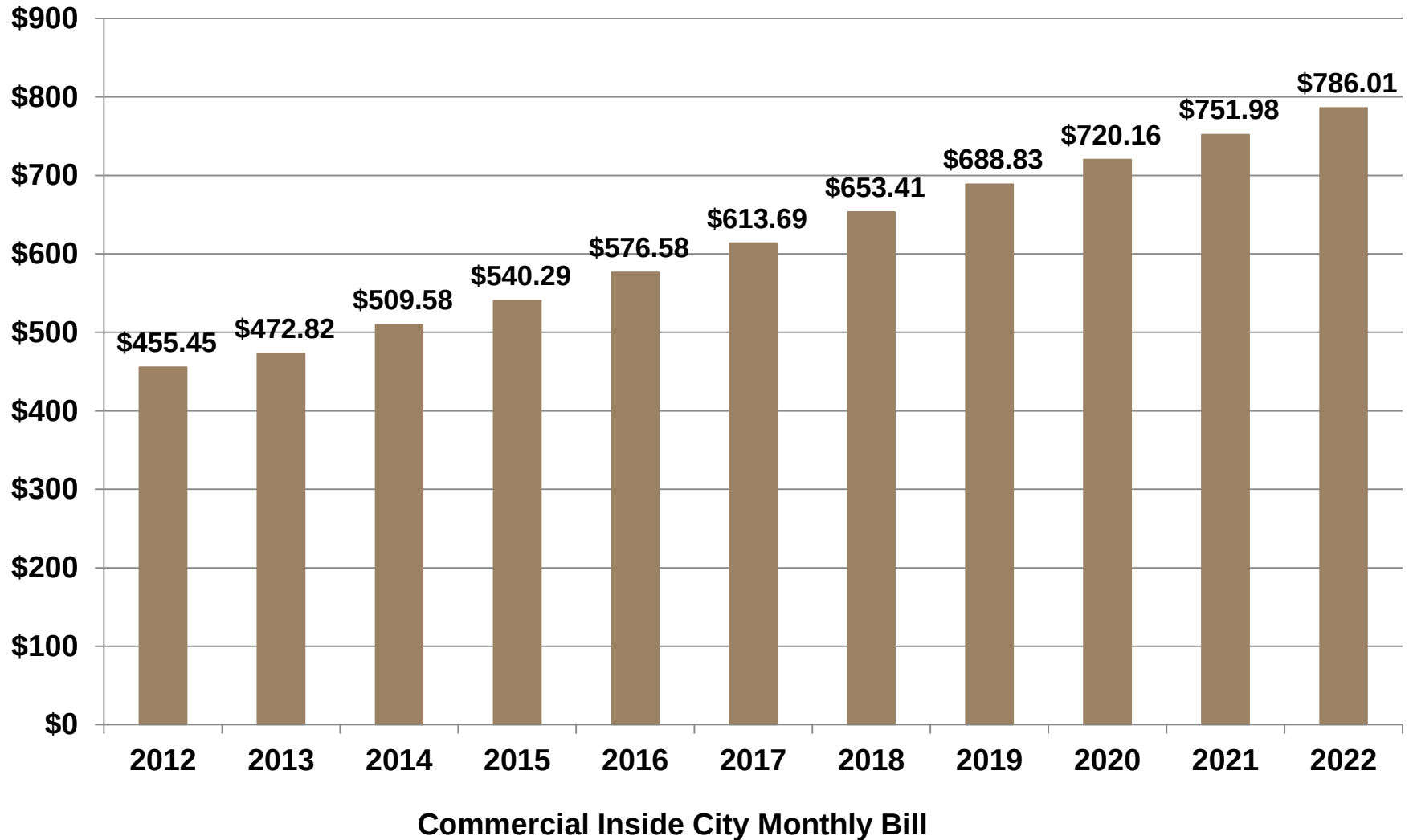
Projection of Customer's Total Monthly Utility Bill 2012-2022

Residential Inside City

Utility Total Monthly Bill Per Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Water	\$19.69	\$24.25	\$27.40	\$29.87	\$32.56	\$35.49	\$38.68	\$42.16	\$45.54	\$49.18	\$53.11
Wastewater	\$15.72	\$18.84	\$20.91	\$23.21	\$25.76	\$28.60	\$31.74	\$33.96	\$36.34	\$38.88	\$41.60
Electric	\$60.38	\$63.88	\$65.95	\$65.95	\$66.86	\$66.86	\$66.86	\$66.86	\$66.86	\$66.86	\$66.86
Storm Drainage	\$8.30	\$8.30	\$9.10	\$9.97	\$10.93	\$11.98	\$12.99	\$14.08	\$14.54	\$14.80	\$15.07
Street Maintenance	\$1.67	\$1.87	\$1.92	\$1.97	\$2.03	\$2.09	\$2.15	\$2.21	\$2.27	\$2.33	\$2.40
Solid Waste Management	\$15.67	\$15.67	\$15.67	\$16.10	\$16.10	\$16.10	\$16.30	\$16.30	\$16.30	\$16.50	\$16.50
Mosquito Control	\$.80	\$.80	\$.80	\$.80	\$.80	\$.80	\$.85	\$.85	\$.85	\$.85	\$.85
Total Residential Inside City	\$122.23	\$133.61	\$141.75	\$147.87	\$155.04	\$161.92	\$169.57	\$176.42	\$182.70	\$189.40	\$196.39
% Inc/(Dec) to Prior Year		9.31%	6.09%	4.31%	4.85%	4.44%	4.73%	4.04%	3.55%	3.67%	3.69%

Projection of Customer's Total Monthly Utility Bill 2012-2022

Commercial Inside City



Projection of Customer's Total Monthly Utility Bill 2012-2022

Commercial Inside City

Utility Total Monthly Bill Per Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Water	\$78.56	\$83.34	\$94.17	\$102.65	\$111.89	\$121.96	\$132.93	\$144.90	\$156.49	\$169.01	\$182.53
Wastewater	\$121.43	\$121.43	\$134.79	\$149.62	\$166.07	\$184.33	\$204.61	\$218.93	\$234.26	\$250.66	\$268.21
Electric	\$168.43	\$178.20	\$183.97	\$183.97	\$186.51	\$186.51	\$186.51	\$186.51	\$186.51	\$186.51	\$186.51
Storm Drainage	\$62.97	\$62.97	\$69.02	\$75.65	\$82.91	\$90.87	\$98.50	\$106.77	\$110.29	\$112.28	\$114.30
Street Maintenance	\$24.06	\$26.88	\$27.63	\$28.40	\$29.20	\$30.02	\$30.86	\$31.72	\$32.61	\$33.52	\$34.46
Solid Waste Management	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Mosquito Control	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Total Commercial Inside City	\$455.45	\$472.82	\$509.58	\$540.29	\$576.58	\$613.69	\$653.41	\$688.83	\$720.16	\$751.98	\$786.01
% Inc/(Dec) to Prior Year		3.81%	7.78%	6.02%	6.72%	6.44%	6.47%	5.42%	4.55%	4.42%	4.53%

Council Action Requested

Adopt a Resolution Identifying the Following Funding Sources:

- 1) 20-year External Loan for \$10M with most advantageous financing package
- 2) 8-year Internal Loan for \$6M from Power Enterprise to Water Enterprise
- 3) Annual transfer of \$750K for 8 years from the General Fund to the Water Enterprise
- 4) Series of rate increases

2014:	13%
2015 – 2019:	9% per year
2020 – 2022:	8% per year

LUC Recommendation

- At their January 16, 2013 meeting, the LUC voted 7-1 to support the Staff-recommended actions



Discussion & Decision

Overview

- Six Borrowing Scenarios
- Feedback from November 27, 2012 City Council Study Session
- External Financing Options

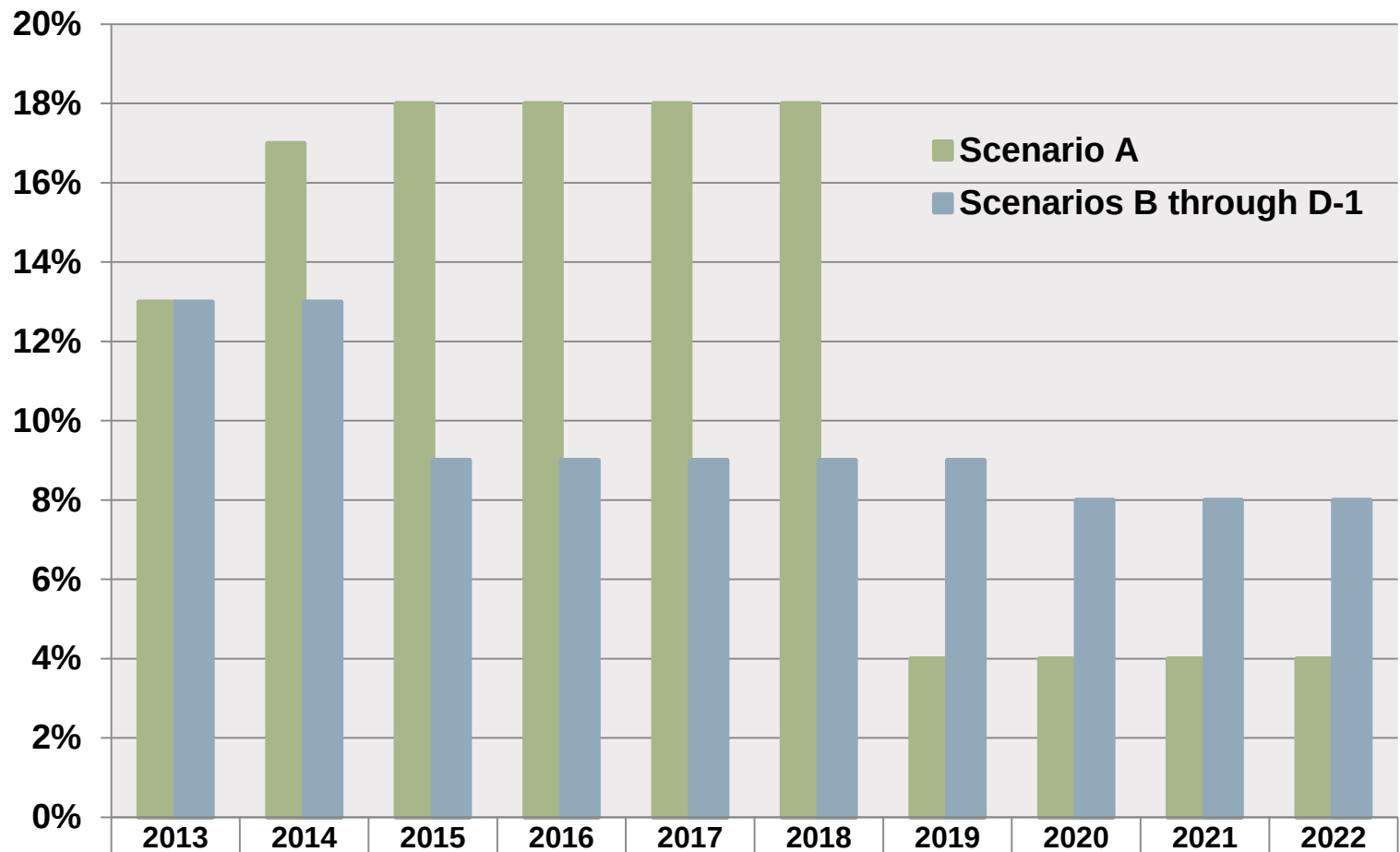
Common Elements In All Scenarios

- All fully fund Staff-recommended projects at Water Treatment Plant
- All loan proceeds would be available in 2013

Key Differences Between the Scenarios

- ❑ Series of rate increases
- ❑ Level of funding for water line replacements
- ❑ Transfer of Water Sales to Raw Water Fund
- ❑ General Fund contributions
- ❑ Annual debt service

Projected Annual Water Rate Increases 2013-2022



	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Scenario A	13%	17%	18%	18%	18%	18%	4%	4%	4%	4%
Scenarios B through D-1	13%	13%	9%	9%	9%	9%	9%	8%	8%	8%

Debt Service Comparison

Scenario	Loan Amount	Loan Type	Interest Rate	Annual Debt Service	Total Interest Payments
A	\$16M	30 Year External Loan	3.4% (fixed)	\$820K	\$9.0M
B	\$12M	20 Year External Loan	3.05% (fixed)	\$800K	\$4.0M
B-1	\$12M	10 Year External Loan	1.55% (fixed)	\$1.5M	\$1.2M
C	\$10M	10 Year Internal Loan	1.7% (variable)	\$1.1M	\$1.0M (assuming 1.7%)
D	\$10M – 20 Yr External \$6M – 8 Yr Internal (from non-utility funds)		3.05% (fixed) 1.5%-4.0% (variable)	+ \$675K \$843K \$1.5M	\$4.1M
D-1	\$10M – 20 Yr External \$6M – 8 Yr Internal (from Power fund)		3.05% (fixed) 1.5%-4.0% (variable)	+ \$675K \$843K \$1.5M	\$4.1M

NOTE: Scenarios D and D-1 require General Fund contribution

Level of Funding Provided

Scenario	Loan Amount	Loan Type	WTP	Line Replacements	% of Line Replacements	First Year of Line Replacements
A	\$16M	30 Year External Loan	Fully Funded (\$27.4M)	Fully Funded (\$23.5M)	100%	2013
B	\$12M	20 Year External Loan	Fully Funded (\$27.4M)	\$12.8M	54%	2013
B-1	\$12M	10 Year External Loan	Fully Funded (\$27.4M)	\$6.5M	28%	2020
C	\$10M	10 Year Internal Loan	Fully Funded (\$27.4M)	\$7.9M	34%	2020
D	\$10M – 20 Yr External \$6M – 8 Yr Internal (from non-utility funds)		Fully Funded (\$27.4M)	\$17.5M	74%	2013
D-1	\$10M – 20 Yr External \$6M – 8 Yr Internal (from Power fund)		Fully Funded (\$27.4M)	\$17.5M	74%	2013

Scenario **A**

Pros and Cons of \$16M, 30 Yr External Loan

PROS

- A. Provides full funding of \$23.5M for line replacements.
- B. Continues transfer of portion of Water Sales to Raw Water Fund.
- C. No depletion of General Fund dollars.
- D. Promotes intergenerational equity.

CONS

- A. Higher rate increases.
- B. Longest repayment period.
- C. Additional financial requirements

Scenario **B**

Pros and Cons of \$12M, 20 Yr External Loan

PROS

- A. Provides \$12.8M of funding for line replacements.
- B. Lower rate increases.
- C. No depletion of General Fund dollars.
- D. Promotes intergenerational equity.

CONS

- A. Longer repayment period.
- B. Additional financial requirements.

Scenario **B-1**

Pros and Cons of \$12M, 10 Yr External Loan

PROS

- A. Shorter repayment period.
- B. Lower rate increases.
- C. No depletion of General Fund dollars.
- D. Promotes intergenerational equity.

CONS

- A. No funding for line replacements until 2020.
- B. Lowest total funding of line replacements in any of the scenarios.

Scenario **C**

Pros and Cons of \$10M, 10 Yr Internal Loan

PROS

- A. Shorter repayment period.
- B. Lower rate increases.
- C. No additional financial requirements.
- D. Loan interest is paid to the City.

CONS

- A. No funding for line replacements until 2020.
- B. Less funds for other City needs.
- C. Variable interest rate

Pros and Cons of \$10M External and \$6M Internal Loan from Non-Utility Funds

PROS

- A. Provides \$17.5M of funding for line replacements.
- B. Lower rate increases.
- C. Promotes intergenerational equity.

CONS

- A. Loss of Enterprise Fund status for one year.
- B. Change in City's spending base under TABOR.
- C. Depletion of General Fund dollars.
- D. Longer repayment period.
- E. Additional financial requirements.

Pros and Cons of \$10M External and \$6M Internal Loan from Power Fund

PROS

- A. Provides \$17.5M of funding for line replacements.
- B. Lower rate increases.
- C. No loss of Enterprise Fund status.
- D. Promotes intergenerational equity.

CONS

- A. Depletion of General Fund dollars.
- B. Longer repayment period.
- C. Additional financial requirements.

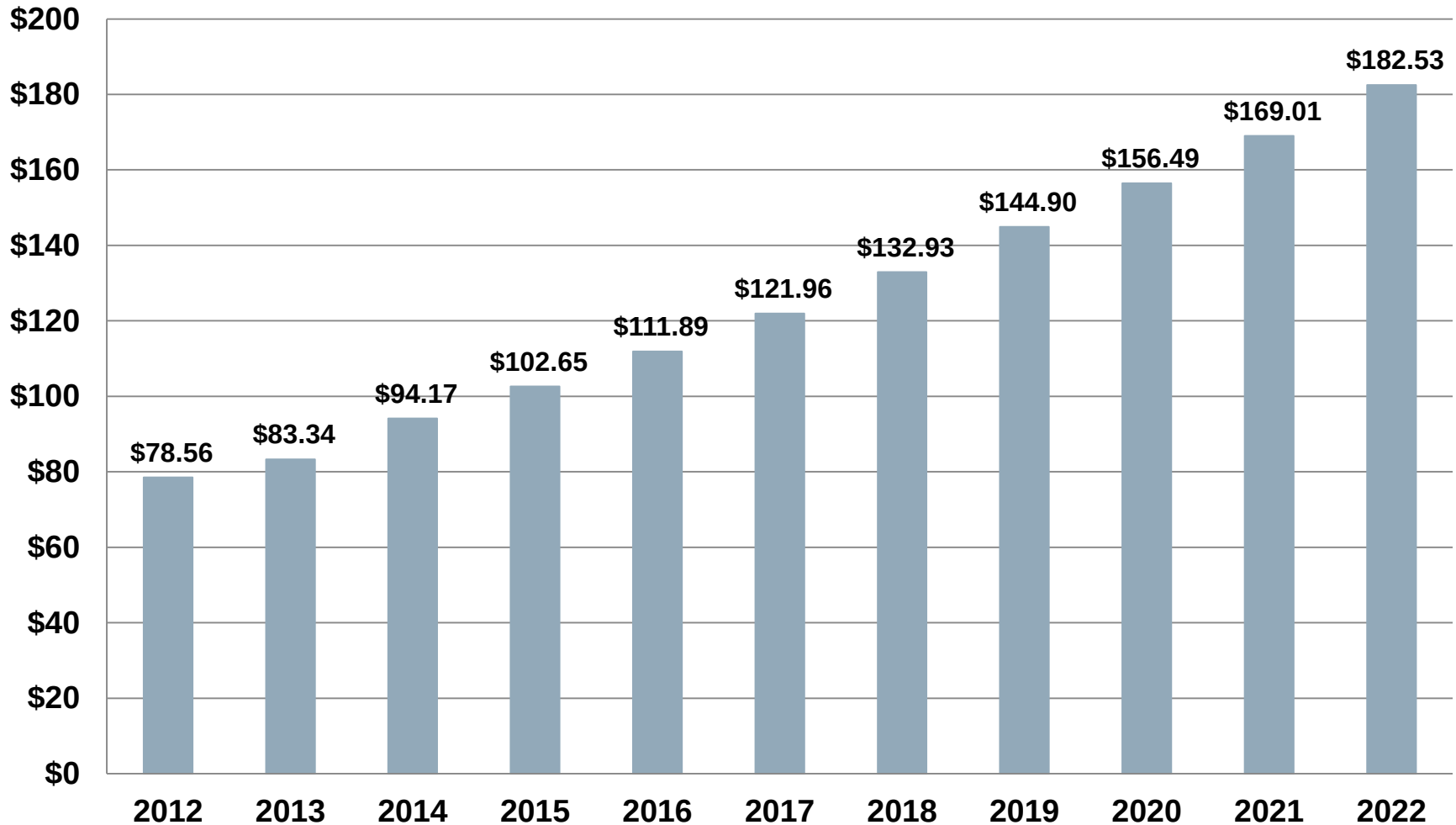
Feedback From November 27, 2012 City Council Study Session

- Consensus indication for Scenario D
- Some support for Scenario A
- Some support for Scenario B
- No support for Scenario C

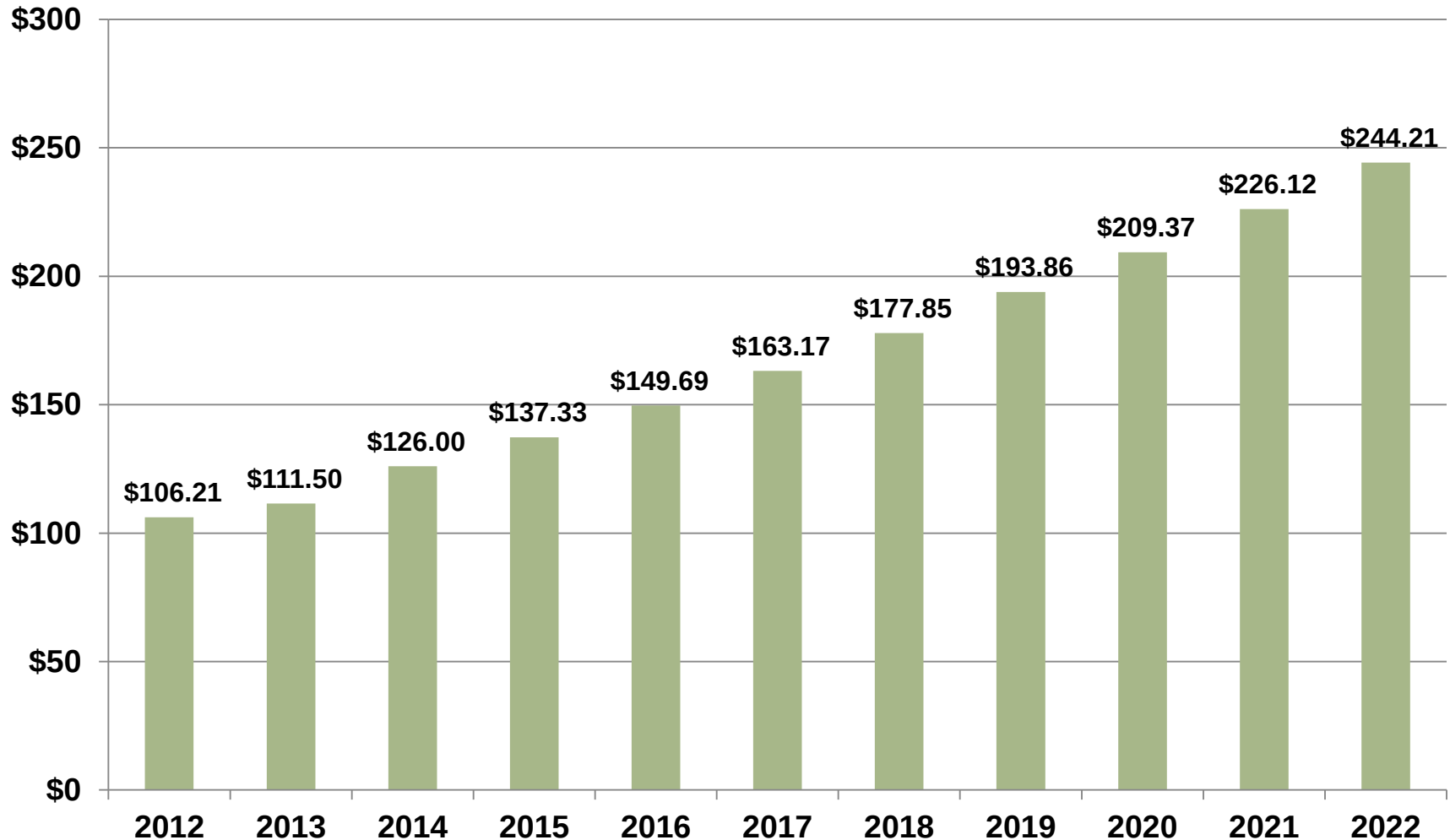
External Financing Options

1. Bank Loan
2. Colorado Water Resources and Power Development Authority
3. Water Utility Bonding

Projected Average Monthly Commercial Water Bill 2012-2022^{P. 248}
(41,630 gallons per month) –
Based on Current Series of Rate Increases

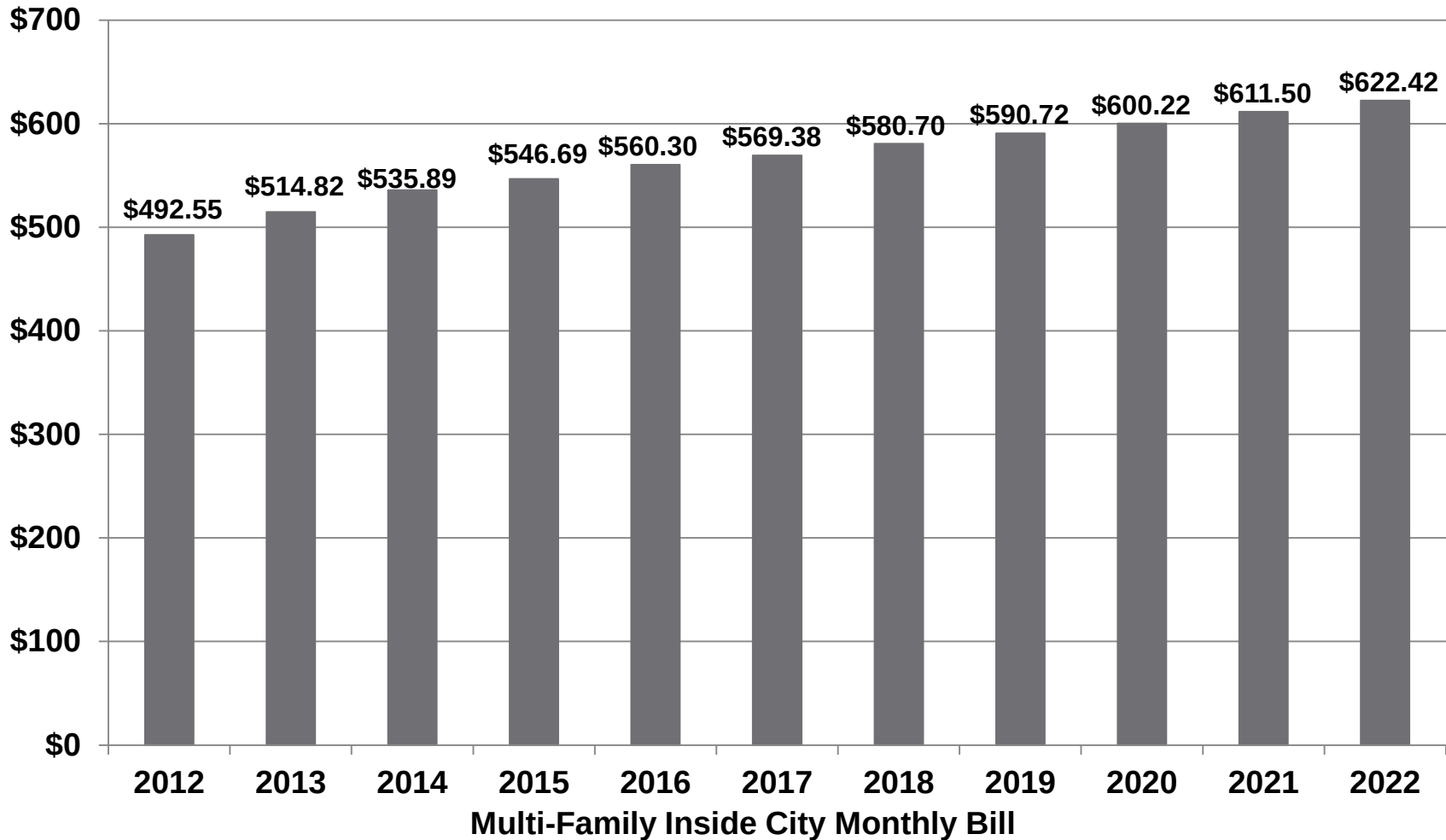


Projected Average Monthly Irrigation Water Bill 2012-2022 (46,700 gallons per month) – Based on Current Series of Rate Increases



Projection of Customer's Total Monthly Utility Bill 2012-2022

Multi-Family Inside City



*Based on an average sized Multi-Family complex of 5.83 dwelling units

Projection of Customer's Total Monthly Utility Bill 2012-2022

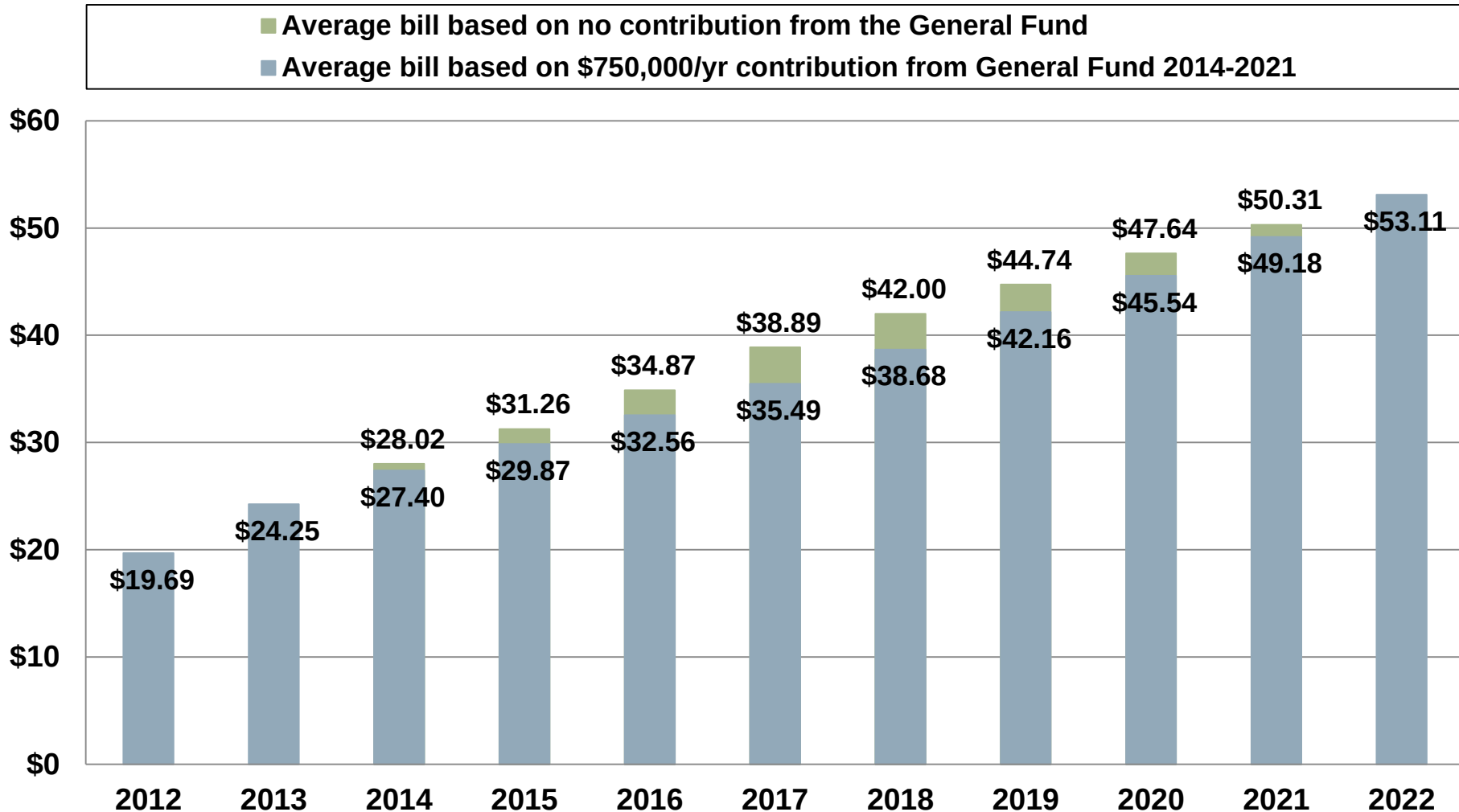
Multi-Family Inside City

Utility Total Monthly Bill Per Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Water	\$52.84	\$55.90	\$63.17	\$68.86	\$75.05	\$81.80	\$89.16	\$97.19	\$104.96	\$113.36	\$122.43
Wastewater	\$12.65	\$11.22	\$12.46	\$13.83	\$15.36	\$17.05	\$18.92	\$20.25	\$21.66	\$23.17	\$24.80
Electric	\$351.99	\$372.43	\$384.50	\$384.50	\$389.80	\$389.80	\$389.80	\$389.80	\$389.80	\$389.80	\$389.80
Storm Drainage	\$4.61	\$4.61	\$5.05	\$5.53	\$6.06	\$6.64	\$7.20	\$7.80	\$8.06	\$8.21	\$8.36
Street Maintenance	\$1.67	\$1.87	\$1.92	\$1.97	\$2.03	\$2.09	\$2.15	\$2.21	\$2.27	\$2.33	\$2.40
Solid Waste Management	\$64.13	\$64.13	\$64.13	\$67.34	\$67.34	\$67.34	\$68.52	\$68.52	\$68.52	\$69.68	\$69.68
Mosquito Control	\$4.66	\$4.66	\$4.66	\$4.66	\$4.66	\$4.66	\$4.95	\$4.95	\$4.95	\$4.95	\$4.95
Total Multi-Family Inside City	\$492.55	\$514.82	\$535.89	\$546.69	\$560.30	\$569.38	\$580.70	\$590.72	\$600.22	\$611.50	\$622.42
% Inc/(Dec) to Prior Year		4.52%	4.09%	2.02%	2.49%	1.62%	1.99%	1.73%	1.61%	1.88%	1.79%

***Based on an average sized Multi-Family complex of 5.83 dwelling units**

Projected Average Residential Water Bill 2012-2022^{P. 252}

(8,100 gallons per month) – With and Without General Fund Contribution



Projection of Customer's Total Monthly Utility Bill 2012-2022 ^{P. 253}

Residential Inside City

Without \$750K/yr Contribution from General Fund to Water 2014-2021

Utility Total Monthly Bill Per Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Water	\$19.69	\$24.25	\$28.02	\$31.26	\$34.87	\$38.89	\$42.00	\$44.74	\$47.64	\$50.31	\$53.11
Wastewater	\$15.72	\$18.84	\$20.91	\$23.21	\$25.76	\$28.60	\$31.74	\$33.96	\$36.34	\$38.88	\$41.60
Electric	\$60.38	\$63.88	\$65.95	\$65.95	\$66.86	\$66.86	\$66.86	\$66.86	\$66.86	\$66.86	\$66.86
Storm Drainage	\$8.30	\$8.30	\$9.10	\$9.97	\$10.93	\$11.98	\$12.99	\$14.08	\$14.54	\$14.80	\$15.07
Street Maintenance	\$1.67	\$1.87	\$1.92	\$1.97	\$2.03	\$2.09	\$2.15	\$2.21	\$2.27	\$2.33	\$2.40
Solid Waste Management	\$15.67	\$15.67	\$15.67	\$16.10	\$16.10	\$16.10	\$16.30	\$16.30	\$16.30	\$16.50	\$16.50
Mosquito Control	\$.80	\$.80	\$.80	\$.80	\$.80	\$.80	\$.85	\$.85	\$.85	\$.85	\$.85
Total Residential Inside City	\$122.23	\$133.61	\$142.37	\$149.26	\$157.35	\$165.32	\$172.89	\$179.00	\$184.80	\$190.53	\$196.39
% Inc/(Dec) to Prior Year		9.31%	6.55%	4.83%	5.42%	5.06%	4.57%	3.53%	3.24%	3.10%	3.07%

**CITY OF LOVELAND****DEVELOPMENT SERVICES DEPARTMENT**

Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: 14
MEETING DATE: 3/5/2013
TO: City Council
FROM: Greg George, Development Services Director
John Duval, City Attorney
PRESENTER: Greg George

TITLE:

A public hearing on an ordinance adding to the Loveland Municipal Code Chapter 18.77 for the Regulation of Oil and Gas Operations and Chapter 18.78 for Setbacks for Development from Oil and Gas operations within the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt, on first reading, an ordinance adding to the Loveland Municipal Code Chapter 18.77 for the regulation of oil and gas operations and Chapter 18.78 for setbacks for development from oil and gas operations in the City of Loveland.

OPTIONS:

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

DESCRIPTION:

This item is a legislative action to consider adoption of an ordinance on first reading to establish regulations on oil and gas development. The ordinance would:

- Require operators to obtain a permit from the City prior to locating an oil and gas facility within Loveland city limits.
- Provide two processes and each with a different mix of standards for obtaining a permit.
 - o **Mandatory process:** The mandatory process would require compliance with standards referred to as “baseline standards.” These standards are designed to protect public health, safety and welfare and the environment, while avoiding preemption by state law and the Colorado Oil and Gas Conservation Commission (COGCC) regulations. The permit would require approval by the Planning Commission, with possible appeal to City Council.
 - o **Optional process:** The optional process would be strictly voluntary and would require compliance with standards referred to as “enhanced standards,” in addition to most of the baseline standards. These standards are designed to mitigate adverse impacts on public health, safety and welfare and the environment to a greater degree than required by the COGCC. To encourage operators to agree to comply with these

higher enhanced standards that might otherwise be preempted by state law, the permit would be approved by the Director of Development Services, with no appeal to either the Planning Commission or City Council. Any appeal would be to Larimer County District Court.

BUDGET IMPACT:

- ☐ Positive
- ☐ Negative
- ☒ Neutral or negligible

City Council directed that fees be charged to operators of oil and gas facilities to cover the cost to the City for processing the permit and performing inspections. Adoption of such fees is provided for in the ordinance. The ordinance also contemplates that City Council will be setting capital expansion fees for oil and gas development within the City.

SUMMARY:

On May 15, 2012, City Council adopted an emergency ordinance imposing a nine-month moratorium on oil and gas development. On August 21, 2012, City Council adopted a Statement of Direction to provide guidance to City staff on the development of new regulations on oil and gas development. On December 18, 2012, City Council adopted an ordinance extending the moratorium on oil and gas development to April 15, 2013. If City Council adopts the ordinance on first reading at this March 5, 2013 meeting, then second reading would be on March 19, 2013. The ordinance would then become legally effective on April 2, 2013.

REVIEWED BY CITY MANAGER:

LIST OF EXHIBITS:

1. Draft ordinance (revisions copy)
2. Draft ordinance (clean copy)
3. City staff memorandum

FIRST READING: _____

SECOND READING: _____

ORDINANCE #

**AN ORDINANCE ADDING TO THE LOVELAND MUNICIPAL CODEA
NEW CHAPTER 18.77 TO THE LOVELAND MUNICIPAL CODE FOR
THE REGULATION OF OIL AND GAS OPERATIONS WITHIN THE
CITY OF LOVELANDAND CHAPTER 18.78 FOR SETBACKS FOR
DEVELOPMENT FROM OIL AND GAS OPERATIONS WITHIN THE
CITY OF LOVELAND**

WHEREAS, on May 15, 2012, the City Council adopted Ordinance No. 5685 as an emergency ordinance; and

WHEREAS, Ordinance No. 5685 imposed a nine (9) month moratorium on the City's acceptance, processing and approval of all applications for City licenses, permits and any other approvals needed to conduct oil and gas operations within the City; and

WHEREAS, this moratorium began on May 16, 2012, and was set to expire on February 16, 2013; and

WHEREAS, on December 18, 2012, the City Council adopted Ordinance No. 5735 to extend the moratorium from February 16, 2013, to the earlier of April 15, 2013, or on the date that an ordinance adopted by City Council to enact local oil and gas regulations becomes law; and

WHEREAS, the primary purpose of the moratorium has been to give City staff and this Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate oil and gas operations occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the environment, wildlife resources and the public's health, safety and welfare; and

WHEREAS, in that process it was determined that under Colorado law the City is prohibited from adopting and enforcing local oil and gas regulations that are in "operational conflict" with state law and the oil and gas regulations which have been adopted by the Colorado Oil and Gas Conservation Commission ("Commission"); and

WHEREAS, the Council recognizes the State of Colorado's interest in fostering the responsible and balanced development of the State's oil and gas resources in a manner consistent with the protection of the environment, wildlife and the public's health, safety and welfare and its legal authority to do so, but Council believes it is also important for the City to have a role in minimizing the adverse impacts that oil and gas development within the City would likely have on the City's environment and its residents' health, safety and welfare; and

WHEREAS, the Council therefore believes that this Ordinance is a proper and necessary exercise of the City's general police power and of its legal authority to regulate zoning and land use, in order to regulate oil and gas operations and facilities within the City to the full extent permitted by law; and

WHEREAS, the development of oil and gas resources presents unique public health, safety and welfare issues that are currently inadequately addressed in the City's current zoning and land use regulations; and

WHEREAS, City staff has completed a review of state law and of the Commission's regulations concerning oil and gas operations, a review of the oil and gas regulations adopted by other local governments throughout the state, has received and considered input from the public, including from the Anadarko Petroleum Corporation, currently the only oil and gas operator known to have plans to begin new oil and gas operations within the City; and

WHEREAS, as a result of that process, the oil and gas regulations and the building setbacks from oil and gas activities as set out in this Ordinance are necessary to protect the City's environment, wildlife resources, and the public's health, safety and welfare.

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

Section 1. That a new Chapter 18.77 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 18.77

Oil and Gas Regulations

Sections:

18.77.010	Authority.
18.77.015	Purpose.
18.77.020	Applicability.
18.77.025	Rules of Construction and Definitions.
18.77.030	Zoning.
18.77.035	Alternative Permit Processes.
18.77.040	Conceptual Review.
18.77.045	Planning Commission Review Process.
18.77.050	Administrative Review Process.
18.77.055	Baseline Standards for Planning Commission Review Process.
18.77.060	Baseline Standards for Planning Commission and Administrative Review Processes.
18.77.065	Enhanced Standards for Administrative Review Process.
18.77.070	Application Requirements.
18.77.075	Prohibited Oil and Gas Facilities.
18.77.080	Variances.

- 18.77.085 Transfer of Permits.**
- 18.77.090 Other Applicable Code Provisions.**
- 18.77.095 Emergency Response Costs.**
- 18.77.100 Application and Inspection Fees.**
- 18.77.105 Capital Expansion Fees.**
- 18.77.110 Reimbursement for Consultant Costs.**
- 18.77.115 Adequate Transportation Facilities**
- 18.77.120 Insurance and Performance Security.**
- 18.77.125 Inspections and Right to Enter.**
- 18.77.130 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.**
- 18.77.135 Conflicting Provisions.**

18.77.010 Authority.

This Chapter 18.77 is enacted pursuant to the city's police powers and land-use authority under Article XX of the Colorado Constitution, Title 31 of the Colorado Revised Statutes, the OGC Act, the COG regulations and under all other applicable laws, rules and regulations. However, it is not the intent of this chapter that these powers and authority be exercised in a manner that would create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict would arise if any application of this chapter has the effect of materially impeding or destroying a state interest as expressed in the OGC Act or the COG regulations. It is therefore the intent of this chapter that its provisions be interpreted and applied in a manner that is consistent and in harmony with any conflicting provisions of the OGC Act or the COG regulations, so as to avoid any operational conflict.

18.77.015 Purpose.

The purpose of this chapter is to generally protect the public's health, safety and welfare and the environment and more specifically to regulate oil and gas operations within the city so as to minimize the potential land use conflicts and other adverse impacts that ~~may will~~ negatively affect existing and future land uses when oil and gas operations occur within the city near those uses. This purpose is intended to be achieved in a manner that recognizes the state's interests in oil and gas operations as expressed in C.R.S. § 34-60-102, which include: fostering the responsible and balanced development of the state's oil and gas resources in a manner consistent with the protection of the public's health, safety and welfare, including protection of the environment and wildlife resources; protecting public and private interests against waste in both the production and use of oil and gas; and allowing Colorado's oil and gas pools to produce up to their maximum efficient rate subject to the prevention of waste, protection of the public's health, safety and welfare, protection of the environment and wildlife resources, and the protection and enforcement of the rights of owners and producers to a common source of oil and gas so that each owner and producer obtains a just and equitable share of production from that source.

18.77.020 Applicability.

Except as otherwise provided in this section, the provisions of this chapter shall apply to all oil and gas operations occurring within the city's boundaries, which shall include, without limitation, any oil and gas operation requiring the commission's issuance or reissuance of a drilling permit or any other permit under the COG regulations. Prior to any person commencing any such operations within the city, that person shall apply for and receive an oil and gas permit from the city in accordance with the provisions of this chapter. This chapter, however, shall not apply to those oil and gas operations for which a drilling permit was issued under the COG regulations prior to April 15, 2013, the effective date of this chapter, and under which permit the oil and gas operations were commenced before April 15, 2013. It shall also not apply to any oil and gas operations occurring on real property annexed into the city on or after April 15, 2013, provided those operations are occurring as of the effective date of the annexation pursuant to a drilling permit issued under the COG regulations. This chapter shall apply to all other oil and gas operations occurring within the city's boundaries after April 15, 2013.

18.77.025 Rules of Construction and Definitions.

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations and in chapter 18.04 of this code. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or federal or state legal holiday, that day shall be excluded in the count.

C. "Abandonment" shall mean the plugging process of cementing a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite. ~~process of plugging: (i) a dry well or a well at which the operator no longer plans to conduct oil and gas operations; and (ii) a seismic core or other exploratory hole.~~

D. "Act" or "OGC Act" shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

E. "Adverse effect" or "adverse impact" shall mean the impact of an action, ~~after mitigation,~~ that is considerable or substantial and unfavorable or harmful. The term includes social, economic, physical, health, aesthetic, historical impact, and/or biological impacts,

including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

F. “Administrative review process” shall mean the expedited and enhanced review process set out in section 18.77.050.

G. “APD” shall mean an application for a permit to drill, deepen, re-enter or recomplate and operate under the COG regulations.

H. “Applicant” shall mean any person possessing the legal right to develop oil or gas underlying land located within the city’s boundaries and who has applied for an oil and gas permit under this chapter.

I. “Application” shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

J. “Baseline standards” shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

K. “Best management practices” shall mean practices that are designed to prevent or reduce adverse impacts caused by oil and gas operations to air, water, soil or biological resources, and to minimize adverse impacts to public health, safety and welfare, including the environment and wildlife resources.

L. “Building” shall mean any residential or non-residential structure designed and permitted to be occupied by natural persons.

M. “City manager” shall mean the city’s duly appointed city manager or his or her designee.

N. “Code” shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

O. “COG rule” or “COG regulations” shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. T. 400; et seq.

P. “Commission” shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Q. “Completion” shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging ~~and abandonment~~ are complied with as set out in the COG regulations. Any well not

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previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

R. ___-“Completion combustion device” shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

S. “Current planning” shall mean the city’s current planning division.

T. “Day” shall mean a calendar day period of twenty four (24) consecutive hours.

U. “Designated agent” shall mean the designated representative of any operator.

V. “Development review team” or “DRT” shall mean the city’s development review team.

W. “Director” shall mean the director of the city’s development services department or his or her designee.

X. “Enhanced standards” shall mean those review standards and best management practices~~operation requirements~~ set out in section 18.77.065.

~~VX. “Flow line” shall mean a pipeline connecting individual well sites to gathering lines.~~

Y. “Fracking” shall mean all the stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geological formation to enhance production of oil and gas.~~technique of using explosive charges and water, sand and certain chemicals injected under pressure into an oil and gas well to create fractures that extend from the well bore into rock, shale or coal formations thereby allowing oil and gas to travel more easily from those formations, where the oil or gas is trapped, to the production well.~~

Z. “Gas” shall mean all natural gases and all hydrocarbons not defined in this section as oil.

~~YAA. “Gathering line” shall mean a pipeline transporting produced gas, oil or water from multiple well sites to a centralized facility.~~

AA. _-“Inspector” shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

BB. _-“Minimize adverse impacts” shall mean, whenever reasonably practicable, to avoid adverse impacts to wildlife resources or significant adverse impacts to the environment from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided,

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mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

CC. “Most effective performance technologies and practices” shall mean the application of proven emerging techniques and technologies or other best management practices used in conducting oil and gas operations which avoid, neutralize, exclude, eliminate, mitigate or minimize adverse on- and off-site impacts to the public health, the environment, landowners, and natural resources, and which may reduce conflicts between operators and potentially adversely affected landowners.

DD. “Natural area” shall mean those areas described or as-identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

EE. “Oil” shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

FF. “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas.

GG. “Oil and gas operations” or “operations” shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, re-entering, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flow-lines and gathering linessystems; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

HH. “Operator” shall mean a person who has the legal right to drill into and produce from a pool and to appropriate the oil or gas produced either for the operator or for the operator and an owner.

II. “Outdoor assembly area” shall mean an improved facility, not within a building, designed to accommodate and provide a place for persons to congregate, but shall not include the backyards of residential buildings.

JJ. “Owner” shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

KK. “Permit” or “oil and gas permit” shall mean a permit issued by the city to an applicant under this chapter.

LL. "Person" shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

MM. "Pit" shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils. This shall include, without limitation and as applicable, "production pits," "special purpose pits," "reserve pits," "multi-well pits" and "drilling pits," as these are defined in the COG regulations.

NN. "Planning commission" shall mean the city's planning commission as established in code section 2.60.210.

OO. "Planning commission review process" shall mean the review process set out in section 18.77.045.

~~PP. "uilding" shall mean any structure designed and permitted to be occupied by persons.~~

PP. "Seismic operations" shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

QQ. "Setback" shall mean the distance on the surface estate between the following, as applicable: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a ~~residential or non-residential~~ building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.

RR. "Significant degradation" shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

SS. "State" shall mean the State of Colorado.

TT. "Surface water body" shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

UU. "Surface owner" shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

VV. "VOC" shall mean volatile organic compounds.

WW. "Well" shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

XX. “Well blowdown” shall mean the maintenance activity designed to remove ~~unwanted~~ fluids from mature wells during which time gas is often vented to the atmosphere.

YY. “Well completion” shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and fracking, allows for the flowback of petroleum or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

ZZ. “Wellhead” shall mean the equipment attached to the casing of an oil, gas or injection well above the surface of the ground.

AAA. “Wetlands” shall have the same meaning as this word is defined in code section 18.41.110.

18.77.030 Zoning.

Notwithstanding any provision in this code to the contrary, oil and gas operations shall be permitted in all of the city’s zoning districts, planned unit developments, unit developments and within any other city-approved land uses, but only if a permit has been issued to the extent required by this chapter and an APD has been issued by the commission for those oil and gas operations.

18.77.035 Alternative Permit Processes.

Any person applying for a permit under this chapter must proceed under the planning commission review process as provided in section 18.77.045, unless the applicant voluntarily chooses to proceed under and qualifies for the expedited ~~and enhanced~~ administrative review process as provided in section 18.77.050. The permit application under the planning commission review process shall be reviewed and granted or denied on the basis of the applicable baseline standards set out in sections 18.77.055 and 18.77.060 and any other applicable standards and requirements in this chapter and code. A permit application under the administrative review process shall be reviewed and granted or denied under the applicable baseline and enhanced standards set out in sections 18.77.060 and 18.77.065 and any other applicable standards and requirements in this chapter and code.

18.77.040 Conceptual Review.

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city’s development review team. Current planning shall schedule such meeting within fourteen (14) days after a written request for the meeting has been received. At least fourteen (14) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy sets of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission under the COG regulations to obtain an APD for the oil and gas operations proposed to be

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conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city's development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city's application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited and enhanced administrative review process rather than the planning commission review process. Within five (5) days after the meeting, current planning shall provide the prospective applicant with the development review team's written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have three (3) months thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations. However, in the event current planning fails to timely provide DRT's written comments and recommendations to the prospective applicant, the prospective applicant may proceed to file its application with current planning within three (3) months thereafter.

18.77.045 Planning Commission Review Process.

A. *Application Completeness Review.* After an application has been filed with current planning, the director shall review the application for completeness to determine its compliance with the applicable requirements of section 18.77.070. If the director determines that any of those applicable requirements have not been satisfied, the director shall, within fourteen (14) days after the application is filed, notify the applicant in writing of any deficiencies in the application. This process of review and notice of deficiency shall continue until the director determines the application satisfies all applicable requirements of section 18.77.070 and is, therefore, a complete application. The director shall notify the applicant in writing that the application is complete within fourteen (14) days after the later of the filing of the application or the filing of the last application resubmittal in response to a notice of deficiency from the director. Promptly thereafter, current planning shall post the complete application on the city's website for public review, but excluding any information required in this chapter to be kept confidential.

B. *Development Review Team.* After an application is filed with current planning and has been determined by the director to be a completed application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application has been determined by the director to be a complete application, is filed with current planning, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

C. *Neighborhood Meeting.* Promptly after the director has issued the written determination that the application is complete, current planning shall schedule a neighborhood meeting to be held within ~~forty-five~~^{fifteen} (145) days of the director's written determination of completeness. Once that neighborhood meeting has been scheduled, notices of the neighborhood meeting shall be provided in accordance with all applicable requirements of code chapter 18.05. The mailed notice required for neighborhood meetings under chapter 18.05 shall also be sent to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are proposed to be located. In addition to the other contents required for the mailed notice under chapter 18.05, the mailed notice shall state that the application can be reviewed prior to the neighborhood meeting on the city's website or at current planning's office. The neighborhood meeting shall be conducted by current planning. The applicant or a representative of the applicant shall attend the neighborhood meeting and be available to answer questions concerning the application. The objective of a neighborhood meeting shall be to inform noticed persons and other interested citizens attending the meeting of the scope and nature of the proposed oil and gas operations under the application and how the operations will be regulated under this chapter and the COG regulations. Notwithstanding the foregoing, the director may waive the provisions of this paragraph C. if the director determines that the City's required notices and neighborhood meeting under this paragraph will be duplicative of the notice and neighborhood meeting requirements under the COG regulations for the applicant's APD.

D. *Planning Commission Hearing.* Current planning shall schedule the application for a public hearing before the planning commission within ~~forty-five~~^{thirty} (45³⁰) days after the DRT has finished its review of the application. Notice of the hearing shall be provided in accordance with all applicable requirements of 18.05. The mailed notice required in chapter 18.05 for this hearing shall also be mailed to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are to be located. In addition, the mailed and published notices shall state that the complete application can be reviewed by the public on the city's website or at current planning's office.

E. *Planning Commission Hearing Procedures.* The planning commission's public hearing shall be conducted as a quasi-judicial proceeding. Subject to the planning commission chairperson's discretion to limit the time and scope of testimony and to make allowances for the adequate presentation of evidence and the opportunity for rebuttal, the order of the hearing shall be as follows: (1) explanation and nature of application by current planning staff; (2) applicant's presentation of evidence and testimony in support of the application; (3) public comment and presentation of evidence; (4) applicant's rebuttal presentation; and (5) motion, discussion and vote by the planning commission on the application. No person making a presentation and providing testimony or comment at the hearing shall be subject to cross-examination. However, during the hearing members of the planning commission and the city attorney may make inquiries for the purposes of eliciting new information and to clarify information presented.

F. *Planning Commission Decision.* The planning commission shall consider the application based solely on the testimony and evidence submitted at the hearing, the applicable provisions of this chapter and any other applicable provisions of this code. At the conclusion of the presentation of testimony and evidence, the planning commission shall vote to grant, grant with conditions or deny the oil and gas permit requested in the application under consideration. A

condition may only be imposed on the grant of an oil and gas permit if the applicant agrees to that condition on the record of the hearing. An applicant's refusal to agree to any such condition shall not be used by the planning commission as a basis, in whole or part, to deny the applicant's requested oil and gas permit. In granting, granting with conditions or denying an application for an oil and gas permit, the planning commission shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing.

G. Appeal of Planning Commission Decision. The planning commission's decision described in paragraph F. of this section may be appealed to the city council by the applicant and any "party in interest" as defined in section 18.80.020. The written notice of appeal shall be filed with current planning within ten (10) days of the effective date of the planning commission's final decision, which date shall be the date the planning commission adopts its written findings and conclusions. The appeal shall be filed and conducted in accordance with the applicable provisions in chapter 18.80 for appeals from the planning commission to the city council. The council's decision in the appeal hearing to grant, grant with conditions or deny the applicant's request for an oil and gas permit shall, like the planning commission's decision, be based on the applicable provisions of this chapter and any other applicable provisions of this code. The council shall also not impose any condition on its grant of the oil and gas permit unless the applicant agrees to the condition on the record of the council's appeal hearing.

18.77.050 Administrative Review Process.

A. Applicant's Election to Use Administrative Review Process. As an alternative to processing an application using the planning commission review process set out in section 18.77.045, an applicant may elect to use the expedited and enhanced administrative review process set out in this section. In electing to use this administrative review process, the applicant must acknowledge and agree in its application to all of the following: (1) that by using this administrative review process to obtain an expedited review, the applicant's application will not only be subject to the baseline standards in section 18.77.060, but also the enhanced standards in section 18.77.065, which enhanced standards could reasonably be interpreted to be in operational conflict in one or more respects with the COG regulations; (2) that the applicant is waiving any such operational conflicts, but only for the purpose of obtaining a permit under~~pursuing~~ this ~~expedited approval of its application under this~~ administrative review process; (3) that to the extent the enhanced or negotiated standards imposed through this administrative review process are not already included as conditions in the applicant's APD, the applicant will request the commission to add such enhanced standards as additional conditions to the applicant's APD; and ~~(4)~~ that if for any reason the applicant wishes to revoke its election to use this administrative review process or to withdraw from the process once started, but still desires an oil and gas permit under this chapter, it will be required to follow and meet all of the requirements of the planning commission review process.

B. Application Completeness Review. An application reviewed under this section shall be reviewed by the director for completeness using the same process used in the planning commission review process as set out in section 18.77.045.A.

C. *Development Review Team.* After an application is filed with current planning and determined by the director to be a complete application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application ~~has been determined by the director to be a complete application, is filed with current planning,~~ the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

D. *Neighborhood Meeting.* The neighborhood meeting for an application reviewed under this section shall be scheduled, noticed and conducted or waived in the same manner as under the planning commission review process ~~as set out in section 18.77.045.CE.,~~ but with one addition. The notices mailed under section 18.77.045.C. shall state that the application is being reviewed under the administrative review process and notify the recipients of the notice that they will have until ~~fifteen~~ (15) days after the neighborhood meeting is held or after such other date set by the director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C. in which to submit to current planning for the director's consideration any comments and information, in written, electronic or photographic form, related to the subject application as provided in paragraph E. of this section.

E. *Public Comment.* Within ~~fifteen~~ (15) days after the neighborhood meeting is held, or after such other date set by the director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C. any person may file with current planning for the director's consideration and to be included in any record on appeal taken under paragraph H. of this section, any comments and information, in written, electronic or photographic form, relevant to the director's consideration of the subject application under this section. Current planning shall preserve all of the comments and information received under this section to ensure that they are included in any record of appeal. These comments and information shall also be made available for review by the applicant. The applicant may supplement its application in response or rebuttal to the comments and information submitted by the public. The applicant must file this supplemental information with current planning within ~~fifteen~~ (15) days after the deadline for the public's submittal of its comments and information. Any comments and information received by current planning after the deadlines set forth herein, shall not be considered by the director in his or her decision and shall not be included in the record of any appeal under paragraph H. of this section.

F. *Director's Negotiations with Applicant.* After receiving the DRT report and all of the public comments and information provided under paragraph E. of this section, the director may, in his or her discretion, negotiate with the applicant for standards to be added as conditions to the oil and gas permit in addition to or in substitution of those baseline standards required in section 18.77.060 and the enhanced standards in section 18.77.065, if in the director's judgment such conditions will result in the increased protection of the public's health, safety or welfare or

further minimize adverse impacts to surrounding land uses, the environment or wildlife resources. The director shall have ten (10) days after the last of the public comments and information have been submitted under paragraph E. of this section in which to conduct those negotiations. If after those negotiations the applicant agrees in writing to these new standards, they shall be added as conditions to the oil and gas permit if the permit is granted by the director. If the applicant does not agree to these conditions, they shall not be added as conditions to any granted oil and gas permit. In addition, the applicant's refusal to agree to any such conditions shall not be used by the director as a basis, in whole or part, to deny the applicant's requested oil and gas permit.

G. *Director's Decision.* Within ~~fifteen~~ (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application's compliance or noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

H. *Appeal of Director's Decision.* The director's decision as set out in his or her written findings and conclusions shall constitute the director's final decision. The director's final decision is not appealable to the planning commission or the city council. The director's final decision may only be appealed by the applicant or a "party in interest," as defined in section 18.80.020, to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The record to be considered in the appeal shall consist of the director's written findings and conclusion, the application, the applicant's supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

18.77.055 Baseline Standards for Planning Commission Review Process.

All applications considered in the planning commission review process and all oil and gas operations approved under this process shall be subject to and comply with [the setback and mitigation requirements set forth in](#) COG rule 604, as amended, ~~for setbacks and mitigation measures~~, in addition to the standards and requirements in code section 18.77.060.

18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.

All applications considered in the planning commission review process and the administrative review process and all oil and gas operations approved under either process shall be subject to and comply with the following standards and requirements, as applicable:

A. *COG regulations for setback requirements.* All oil and gas operations shall comply with COG rule 603, as amended.

B. *COG regulations for groundwater baseline sampling and monitoring.* All permits for oil and gas operations shall comply with COG rule 318.A.e, as amended.

C. *COG regulations for protection of wildlife resources.* All permits for oil and gas operations shall comply with COG rule series 1200, as amended. The operator shall notify the director if consultation with Colorado ~~Division of Parks and~~ Parks and ~~Division of~~ Wild-Llife is required pursuant to COG rule 306.c.

D. *COG regulations for reclamation.* All permits for oil and gas operations shall comply with COG rule series 1000, as amended. The operator shall provide copies of the commission's drill site reclamation notice to the director at the same time as it is provided to the surface owner.

E. *COG regulations for well soil protection and plugging and abandonment.*

1. All oil and gas facilities permits for oil and gas operations shall comply with the requirement for well abandonment soil protection and plugging and abandonment set forth in COG rule ~~706319~~, as amended. The operator shall provide a copy of the approval granted by the commission for the abandonment plugging method to the director within thirty (30) days from receiving such approval.

2. The operator shall provide copies of the commission's plugging and abandonment report to the director at the same time as it is provided to the commission.

3. The operator shall notify the Loveland Fire and Rescue Authority not less than two (2) hours prior to commencing plugging operations.

~~F. *Anchoring.* All mechanized equipment associated with oil and gas operations shall be anchored so as to minimize transmission of vibrations through the ground.~~

~~G.F.~~ *Applications and permits.* Copies of all county, state and federal applications and permits that are required for the oil and gas operation shall be provided to the director.

~~H.G.~~ *Burning of trash.* No burning of trash shall occur on the site of any oil and gas operations.

~~I.H.~~ *Chains.* Traction chains on heavy equipment shall be removed before entering a city street.

~~J.I.~~ *COG regulations for hydraulic fracturing chemical disclosure.* All permits for oil and gas operations shall comply with COG rule 205.A, as amended. The operator shall provide copies of the commission's chemical disclosure registry form to the Loveland Fire and Rescue Authority at the same time as it is provided to the commission.

~~K.J.~~ *Color.* Oil and gas facilities, once development of the site is complete, shall be painted in a uniform, non-contrasting, non-reflective color, to blend with the surrounding landscape and with colors that match the land rather than the sky. The color should be slightly darker than the surrounding landscape.

~~L.K.~~ *Cultural and historic resources standards.* The installation and operation of any oil and gas ~~facility~~~~operation~~ shall not cause significant degradation of cultural or historic resources, of sites eligible as City Landmarks, or the State or National Historic Register, as outlined in code section 15.56.030.

~~M.L.~~ *Stormwater quality and dust control.* All permits for oil and gas operations shall comply with COG rule 805, as amended, plus code chapter 13.20.

~~N.M.~~ *Electric equipment.* The use of electric-powered motors for pumping or drilling systems shall be required if a provider of electric power agrees at the provider's customary rates, fees and charges to provide electric service to an oil and gas facility and the cost to make the electrical connection is economically practicable.~~oil and gas facility is located in reasonably close proximity to available electric distribution lines.~~ Electric service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of natural gas or diesel generators may be used until electric service is provided.

~~O.N.~~ *Emergency response standards.*

1. In General. Operators agree to take all reasonable measures to assure that ~~O~~oil and gas operations shall not cause an unreasonable risk of emergency situations such as explosions, fires, gas, oil or water pipeline leaks, ruptures, hydrogen sulfide or other toxic gas or fluid emissions, hazardous material vehicle accidents or spills.

2. Emergency Preparedness Plan. Each operator with an operation in the city is required to provide to the City its~~develop an~~ emergency preparedness plan for operations within the City,~~each specific facility site,~~ which shall be in compliance with the applicable provisions of the International Fire Code as adopted in the city code. The plan shall be filed with the Loveland Fire Rescue Authority and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). The emergency preparedness plan shall contain at least all of the following information:

(a) The designation of the operator's group or individuals~~Name, address and phone number, including 24-hour emergency numbers, for at least two persons~~ responsible for emergency field operations. An office or group designated to handle first response situations, emergency field operations or on-scene incident commands

will meet this requirement. A phone number and address of such operation shall be required.

(b) A map identifying the location of pipelines, isolation valves and/or a plot plan, sufficient in detail to enable the Loveland Fire Rescue Authority to respond to potential emergencies. An as-built facilities map in a format suitable for input into the city's geographical information system depicting the locations and type of above and below ground facilities, including sizes and depths below grade of all oil and gas gathering and transmission lines and associated equipment, isolation valves, surface operations and their functions, as well as transportation routes to and from exploration and development sites for emergency response and management purposes. The information concerning pipelines and isolation valves shall be kept confidentially by the Loveland Fire Rescue Authority, and shall only be disclosed in the event of an emergency or as otherwise required by law. ~~The city shall deny the right of inspection of the as-built facilities maps to the public pursuant to C.R.S. § 24-72-204.~~

~~(c) Detailed information addressing each potential emergency that may be associated with the operation, which shall include any or all of the following: explosions, fires, gas, oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills. For each potential emergency, threshold/trigger levels shall be pre-identified to determine when a state of emergency should be declared.~~

~~(cd)~~ A provision that any spill outside of the containment area that has the potential to leave the facility or to threaten waters of the state and that is required to be reported to the commission or the commission's director shall be immediately reported to the Loveland Fire Rescue Authority emergency dispatch at 911 and to the director promptly thereafter~~immediately~~.

~~(de)~~ ~~Detailed information identifying a~~Access or evacuation routes and health care facilities anticipated to be used in the case of an emergency.

~~(ef)~~ A project-specific emergency preparedness plan for any operation that involves drilling or penetrating through known zones of hydrogen sulfide gas.

~~(fg)~~ A provision obligating the operator to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency caused by oil and gas operations and not promptly handled by the operator or its agents.

~~(gh)~~ Detailed information showing that the applicant has adequate personnel, supplies and funding to implement the emergency response plan immediately at all times during construction and operations.

~~(i) A provision obligating the applicant to have immediately available on each oil and gas operation site a current Material Safety Data Sheets (MSDS) for all chemicals used or stored on the site. The MSDS sheets shall be provided immediately upon request to the director, a public safety officer or a health professional.~~

~~—(j) The plan shall include a provision establishing a process by which the operator engages with the surrounding neighbors to educate them on the risks of the on-site operations and to establish a process for surrounding neighbors to communicate with the operator.~~

P.O. *Noise mitigation.* All permits for oil and gas operations shall comply with COG rule 802, as amended, plus the following:

1. The exhaust from all engines, ~~motors~~, coolers and other mechanized equipment shall be vented up and in a direction away from the closest existing residences.
2. Additional noise mitigation may be required based on specific site characteristics, including, but not limit to, the following:
 - (a) Nature and proximity of adjacent development;
 - (b) Prevailing weather patterns, including wind direction;
 - (c) Vegetative cover on or adjacent to the site; and
 - (d) Topography.
3. The level of required noise mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and the level of noise emitted by the well site. To the extent feasible and not inconsistent with its operations, operator shall use One (1) or more of the following additional noise mitigation measures to mitigate noise impacts~~may be required~~:
 - (a) Acoustically insulated housing or cover enclosures on motors, engines and compressors;
 - (b) Vegetative screens consisting of trees and shrubs;
 - (c) Solid wall or fence of acoustically insulating material surrounding all or part of the facility;

- (d) Noise mitigation plan identifying and limiting hours of maximum noise emissions, type, and frequency, and level of noise to be emitted and proposed mitigation measures; and
- (e) Lowering the level of pumps or tank batteries.

Q. *Fencing.* Permanent perimeter fencing six (6) feet in height shall be installed around the entire perimeter of the oil and gas operations site, including gates at all access points. Such gates shall be locked when employees of the operators are not present on the site. Such fencing and gates shall be solid, opaque and consist of masonry, stucco, steel or other similar materials. The director may allow chain link fencing if solid and opaque fencing creates a threat to public safety.

R. *Flammable material.* All land within twenty five (25) feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.

S. *Land disturbance standards.* The following mitigation measures shall be used to achieve compatibility and reduce land use impacts:

1. Pad dimensions for a well shall be the minimum size necessary to accommodate operational needs while minimizing surface disturbance.
2. Oil and gas operations shall use structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.
3. Oil and gas operations shall be located in a manner that minimizes the amount of cut and fill.
4. To the maximum extent feasible, oil and gas operations shall use and share existing infrastructure, minimize the installation of new facilities and avoid additional disturbance to lands in a manner that reduces the introduction of significant new land use impacts to the environment, landowners and natural resources.
5. Landscaping plans shall include drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. The operator shall submit to the city a temporary irrigation plan and implement said plan, once approved by the city, for the first two years after the plant material has been planted. If it is practicable to provide a permanent irrigation system, the operator shall submit an irrigation plan for permanent watering and the operator shall provide a performance guarantee for such landscaping that is acceptable to the director. Produced water may not be used for landscaping purposes.
6. The application shall include an analysis of the existing vegetation on the site to establish a baseline for re-vegetation upon temporary or final reclamation or

abandonment of the operations. The analysis shall include a written description of the species, character and density of existing vegetation on the site and a summary of the potential impacts to vegetation as a result of the proposed operations. The application shall include any commission-required interim and final reclamation procedures and any measures developed from a consultation with current planning regarding site specific re-vegetation plan recommendations.

T. *Landscaping.* When an oil and gas operation site is less than one hundred (100) feet from a public street, a Type D Bufferyard shall be required between the oil and gas operation and the public street in accordance with the City of Loveland Site Development Performance Standards and Guidelines as adopted in code chapter 18.47.

U. *Lighting.* All permits for oil and gas operations shall comply with COG rule 803, as amended, plus the following:

1. Except during drilling, completion or other operational activities requiring additional lighting, down-lighting shall be required, meaning that all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture; and
2. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and on any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures.

V. *Maintenance of machinery.* Routine field maintenance of vehicles and mobile machinery shall not be performed within three hundred (300) feet of any water body.

W. *Mud tracking.* An operator shall take all practical measures to ensure that the operator's vehicles do not track mud or leave debris on city streets. Any such mud or debris left on city streets by an operator's operation shall be promptly cleaned up by the operator.

X. *Reclamation plan.* The application shall include any interim and final reclamation requirements required by the COG regulations.

Y. *Recordation of flow-lines.* The legal description of all flow-lines, including transmission and gathering systems, shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flow-lines shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days after abandonment.

Z. *Removal of debris.* When oil and gas operations become operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried on-site.

AA. *Removal of equipment.* All equipment used for drilling, re-drilling, maintenance and other oil and gas operations shall be removed from the site within thirty (30) days of completion of the work. Permanent storage of equipment on well pad sites shall be prohibited.

BB. *Signs.* A sign permit shall be obtained for all signs at the oil and gas ~~facility~~operations site or otherwise associated with the oil and gas operations in accordance with code chapter 18.50, consistent with the COG regulations.~~except as otherwise required by the COG regulations.~~

CC. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right to Know Act, the Comprehensive Environmental Response Compensation and Liability Act, the Oil and Pollution Act, and the Clean Water Act, as applicable. If a spill or release impacts or threatens to impact a water well, the operator shall comply with existing COG regulations concerning reporting and notification of spills, and~~notify the affected or potentially affected water well owner immediately following discovery of the release, and~~ the spill or release shall be reported to the director within twenty-four (24) hours of the operator becoming aware of the spill or release.

DD. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state in accordance with COG rule series 1000.

EE. *Development standards for street, electric, water/wastewater, and stormwater infrastructure.* All permits for oil and gas operations shall comply with the development standards for street, electric, water/wastewater and stormwater infrastructure set forth in code chapter 16.24.

FF. *Transportation and circulation.* All applicants shall include descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste and all other material to be hauled on the city's streets. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, and any other information required by the city engineer. In addition to any other bonding or indemnification requirements of the city as may be reasonably imposed, all applicants shall provide the city with a policy of insurance in an amount determined by the city engineer to be sufficient to protect the city against any damages that may occur to the city's streets, roads or rights-of-way as a result of any weight stresses or spillage of hauled materials including, without limitation, water, sand, waste fluids, waste solids and mixed wastes.

GG. *Water supply.* The operator shall identify on the site plan its source for water used in both the drilling and production phases of operations. The sources and amount of water used in the city shall be documented and ~~this~~record shall be provided to the city annually or sooner, upon request of the city's Water and Power Department director, or his or her designee. The disposal of water used on site shall also be detailed including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water, and the final destination for water used in operation.

HH. *Weed control.* The applicant shall be responsible for ongoing weed control at oil and gas operations sites, pipelines and along access roads during construction and operations, until abandonment and final reclamation is completed pursuant to commission rules. Control of weeds shall comply with the standards in code chapter 7.18.

II. *Well abandonment.* The operator shall comply with the COG regulations regarding well abandonment. Upon plugging and abandonment of a well, the operator shall provide the director with surveyed coordinates of the abandoned well and shall leave onsite a physical marker of the well location.

JJ. *Federal and state regulations.* The operator shall comply with all applicable federal and state regulations including, without limitation, the OGC act and the COG regulations.

KK. *Building permits.* A building permit shall be obtained for all structures as required by the International Fire Code and/or International Building Code as adopted in the city code.

LL. *Floodplains.* All oil and gas operations shall be prohibited within the city's floodway districts as defined and established in code chapter 18.45. Oil and gas operations shall be permitted within the city's flood fringe districts as defined and established in code chapter 18.45, provided such operations comply with all applicable requirements of chapter 18.45.

~~MM. *Temporary housing.* Temporary housing at any oil and gas operations, including without limitation, trailers, modular homes, and recreational vehicles shall be prohibited.~~

~~MMNN.~~ *Trash and recycling enclosures.* All applications for oil and gas operations shall comply with the requirements contained in code chapter 7.16, to the maximum extent feasible.

~~NNOO.~~ *Representations.* The approved project development plan shall be subject to all conditions and commitments of record, including verbal representations made by the applicant on the record of any hearing or review process and in the application file, including without limitation compliance with all approved mitigation plans.

~~OOPP.~~ *Domestic water supply.* Oil and gas operation sites shall be connected to a domestic water supply if a domestic water supplier agrees to make such a connection and the site is located in reasonably close proximity to such connection at the supplier's customary rates, fees and charges. Domestic water service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of imported water may be allowed until such water service is provided.

~~PPQQ.~~ *Seismic operations.* The operator shall provide at least a fifteen (15) day advance notice to the director and the Loveland Rural Fire Authority whenever seismic activity will be conducted within the city.

~~QQRR.~~ *Access roads.* All private roads used to access the tank battery or the wellhead shall, at a minimum, be:

1. A graded gravel roadway at least twenty (20) feet wide with a minimum unobstructed overhead clearance of thirteen (13) feet six(6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the City Engineer. The aggregate material, at a minimum, shall meet the requirements for a Class 6, Aggregate Base Course as specified in the *Colorado Department of Highways Standard Specifications for Road and Bridge Construction*, latest edition.

2. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage to waterway (i.e. roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of culvert pipes shall be subject to approval by the city engineer.

RRSS. *Visual impacts.*

1. To the maximum extent practicable, oil and gas facilities shall be:
 - (a) Located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings, and other landmarks;
 - (b) Located to avoid crossing hills or ridges;
 - (c) Located to avoid the removal of trees; and
 - (d) Located at the base of slopes to provide a background of topography and/or natural cover.
2. Access roads shall be aligned to follow existing grades and minimize cuts and fills.
3. One (1) or more of the landscaping practices may be required on a site specific bases:
 - (a) Establishment and proper maintenance of adequate ground cover, shrubs and trees;
 - (b) Shaping cuts and fills to appear as natural forms;
 - (c) Cutting rock areas to create irregular forms; and
 - (d) Designing the facility to utilize natural screens.

~~STT~~. COG regulations for odor. All oil and gas operations~~facilities~~permits shall comply with COG rule 805.

TT. COG regulations for abandonment of pipelines. Any pipelines abandoned in place shall comply with COG rule 1103 and the operator's notice to the commission~~COG~~ of such abandonment shall be promptly filed thereafter by the applicant with the director~~local governmental designee.~~

18.77.065 Enhanced Standards for Administrative Review Process.

All applications considered in the administrative review process and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the standards and requirements in code section 18.77.060:

A. *Setbacks.* The following setbacks shall apply to the oil and gas operations. Unless specified otherwise herein, setbacks shall be measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building.

1. Except as required under subparagraph 5, below, a~~All~~ oil and gas operations shall be located at least five hundred (500) feet from any residential or non-residential occupied~~building~~, or such greater distance as may be required by the commission.
2. All oil and gas operations shall be at least two hundred (200) feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility, or such greater distance as may be required by the commission.
3. All oil and gas operations shall be located at least five hundred (500) feet from: (i) the boundary property line~~of any natural area or wetlands~~; (ii) the property line of any property managed by the city's Parks and Recreation Department and any city park; (iii) the operating high water line of any surface water body including, but not limited to, rivers, streams, ditches, wetlands, reservoirs and lakes; (iii) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and ~~(iv) any "Designated Outdoor Activity Area (v) the property line of any property subject to a conservation easement managed by a public or non-profit entity," as defined in COG regulations~~; or such greater distance as required by the commission.
4. All oil and gas operations shall be located at least five hundred (500) feet from any domestic or commercial water well, or such greater distance as required by the commission.
5. All oil and gas operations shall be located at least one thousand (1,000) from any residential or non-residential building with an occupancy rating for fifty (50) persons or more and any outdoor assembly area with a capacity of fifty (50) persons or

more. “High Occupancy Building” as defined in the COG regulations, or such greater distance as required by the commission.

B. *Commission mitigation regulations.* ~~All Permits for~~ oil and gas operations ~~to be located within city limits, whether within or outside any “Designated Setback Location” as defined in the COG regulations,~~ shall comply with the mitigation measures required under ~~C~~commission Rule 604.c, as amended.

C. *Bufferyards.* The bufferyards set forth in Table 1 below, shall be established around the entire perimeter of the oil and gas operation sites, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation system shall be provided, maintained and operated for xeriscape plant types for a period of two years from planting.

Table 1 - Bufferyards			
Base Standard (plants per 100 linear feet)	Optional Width (feet)	Plant Multiplier	Option: add 6 foot opaque masonry wall
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	
4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

D. *Air quality standards.* Air emissions from oil and gas facilities shall be in compliance with the permit and control provisions of the Environmental Protection Agency, Air Quality Control Commission and Colorado Oil and Gas Conservation Commission. In addition, the operator of the oil and gas facility agrees to employ the following enhanced standards for air quality mitigation.

1. *General duty to minimize emissions.* All continuously operated equipment, including but not limited to, storage vessels and dehydrators shall route vapors to a capture and control device with at least a ninety-eight percent (98%) destruction efficiency. Operators shall submit to the director test data of like equipment or manufacturer’s data demonstrating the control device can meet the destruction efficiency. Any combustion device, auto ignition system, recorder, vapor recovery device or other equipment used to meet the destruction efficiency shall be installed, calibrated, operated and maintained in accordance with the manufacturer’s recommendations, instruction and operating manuals.

2. *Combustion devices.* All flares shall be designed and operated as follows:

(a) The combustion devices shall be designed and operated in a matter that will ensure it complies with 40 Code of Federal Regulations (“CFR”) §60.18 (General control device and work practice requirements);

(b) The combustion device shall be operated with a pilot flame present at all times vapors may be routed to it. Presence of a pilot flame shall be continuously monitored and recorded; and

(c) Combustion devices shall be equipped with automatic flame ignition systems in the event the pilot flame is extinguished.

3. *Fugitive emissions.* The operator shall develop and follow a leak detection and repair plan to minimize emissions from fugitive components. The plan will be submitted to the director for incorporation into the permit.

4. *Pneumatic controllers.* The operator shall use only no- or low-bleed pneumatic controllers, where such controllers are available for the proposed application. High-bleed pneumatic controllers may be used where air is the motive gas for operation of the controller and valve.

5. *Well completion practices.* For each well completion operation, the operator shall minimize emissions from the operation as set forth below:

(a) For the duration of flowback, route the recovered gas to the sales pipeline once the well has enough gas to safely operate the separator, or like device, and liquid control valves;

(b) If flow and gathering lines are not available to comply with subparagraph (a) above, the operator shall capture the recovered gas to a completion combustion device, equipped with a continuous ignition system, to oxidize the recovered gas stream except in conditions that may result in a fire hazard or explosion, or where high heat emissions from the completion device may negatively impact a sensitive area or nearby structure;

(c) Operators shall have a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback; and

(d) Operators shall maintain a log for each well completion operation. The log shall be completed in accordance with the methods outlined in the Environmental Protection Agency’s Code of Federal Regulations, specifically 40 CFR Part 60, Subpart OOOO.

6. *Well maintenance and blowdowns.* The operator shall utilize best management practices during well maintenance and blowdowns to minimize or eliminate venting emissions.

7. *Capture of produced gas from wells.* Gas produced during normal production shall be captured, to the maximum extent feasible, and not flared or vented, except in situations where flaring or venting is required to ensure that associated natural gas can be safely disposed of in emergency shutdown situations.

8. *Rod-packing maintenance.* Operators shall replace rod-packing from reciprocating compressors located at facilities approved after April 15, 2013, every twenty-six thousand (26,000) hours of operation or thirty-six (36) months, whichever occurs first.

E. *Pipelines.* Any newly constructed or substantially modified pipelines on site shall meet the following requirements:

1. Flow-lines, gathering lines and transmission lines shall be sited at a minimum of fifty (50) feet away from residential and non-residential buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within one hundred fifty (150) feet of residential ~~or~~ non-residential buildings or the high water mark of any surface water body shall incorporate leak detection, secondary containment or other mitigation, as appropriate;

2. To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance;

3. To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts; and

4. Operators shall use boring technology when crossing streams, rivers, ~~or~~ irrigation ditches ~~or wetlands~~ with a pipeline to minimize negative impacts to the channel, bank and riparian areas.

F. All oil and gas facilities shall comply with the sound limitation standards set forth in code chapter 7.32 after development of the well is complete. A noise mitigation study shall be submitted with the application to demonstrate compliance with said ~~code chapter~~section. If necessary to comply with said ~~chapter~~section, a noise screen shall be constructed along the edge of the oil and gas facility between the facility and existing residential development or land zoned for future residential development.

18.77.070 Application Requirements.

All applications submitted to current planning shall contain the information required for an APD and any additional information required by the city's "Oil and Gas Development Application Submittal Checklist" approved by the city manager.

18.77.075 Prohibited Oil and Gas Facilities.

Notwithstanding any provision in this chapter or code to the contrary, the following oil and gas operations and oil and gas facilities shall be prohibited within the city:

- A. Pits;
- B. Commercial disposal facilities regulated by the Colorado Department of Public Health and Environment;
- C. Centralized exploration and production waste management facilities; and
- D. Temporary housing at any oil and gas operations, including without limitation trailers, modular homes and recreational vehicles, except for such housing customarily required during twenty-four hour drilling and fracking operations.

18.77.080 Variances.

A. *Variance Request.* In both the planning commission review and administrative review processes, an applicant may request a variance from any provision of this chapter. A request for a variance under this section ~~may~~shall be included in the applicant's application and shall be processed, reviewed and granted, granted with conditions or denied in accordance with and as part of the planning commission review process or the administrative review process, as applicable. The variance provisions of chapter 18.60 shall not be applicable to a variance request under this chapter.

B. *Grounds for Variance.* A variance from the application of any provision in this chapter shall be granted on the basis of one or more of the following grounds:

1. The provision is in operational conflict with the OGC act or the COG regulations, meaning the application of the provision would have the effect of materially impeding or destroying a state interest as expressed in the COG act or the COG regulations.
2. There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting a variance from the operation of the provision will not have an adverse effect on the public health, safety or welfare or on the environment.
3. Protection of the public health, safety and welfare and of the environment would be enhanced by an alternative approach not contemplated by the provision.
4. Application of the provision will constitute a regulatory taking of property without just compensation by the city under Article II, Section 3 of the Colorado Constitution.

5. Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas operations, which may include, without limitation, topographical conditions, shape or dimension of the operation site, inadequate public infrastructure to the site, or close proximity of occupied buildings.

18.77.085 Transfer of Permits.

Oil and gas permits may be assigned to another operator only with the prior written consent of the director and upon a showing to the director that the new operator can and will comply with all conditions of the transferred permit and with all of the applicable provisions of this chapter, the ~~ADPD~~ and the COG regulations. The existing operator shall assign the permit to the new operator on a form provided by the city and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this chapter.

18.77.090 Other Applicable Code Provisions.

In addition to the provisions of this chapter, all oil and gas operations conducted within the city shall comply with all applicable provisions of the following code chapters: 3.16, Sales and Use Tax; 7.12, Nuisances - Unsanitary Conditions; 7.16, Solid Waste Collection and Recycling; 7.18, Weed Control; 7.26, Accumulations of Waste Materials; 7.30, Graffiti; 7.36, Fire Protection; 10.04, Traffic Regulations; 10.20, Parking; 12.16, Use of City Rights-of-Way; 12.28, Prohibited Uses of Streets and Other Public Places; 13.18, Stormwater Management; 13.20, Stormwater Quality; 15.08, Building Code; 15.12, Property Maintenance Code; 15.14, Floodplain Building Code; 15.16, Mechanical Code; 15.24, Electrical Code; 15.28, Fire Code; 16.38, Capital Expansion Fees; 16.41, Adequate Community Facilities; 16.42, Street Maintenance Fee; 18.45, Floodplain Regulations; 18.50, Signs; 13.04, Water Service; 13.06, Cross Connection Control; and 19.06, Irrigation.

18.77.095 Emergency Response Costs.

The operator shall reimburse the Loveland Fire Rescue Authority for any emergency response costs incurred by the Authority in connection with fire, explosion or hazardous materials at the well or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by mistake of the Authority or in response to solely a medical emergency.

18.77.100 Application and Inspection Fees.

The city council may establish by resolution fees to be collected at the time an application is filed with current planning for the city's reasonable costs in processing applications under this chapter and for fees thereafter imposed for the city's reasonable costs to conduct inspections to ensure compliance with this chapter. Fees established for inspections shall be nondiscriminatory to only cover the city's reasonable costs to inspect and monitor for road damage and for compliance with the city's fire code, building codes and the conditions of any

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permit issued under this chapter. However, such inspection fees shall not be based on any costs the city might incur to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order or permit condition administered by the commission.

18.77.105 Capital Expansion Fees.

Oil and gas operations within the city shall be subject to the capital expansion fees established under code chapter 18.38. The city council may adopt and set such fees by resolution.

18.77.110 Reimbursement for Consultant Costs.

If the city contracts with an outside consultant to review and advise the city concerning any applicant's application or in connection with any applicant's hearing conducted under this chapter, the applicant shall reimburse the city for the city's reasonable costs incurred with that consultant. No permit shall be issued and no suspended permit shall be reinstated until the applicant reimburses the city in full for any such costs.

18.77.115 Adequate Transportation Facilities.

All applications submitted and all permits issued under this chapter shall be subject to all of the applicable adequate community facilities requirements of code chapter 16.41 as they relate solely to the transportation facilities required in code section 16.41.110.

18.77.120 Insurance and Performance Security.

A. *Insurance.* Every operator granted a permit under this chapter shall procure and maintain throughout the duration of the operator's oil and gas operations a policy of comprehensive general liability insurance, or a self-insurance program approved by the Colorado Insurance Commission, insuring the operator and naming the city as an additional insured, against any liability for personal injury, bodily injury or death arising out of the operator's permitted operations, with coverage of at least one million dollars (\$1,000,000) per occurrence. Unless the operator is self-insured, insurance required by this paragraph A. shall be with companies qualified to do business in the State of Colorado and may provide for a deductible as the operator deems reasonable, but in no event greater than ten thousand dollars (\$10,000). The operator shall be responsible for payment of any deductible. No such policy shall be subject to cancellation or reduction in coverage limits or other modification except after thirty (30) days prior written notice to the city. The operator shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the operator changes to "occurrence," the operator shall carry a twelve (12) month tail. The operator shall not do or permit to be done anything that shall invalidate the policies. In addition, the insurance required by this paragraph A. shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, disbursement, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. Further, the policies required by this paragraph A. shall be deemed to be for the mutual and joint benefit and protection of the

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operator and the city and shall provide that although the city is named as additional insured, the city shall nevertheless be entitled to recover under said policies for any loss occasioned to the city or its officers, employees or agents by reason of negligence of the operator or of its officers, employees, agents, subcontractors or business invitees and such policies shall be written as primary policies not contributing to or in excess of any insurance coverage the city may carry. Prior to the issuance of the operator's permit, the operator shall furnish to the city certificates of insurance evidencing the insurance coverage required herein. In addition, the operator shall, upon request by the city and not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the city with a certificate of insurance evidencing either new or continuing coverage in accordance with the requirements of this section.

B. *Performance Security for Road Damage*. Prior to the issuance of a permit to an applicant, the applicant shall provide the city with a _____ (\$_____) performance security for each well that is permitted while the well is in operation in the form of an irrevocable letter of credit or equivalent financial security acceptable to the director. Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting ~~the general public and~~ any damage to the city's public rights-of-way. Reclamation and other activities and operations which fall under the COG regulations are exempted from this performance security coverage.

18.77.125 Inspections and Right to Enter.

A. *Inspections*. In recognition of the potential adverse impacts associated with oil and gas operations in an urban setting, all oil and gas operations and facilities may be inspected by the city's duly appointed inspectors at reasonable times to determine compliance with the applicable provisions of this chapter and all other applicable provisions in this code.

B. *Right to Enter*. Notwithstanding any other provision in this code to the contrary, for the purpose of implementing and enforcing the provisions of this chapter and the other applicable provisions of this code, the city's inspectors shall have the right to enter upon the private property of a permitted operator after reasonable notification to the operator's designated agent, in order to provide the operator with the opportunity to be present during such inspection. Such notice shall not be required in the event of an emergency that threatens the public's health or safety. By accepting an oil and gas permit under this chapter, the operator grants its consent to this right to enter.

C. *Designated Agent*. The applicant shall include in its application the telephone number and email address of its designated agent and at least one back-up designated agent who can be reached twenty-four hours a day for the purpose of being notified of any proposed city inspection under this section or in case of an emergency.

18.77.130 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.

A. *Violations*. It shall be unlawful and a misdemeanor offense under this chapter for any person to do any of the following:

1. Conduct any oil and gas operation within the city without a validly issued permit;
2. Violate any condition of a permit; or
3. Violate any applicable provision of this chapter and code.

B. *Suspension and Revocation.* If at any time the director has reasonable grounds to believe that an operator is in violation of any provision of this chapter or code, the director may suspend the operator's permit. The director shall give the operator's designated agent written notice of the suspension and, upon receiving such notice, the operator shall immediately cease all operations under the permit, except those reasonably required to protect the public's health and safety. The director's written notice shall state with specificity the operator's violation(s). The suspension shall continue in effect until the director determines that the violation(s) has been satisfactorily corrected. At any time during the suspension, the operator may appeal the director's action to the City Council by filing with the City Clerk a written notice of appeal stating with specificity the operator's grounds for appeal. Within thirty (30) days of the City Clerk's receipt of that notice, a public hearing shall be held before the City Council. The hearing shall be conducted as a quasi-judicial proceeding with the operator having the burden of proof and with the director defending the suspension of the permit. After hearing and receiving evidence and testimony from the operator, from the director and from other city staff and consultants, and after receiving public comment, the City Council may revoke the permit, terminate the suspension of the permit or take such other action as it deems appropriate under the circumstances taking into consideration and balancing the protection of the public's health, safety and welfare and the operator's rights under this chapter and state law to conduct its oil and gas operations. Within twenty one (21) days after the hearing, the Council shall adopt its written findings and conclusion supporting its decision. The Council's written findings and conclusions shall constitute the Council's final decision that may be appealed to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

C. *Civil Actions.* In addition to any other legal remedies provided under this chapter to enforce violations of this chapter, the city may commence a civil action against an operator committing any such violations in any court of competent jurisdiction and request any remedy available under the law or in equity to enforce the provisions of this chapter, to collect any damages suffered by the city as the result of any violation and to recover any fees, reimbursements and other charges owed to the city under this chapter and code. If the city prevails in any such civil action, the operator shall be liable to the city for all of the city's reasonable attorney's fees, expert witness costs and all other costs incurred in that action.

D. *Penalties.* A violation of any provision of this chapter shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment. A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

18.77.135 Conflicting Provisions.

In the event of any conflict between any provision of this chapter and any other provision of this code, the provision of this chapter shall control.

Section 2. That a new Chapter 18.78 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 18.78**Building Setbacks from Oil and Gas Facilities****Sections:****18.78.010 Purpose****18.78.020 Building Setbacks from Oil and Gas Facilities****18.78.030 Variances.****18.78.010 Purpose.**

The purpose of this chapter is to generally protect the public's health, safety and welfare and more specifically to establish setbacks for new development from existing or abandoned oil and gas facilities.

18.78.020 Building Setbacks from Oil and Gas Facilities.

All ~~residential and non-residential~~ "buildings," as defined in code section 18.77.025, except such buildings with an occupancy rating for fifty (50) persons or more, ~~buildings intended to be occupied~~ shall be setback a minimum distance of five hundred (500) feet ~~from an existing or abandoned oil and gas facility.~~ and ~~a~~ All such buildings with an occupancy rating for fifty (50) persons or more and "outdoor assembly areas," as this term is defined in code section 18.77.025, "High Occupancy Building Units," as defined in the rules and regulations of the Colorado Oil and Gas Conservation Commission, shall be set back a minimum of one thousand (1,000) feet from any existing or abandoned "oil and gas well," ~~facility,~~ as this term is defined in code section 18.77.025. Land included in such setback areas shall be designated as open space and uses such as open space play fields and parks shall not be permitted within such areas.

18.78.030 Variances.

The owner of any real property subject to the setback requirements of section 18.78.020 may request a variance from those setbacks in accordance with the provisions of section 18.77.080 using the planning review process set out in Chapter 18.77.

Section 3. That Ordinance No. 5685 and Ordinance No. 5735 are hereby repealed.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this ____ day of _____, 20132.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

FIRST READING: _____

SECOND READING: _____

ORDINANCE #

**AN ORDINANCE ADDING TO THE LOVELAND MUNICIPAL CODE
CHAPTER 18.77 FOR THE REGULATION OF OIL AND GAS
OPERATIONS AND CHAPTER 18.78 FOR SETBACKS FOR
DEVELOPMENT FROM OIL AND GAS OPERATIONS WITHIN THE
CITY OF LOVELAND**

WHEREAS, on May 15, 2012, the City Council adopted Ordinance No. 5685 as an emergency ordinance; and

WHEREAS, Ordinance No. 5685 imposed a nine (9) month moratorium on the City's acceptance, processing and approval of all applications for City licenses, permits and any other approvals needed to conduct oil and gas operations within the City; and

WHEREAS, this moratorium began on May 16, 2012, and was set to expire on February 16, 2013; and

WHEREAS, on December 18, 2012, the City Council adopted Ordinance No. 5735 to extend the moratorium from February 16, 2013, to the earlier of April 15, 2013, or on the date that an ordinance adopted by City Council to enact local oil and gas regulations becomes law; and

WHEREAS, the primary purpose of the moratorium has been to give City staff and this Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate oil and gas operations occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the environment, wildlife resources and the public's health, safety and welfare; and

WHEREAS, in that process it was determined that under Colorado law the City is prohibited from adopting and enforcing local oil and gas regulations that are in "operational conflict" with state law and the oil and gas regulations which have been adopted by the Colorado Oil and Gas Conservation Commission ("Commission"); and

WHEREAS, the Council recognizes the State of Colorado's interest in fostering the responsible and balanced development of the State's oil and gas resources in a manner consistent with the protection of the environment, wildlife and the public's health, safety and welfare and its legal authority to do so, but Council believes it is also important for the City to have a role in minimizing the adverse impacts that oil and gas development within the City would likely have on the City's environment and its residents' health, safety and welfare; and

WHEREAS, the Council therefore believes that this Ordinance is a proper and necessary exercise of the City's general police power and of its legal authority to regulate zoning and land use, in order to regulate oil and gas operations and facilities within the City to the full extent permitted by law; and

WHEREAS, the development of oil and gas resources presents unique public health, safety and welfare issues that are currently inadequately addressed in the City's current zoning and land use regulations; and

WHEREAS, City staff has completed a review of state law and of the Commission's regulations concerning oil and gas operations, a review of the oil and gas regulations adopted by other local governments throughout the state, has received and considered input from the public, including from the Anadarko Petroleum Corporation, currently the only oil and gas operator known to have plans to begin new oil and gas operations within the City; and

WHEREAS, as a result of that process, the oil and gas regulations and the building setbacks from oil and gas activities as set out in this Ordinance are necessary to protect the City's environment, wildlife resources, and the public's health, safety and welfare.

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

Section 1. That a new Chapter 18.77 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 18.77

Oil and Gas Regulations

Sections:

18.77.010	Authority.
18.77.015	Purpose.
18.77.020	Applicability.
18.77.025	Rules of Construction and Definitions.
18.77.030	Zoning.
18.77.035	Alternative Permit Processes.
18.77.040	Conceptual Review.
18.77.045	Planning Commission Review Process.
18.77.050	Administrative Review Process.
18.77.055	Baseline Standards for Planning Commission Review Process.
18.77.060	Baseline Standards for Planning Commission and Administrative Review Processes.
18.77.065	Enhanced Standards for Administrative Review Process.
18.77.070	Application Requirements.
18.77.075	Prohibited Oil and Gas Facilities.
18.77.080	Variances.
18.77.085	Transfer of Permits.

- 18.77.090 Other Applicable Code Provisions.**
- 18.77.095 Emergency Response Costs.**
- 18.77.100 Application and Inspection Fees.**
- 18.77.105 Capital Expansion Fees.**
- 18.77.110 Reimbursement for Consultant Costs.**
- 18.77.115 Adequate Transportation Facilities**
- 18.77.120 Insurance and Performance Security.**
- 18.77.125 Inspections and Right to Enter.**
- 18.77.130 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.**
- 18.77.135 Conflicting Provisions.**

18.77.010 Authority.

This Chapter 18.77 is enacted pursuant to the city's police powers and land-use authority under Article XX of the Colorado Constitution, Title 31 of the Colorado Revised Statutes, the OGC Act, the COG regulations and under all other applicable laws, rules and regulations. However, it is not the intent of this chapter that these powers and authority be exercised in a manner that would create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict would arise if any application of this chapter has the effect of materially impeding or destroying a state interest as expressed in the OGC Act or the COG regulations. It is therefore the intent of this chapter that its provisions be interpreted and applied in a manner that is consistent and in harmony with any conflicting provisions of the OGC Act or the COG regulations, so as to avoid any operational conflict.

18.77.015 Purpose.

The purpose of this chapter is to generally protect the public's health, safety and welfare and the environment and more specifically to regulate oil and gas operations within the city so as to minimize the potential land use conflicts and other adverse impacts that may negatively affect existing and future land uses when oil and gas operations occur within the city near those uses. This purpose is intended to be achieved in a manner that recognizes the state's interests in oil and gas operations as expressed in C.R.S. § 34-60-102, which include: fostering the responsible and balanced development of the state's oil and gas resources in a manner consistent with the protection of the public's health, safety and welfare, including protection of the environment and wildlife resources; protecting public and private interests against waste in both the production and use of oil and gas; and allowing Colorado's oil and gas pools to produce up to their maximum efficient rate subject to the prevention of waste, protection of the public's health, safety and welfare, protection of the environment and wildlife resources, and the protection and enforcement of the rights of owners and producers to a common source of oil and gas so that each owner and producer obtains a just and equitable share of production from that source.

18.77.020 Applicability.

Except as otherwise provided in this section, the provisions of this chapter shall apply to all oil and gas operations occurring within the city's boundaries, which shall include, without

limitation, any oil and gas operation requiring the commission's issuance or reissuance of a drilling permit or any other permit under the COG regulations. Prior to any person commencing any such operations within the city, that person shall apply for and receive an oil and gas permit from the city in accordance with the provisions of this chapter. This chapter, however, shall not apply to those oil and gas operations for which a drilling permit was issued under the COG regulations prior to April 15, 2013, the effective date of this chapter, and under which permit the oil and gas operations were commenced before April 15, 2013. It shall also not apply to any oil and gas operations occurring on real property annexed into the city on or after April 15, 2013, provided those operations are occurring as of the effective date of the annexation pursuant to a drilling permit issued under the COG regulations. This chapter shall apply to all other oil and gas operations occurring within the city's boundaries after April 15, 2013.

18.77.025 Rules of Construction and Definitions.

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations and in chapter 18.04 of this code. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or federal or state legal holiday, that day shall be excluded in the count.

C. "Abandonment" shall mean the plugging process of cementing a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite.

D. "Act" or "OGC Act" shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

E. "Adverse effect" or "adverse impact" shall mean the impact of an action that is considerable or substantial and unfavorable or harmful. The term includes social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

F. "Administrative review process" shall mean the expedited and enhanced review process set out in section 18.77.050.

G. “APD” shall mean an application for a permit to drill, deepen, re-enter or recomplete and operate under the COG regulations.

H. “Applicant” shall mean any person possessing the legal right to develop oil or gas underlying land located within the city’s boundaries and who has applied for an oil and gas permit under this chapter.

I. “Application” shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

J. “Baseline standards” shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

K. “Best management practices” shall mean practices that are designed to prevent or reduce adverse impacts caused by oil and gas operations to air, water, soil or biological resources, and to minimize adverse impacts to public health, safety and welfare, including the environment and wildlife resources.

L. “Building” shall mean any residential or non-residential structure designed and permitted to be occupied by natural persons.

M. “City manager” shall mean the city’s duly appointed city manager or his or her designee.

N. “Code” shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

O. “COG rule” or “COG regulations” shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. T. 400; et seq.

P. “Commission” shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Q. “Completion” shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging are complied with as set out in the COG regulations. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

R. “Completion combustion device” shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

S. “Current planning” shall mean the city’s current planning division.

T. “Day” shall mean a calendar day.

U. “Designated agent” shall mean the designated representative of any operator. V. “Development review team” or “DRT” shall mean the city’s development review team.

V. “Director” shall mean the director of the city’s development services department or his or her designee.

W. “Enhanced standards” shall mean those review standards and best management practices set out in section 18.77.065.

X. “Fracking” shall mean all the stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geological formation to enhance production of oil and gas.

Y. “Gas” shall mean all natural gases and all hydrocarbons not defined in this section as oil.

Z. “Inspector” shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

AA. “Minimize adverse impacts” shall mean, whenever reasonably practicable, to avoid adverse impacts to wildlife resources or significant adverse impacts to the environment from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

BB. “Most effective performance technologies and practices” shall mean the application of proven emerging techniques and technologies or other best management practices used in conducting oil and gas operations which avoid, neutralize, exclude, eliminate, mitigate or minimize adverse on- and off-site impacts to the public health, the environment, landowners, and natural resources, and which may reduce conflicts between operators and potentially adversely affected landowners.

CC. “Natural area” shall mean those areas described or identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

DD. “Oil” shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

EE. “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas.

FF. “Oil and gas operations” or “operations” shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, re-entering, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flowlines and gathering lines; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

GG. “Operator” shall mean a person who has the legal right to drill into and produce from a pool and to appropriate the oil or gas produced either for the operator or for the operator and an owner.

HH. “Outdoor assembly area” shall mean an improved facility, not within a building, designed to accommodate and provide a place for persons to congregate, but shall not include the backyards of residential buildings.

II. “Owner” shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

JJ. “Permit” or “oil and gas permit” shall mean a permit issued by the city to an applicant under this chapter.

KK. “Person” shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

LL. “Pit” shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils. This shall include, without limitation and as applicable, “production pits,” “special purpose pits,” “reserve pits,” “multi-well pits” and “drilling pits,” as these are defined in the COG regulations.

MM. “Planning commission” shall mean the city’s planning commission as established in code section 2.60.210.

NN. “Planning commission review process” shall mean the review process set out in section 18.77.045.

OO. “Seismic operations” shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

PP. “Setback” shall mean the distance on the surface estate between the following, as applicable: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.

QQ. “Significant degradation” shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

RR. “State” shall mean the State of Colorado.

SS. “Surface water body” shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

TT. “Surface owner” shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

UU. “VOC” shall mean volatile organic compounds.

VV. “Well” shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

WW. “Well blowdown” shall mean the maintenance activity designed to remove fluids from mature wells during which time gas is often vented to the atmosphere.

XX. “Well completion” shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and fracking, allows for the flowback of petroleum or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

YY. “Wellhead” shall mean the equipment attached to the casing of an oil, gas or injection well above the surface of the ground.

ZZ. “Wetlands” shall have the same meaning as this word is defined in code section 18.41.110.

18.77.030 Zoning.

Notwithstanding any provision in this code to the contrary, oil and gas operations shall be permitted in all of the city's zoning districts, planned unit developments, unit developments and within any other city-approved land uses, but only if a permit has been issued to the extent required by this chapter and an APD has been issued by the commission for those oil and gas operations.

18.77.035 Alternative Permit Processes.

Any person applying for a permit under this chapter must proceed under the planning commission review process as provided in section 18.77.045, unless the applicant voluntarily chooses to proceed under and qualifies for the expedited and enhanced administrative review process as provided in section 18.77.050. The permit application under the planning commission review process shall be reviewed and granted or denied on the basis of the applicable baseline standards set out in sections 18.77.055 and 18.77.060 and any other applicable standards and requirements in this chapter and code. A permit application under the administrative review process shall be reviewed and granted or denied under the applicable baseline and enhanced standards set out in sections 18.77.060 and 18.77.065 and any other applicable standards and requirements in this chapter and code.

18.77.040 Conceptual Review.

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city's development review team. Current planning shall schedule such meeting within fourteen (14) days after a written request for the meeting has been received. At least fourteen (14) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy sets of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission under the COG regulations to obtain an APD for the oil and gas operations proposed to be conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city's development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city's application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited and enhanced administrative review process rather than the planning commission review process. Within five (5) days after the meeting, current planning shall provide the prospective applicant with the development review team's written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have three (3) months thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations. However, in the event current planning fails to timely provide DRT's written comments and recommendations to the prospective applicant, the prospective applicant may proceed to file its application with current planning within three (3) months thereafter.

18.77.045 Planning Commission Review Process.

A. *Application Completeness Review.* After an application has been filed with current planning, the director shall review the application for completeness to determine its compliance with the applicable requirements of section 18.77.070. If the director determines that any of those applicable requirements have not been satisfied, the director shall, within fourteen (14) days after the application is filed, notify the applicant in writing of any deficiencies in the application. This process of review and notice of deficiency shall continue until the director determines the application satisfies all applicable requirements of section 18.77.070 and is, therefore, a complete application. The director shall notify the applicant in writing that the application is complete within fourteen (14) days after the later of the filing of the application or the filing of the last application resubmittal in response to a notice of deficiency from the director. Promptly thereafter, current planning shall post the complete application on the city's website for public review, but excluding any information required in this chapter to be kept confidential.

B. *Development Review Team.* After an application is filed with current planning and has been determined by the director to be a completed application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application has been determined by the director to be a complete application, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

C. *Neighborhood Meeting.* Promptly after the director has issued the written determination that the application is complete, current planning shall schedule a neighborhood meeting to be held within forty-five (45) days of the director's written determination of completeness. Once that neighborhood meeting has been scheduled, notices of the neighborhood meeting shall be provided in accordance with all applicable requirements of code chapter 18.05. The mailed notice required for neighborhood meetings under chapter 18.05 shall also be sent to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are proposed to be located. In addition to the other contents required for the mailed notice under chapter 18.05, the mailed notice shall state that the application can be reviewed prior to the neighborhood meeting on the city's website or at current planning's office. The neighborhood meeting shall be conducted by current planning. The applicant or a representative of the applicant shall attend the neighborhood meeting and be available to answer questions concerning the application. The objective of a neighborhood meeting shall be to inform noticed persons and other interested citizens attending the meeting of the scope and nature of the proposed oil and gas operations under the application and how the operations will be regulated under this chapter and the COG regulations. Notwithstanding the foregoing, the director may waive the provisions of this paragraph C. if the director determines that the City's required notices and neighborhood

meeting under this paragraph will be duplicative of the notice and neighborhood meeting requirements under the COG regulations for the applicant's APD.

D. *Planning Commission Hearing.* Current planning shall schedule the application for a public hearing before the planning commission within forty-five (45) days after the DRT has finished its review of the application. Notice of the hearing shall be provided in accordance with all applicable requirements of 18.05. The mailed notice required in chapter 18.05 for this hearing shall also be mailed to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are to be located. In addition, the mailed and published notices shall state that the complete application can be reviewed by the public on the city's website or at current planning's office.

E. *Planning Commission Hearing Procedures.* The planning commission's public hearing shall be conducted as a quasi-judicial proceeding. Subject to the planning commission chairperson's discretion to limit the time and scope of testimony and to make allowances for the adequate presentation of evidence and the opportunity for rebuttal, the order of the hearing shall be as follows: (1) explanation and nature of application by current planning staff; (2) applicant's presentation of evidence and testimony in support of the application; (3) public comment and presentation of evidence; (4) applicant's rebuttal presentation; and (5) motion, discussion and vote by the planning commission on the application. No person making a presentation and providing testimony or comment at the hearing shall be subject to cross-examination. However, during the hearing members of the planning commission and the city attorney may make inquiries for the purposes of eliciting new information and to clarify information presented.

F. *Planning Commission Decision.* The planning commission shall consider the application based solely on the testimony and evidence submitted at the hearing, the applicable provisions of this chapter and any other applicable provisions of this code. At the conclusion of the presentation of testimony and evidence, the planning commission shall vote to grant, grant with conditions or deny the oil and gas permit requested in the application under consideration. A condition may only be imposed on the grant of an oil and gas permit if the applicant agrees to that condition on the record of the hearing. An applicant's refusal to agree to any such condition shall not be used by the planning commission as a basis, in whole or part, to deny the applicant's requested oil and gas permit. In granting, granting with conditions or denying an application for an oil and gas permit, the planning commission shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing.

G. *Appeal of Planning Commission Decision.* The planning commission's decision described in paragraph F. of this section may be appealed to the city council by the applicant and any "party in interest" as defined in section 18.80.020. The written notice of appeal shall be filed with current planning within ten (10) days of the effective date of the planning commission's final decision, which date shall be the date the planning commission adopts its written findings and conclusions. The appeal shall be filed and conducted in accordance with the applicable provisions in chapter 18.80 for appeals from the planning commission to the city council. The council's decision in the appeal hearing to grant, grant with conditions or deny the applicant's request for an oil and gas permit shall, like the planning commission's decision, be based on the applicable provisions of this chapter and any other applicable provisions of this code. The

council shall also not impose any condition on its grant of the oil and gas permit unless the applicant agrees to the condition on the record of the council's appeal hearing.

18.77.050 Administrative Review Process.

A. *Applicant's Election to Use Administrative Review Process.* As an alternative to processing an application using the planning commission review process set out in section 18.77.045, an applicant may elect to use the expedited and enhanced administrative review process set out in this section. In electing to use this administrative review process, the applicant must acknowledge and agree in its application to all of the following: (1) that by using this administrative review process to obtain an expedited review, the applicant's application will not only be subject to the baseline standards in section 18.77.060, but also the enhanced standards in section 18.77.065, which enhanced standards could reasonably be interpreted to be in operational conflict in one or more respects with the COG regulations; (2) that the applicant is waiving any such operational conflicts, but only for the purpose of obtaining a permit under this administrative review process; (3) that to the extent the enhanced or negotiated standards imposed through this administrative review process are not already included as conditions in the applicant's APD, the applicant will request the commission to add such enhanced standards as additional conditions to the applicant's APD; and (4) that if for any reason the applicant wishes to revoke its election to use this administrative review process or to withdraw from the process once started, but still desires an oil and gas permit under this chapter, it will be required to follow and meet all of the requirements of the planning commission review process.

B. *Application Completeness Review.* An application reviewed under this section shall be reviewed by the director for completeness using the same process used in the planning commission review process as set out in section 18.77.045.A.

C. *Development Review Team.* After an application is filed with current planning and determined by the director to be a complete application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application has been determined by the director to be a complete application, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

D. *Neighborhood Meeting.* The neighborhood meeting for an application reviewed under this section shall be scheduled, noticed and conducted or waived in the same manner as under the planning commission review process set out in section 18.77.045.C., but with one addition. The notices mailed under section 18.77.045.C. shall state that the application is being reviewed under the administrative review process and notify the recipients of the notice that they will have until fifteen (15) days after the neighborhood meeting is held or after such other date set by the

director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C. in which to submit to current planning for the director's consideration any comments and information, in written, electronic or photographic form, related to the subject application as provided in paragraph E. of this section.

E. *Public Comment.* Within fifteen (15) days after the neighborhood meeting is held, or after such other date set by the director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C. any person may file with current planning for the director's consideration and to be included in any record on appeal taken under paragraph H. of this section, any comments and information, in written, electronic or photographic form, relevant to the director's consideration of the subject application under this section. Current planning shall preserve all of the comments and information received under this section to ensure that they are included in any record of appeal. These comments and information shall also be made available for review by the applicant. The applicant may supplement its application in response or rebuttal to the comments and information submitted by the public. The applicant must file this supplemental information with current planning within fifteen (15) days after the deadline for the public's submittal of its comments and information. Any comments and information received by current planning after the deadlines set forth herein, shall not be considered by the director in his or her decision and shall not be included in the record of any appeal under paragraph H. of this section.

F. *Director's Negotiations with Applicant.* After receiving the DRT report and all of the public comments and information provided under paragraph E. of this section, the director may, in his or her discretion, negotiate with the applicant for standards to be added as conditions to the oil and gas permit in addition to or in substitution of those baseline standards required in section 18.77.060 and the enhanced standards in section 18.77.065, if in the director's judgment such conditions will result in the increased protection of the public's health, safety or welfare or further minimize adverse impacts to surrounding land uses, the environment or wildlife resources. The director shall have ten (10) days after the last of the public comments and information have been submitted under paragraph E. of this section in which to conduct those negotiations. If after those negotiations the applicant agrees in writing to these new standards, they shall be added as conditions to the oil and gas permit if the permit is granted by the director. If the applicant does not agree to these conditions, they shall not be added as conditions to any granted oil and gas permit. In addition, the applicant's refusal to agree to any such conditions shall not be used by the director as a basis, in whole or part, to deny the applicant's requested oil and gas permit.

G. *Director's Decision.* Within fifteen (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application's compliance or

noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

H. *Appeal of Director's Decision.* The director's decision as set out in his or her written findings and conclusions shall constitute the director's final decision. The director's final decision is not appealable to the planning commission or the city council. The director's final decision may only be appealed by the applicant or a "party in interest," as defined in section 18.80.020, to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The record to be considered in the appeal shall consist of the director's written findings and conclusion, the application, the applicant's supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

18.77.055 Baseline Standards for Planning Commission Review Process.

All applications considered in the planning commission review process and all oil and gas operations approved under this process shall be subject to and comply with the setback and mitigation requirements set forth in COG rule 604, as amended, in addition to the standards and requirements in code section 18.77.060.

18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.

All applications considered in the planning commission review process and the administrative review process and all oil and gas operations approved under either process shall be subject to and comply with the following standards and requirements, as applicable:

A. *COG regulations for setback requirements.* All oil and gas operations shall comply with COG rule 603, as amended.

B. *COG regulations for groundwater baseline sampling and monitoring.* All permits for oil and gas operations shall comply with COG rule 318.A.e, as amended.

C. *COG regulations for protection of wildlife resources.* All permits for oil and gas operations shall comply with COG rule series 1200, as amended. The operator shall notify the director if consultation with Colorado Division of Parks and Wildlife is required pursuant to COG rule 306.c.

D. *COG regulations for reclamation.* All permits for oil and gas operations shall comply with COG rule series 1000, as amended. The operator shall provide copies of the commission's drill site reclamation notice to the director at the same time as it is provided to the surface owner.

E. *COG regulations for well abandonment.*

1. All oil and gas facilities shall comply with the requirement for well abandonment set forth in COG rule 319, as amended. The operator shall provide a copy of the approval granted by the commission for the abandonment to the director within thirty (30) days from receiving such approval.
2. The operator shall provide copies of the commission's plugging and abandonment report to the director at the same time as it is provided to the commission.
3. The operator shall notify the Loveland Fire and Rescue Authority not less than two (2) hours prior to commencing plugging operations.

F. *Applications and permits.* Copies of all county, state and federal applications and permits that are required for the oil and gas operation shall be provided to the director.

G. *Burning of trash.* No burning of trash shall occur on the site of any oil and gas operations.

H. *Chains.* Traction chains on heavy equipment shall be removed before entering a city street.

I. *COG regulations for hydraulic fracturing chemical disclosure.* All permits for oil and gas operations shall comply with COG rule 205.A, as amended. The operator shall provide copies of the commission's chemical disclosure registry form to the Loveland Fire and Rescue Authority at the same time as it is provided to the commission.

J. *Color.* Oil and gas facilities, once development of the site is complete, shall be painted in a uniform, non-contrasting, non-reflective color, to blend with the surrounding landscape and with colors that match the land rather than the sky. The color should be slightly darker than the surrounding landscape.

K. *Cultural and historic resources standards.* The installation and operation of any oil and gas facility shall not cause significant degradation of cultural or historic resources, of sites eligible as City Landmarks, or the State or National Historic Register, as outlined in code section 15.56.030.

L. *Stormwater quality and dust control.* All permits for oil and gas operations shall comply with COG rule 805, as amended, plus code chapter 13.20.

M. *Electric equipment.* The use of electric-powered motors for pumping or drilling systems shall be required if a provider of electric power agrees at the provider's customary rates, fees and charges to provide electric service to an oil and gas facility and the cost to make the electrical connection is economically practicable. Electric service to the oil and gas facility shall be

provided within the shortest time period reasonably practicable. Temporary use of natural gas or diesel generators may be used until electric service is provided.

N. *Emergency response standards.*

1. In General. Operators agree to take all reasonable measures to assure that oil and gas operations shall not cause an unreasonable risk of emergency situations such as explosions, fires, gas, oil or water pipeline leaks, ruptures, hydrogen sulfide or other toxic gas or fluid emissions, hazardous material vehicle accidents or spills.

2. Emergency Preparedness Plan. Each operator with an operation in the city is required to provide to the City its emergency preparedness plan for operations within the City, which shall be in compliance with the applicable provisions of the International Fire Code as adopted in the city code. The plan shall be filed with the Loveland Fire Rescue Authority and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). The emergency preparedness plan shall contain at least all of the following information:

(a) The designation of the operator's group or individuals responsible for emergency field operations. An office or group designated to handle first response situations, emergency field operations or on-scene incident commands will meet this requirement. A phone number and address of such operation shall be required.

(b) A map identifying the location of pipelines, isolation valves and/or a plot plan, sufficient in detail to enable the Loveland Fire Rescue Authority to respond to potential emergencies. The information concerning pipelines and isolation valves shall be kept confidential by the Loveland Fire Rescue Authority, and shall only be disclosed in the event of an emergency or as otherwise required by law.

(c) A provision that any spill outside of the containment area that has the potential to leave the facility or to threaten waters of the state and that is required to be reported to the commission or the commission's director shall be immediately reported to the Loveland Fire Rescue Authority emergency dispatch at 911 and to the director promptly thereafter.

(d) Access or evacuation routes and health care facilities anticipated to be used in the case of an emergency.

(e) A project-specific emergency preparedness plan for any operation that involves drilling or penetrating through known zones of hydrogen sulfide gas.

(f) A provision obligating the operator to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency caused by oil and gas operations and not promptly handled by the operator or its agents.

(g) Detailed information showing that the applicant has adequate personnel, supplies and funding to implement the emergency response plan immediately at all times during construction and operations.

O. *Noise mitigation.* All permits for oil and gas operations shall comply with COG rule 802, as amended, plus the following:

1. The exhaust from all engines, coolers and other mechanized equipment shall be vented up and in a direction away from the closest existing residences.

2. Additional noise mitigation may be required based on specific site characteristics, including, but not limit to, the following:

(a) Nature and proximity of adjacent development;

(b) Prevailing weather patterns, including wind direction:

(c) Vegetative cover on or adjacent to the site; and

(d) Topography.

3. The level of required noise mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and the level of noise emitted by the well site. To the extent feasible and not inconsistent with its operations, operator shall use one (1) or more of the following additional noise mitigation measures to mitigate noise impacts:

(a) Acoustically insulated housing or cover enclosures on motors, engines and compressors;

(b) Vegetative screens consisting of trees and shrubs;

(c) Solid wall or fence of acoustically insulating material surrounding all or part of the facility;

(d) Noise mitigation plan identifying and limiting hours of maximum noise emissions, type, and frequency, and level of noise to be emitted and proposed mitigation measures; and

(e) Lowering the level of pumps or tank batteries.

P. *Fencing*. Permanent perimeter fencing six (6) feet in height shall be installed around the entire perimeter of the oil and gas operations site, including gates at all access points. Such gates shall be locked when employees of the operators are not present on the site. Such fencing and gates shall be solid, opaque and consist of masonry, stucco, steel or other similar materials. The director may allow chain link fencing if solid and opaque fencing creates a threat to public safety.

Q. *Flammable material*. All land within twenty five (25) feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.

R. *Land disturbance standards*. The following mitigation measures shall be used to achieve compatibility and reduce land use impacts:

1. Pad dimensions for a well shall be the minimum size necessary to accommodate operational needs while minimizing surface disturbance.
2. Oil and gas operations shall use structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.
3. Oil and gas operations shall be located in a manner that minimizes the amount of cut and fill.
4. To the maximum extent feasible, oil and gas operations shall use and share existing infrastructure, minimize the installation of new facilities and avoid additional disturbance to lands in a manner that reduces the introduction of significant new land use impacts to the environment, landowners and natural resources.
5. Landscaping plans shall include drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. The operator shall submit to the city a temporary irrigation plan and implement said plan, once approved by the city, for the first two years after the plant material has been planted. If it is practicable to provide a permanent irrigation system, the operator shall submit an irrigation plan for permanent watering and the operator shall provide a performance guarantee for such landscaping that is acceptable to the director. Produced water may not be used for landscaping purposes.
6. The application shall include an analysis of the existing vegetation on the site to establish a baseline for re-vegetation upon temporary or final reclamation or abandonment of the operations. The analysis shall include a written description of the species, character and density of existing vegetation on the site and a summary of the potential impacts to vegetation as a result of the proposed operations. The application shall include any commission-required interim and final reclamation procedures and any measures developed from a consultation with current planning regarding site specific re-vegetation plan recommendations.

S. *Landscaping.* When an oil and gas operation site is less than one hundred (100) feet from a public street, a Type D Bufferyard shall be required between the oil and gas operation and the public street in accordance with the City of Loveland Site Development Performance Standards and Guidelines as adopted in code chapter 18.47.

T. *Lighting.* All permits for oil and gas operations shall comply with COG rule 803, as amended, plus the following:

1. Except during drilling, completion or other operational activities requiring additional lighting, down-lighting shall be required, meaning that all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture; and
2. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and on any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures.

U. *Maintenance of machinery.* Routine field maintenance of vehicles and mobile machinery shall not be performed within three hundred (300) feet of any water body.

V. *Mud tracking.* An operator shall take all practical measures to ensure that the operator's vehicles do not track mud or leave debris on city streets. Any such mud or debris left on city streets by an operator's operation shall be promptly cleaned up by the operator.

W. *Reclamation plan.* The application shall include any interim and final reclamation requirements required by the COG regulations.

X. *Recordation of flowlines.* The legal description of all flowlines, including transmission and gathering systems, shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flowlines shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days after abandonment.

Y. *Removal of debris.* When oil and gas operations become operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried on-site.

Z. *Removal of equipment.* All equipment used for drilling, re-drilling, maintenance and other oil and gas operations shall be removed from the site within thirty (30) days of completion of the work. Permanent storage of equipment on well pad sites shall be prohibited.

AA. *Signs.* A sign permit shall be obtained for all signs at the oil and gas facility or otherwise associated with the oil and gas operations in accordance with code chapter 18.50, consistent with the COG regulations.

BB. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right to Know Act, the Comprehensive Environmental Response Compensation and Liability Act, the Oil and Pollution Act, and the Clean Water Act, as applicable. If a spill or release impacts or threatens to impact a water well, the operator shall comply with existing COG regulations concerning reporting and notification of spills, and the spill or release shall be reported to the director within twenty-four (24) hours of the operator becoming aware of the spill or release.

CC. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state in accordance with COG rule series 1000.

DD. *Development standards for street, electric, water/wastewater, and stormwater infrastructure.* All permits for oil and gas operations shall comply with the development standards for street, electric, water/wastewater and stormwater infrastructure set forth in code chapter 16.24.

EE. *Transportation and circulation.* All applicants shall include descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste and all other material to be hauled on the city's streets. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, and any other information required by the city engineer. In addition to any other bonding or indemnification requirements of the city as may be reasonably imposed, all applicants shall provide the city with a policy of insurance in an amount determined by the city engineer to be sufficient to protect the city against any damages that may occur to the city's streets, roads or rights-of-way as a result of any weight stresses or spillage of hauled materials including, without limitation, water, sand, waste fluids, waste solids and mixed wastes.

FF. *Water supply.* The operator shall identify on the site plan its source for water used in both the drilling and production phases of operations. The sources and amount of water used in the city shall be documented and record shall be provided to the city annually or sooner, upon request of the city's Water and Power Department director, or his or her designee. The disposal of water used on site shall also be detailed including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water, and the final destination for water used in operation.

GG. *Weed control.* The applicant shall be responsible for ongoing weed control at oil and gas operations sites, pipelines and along access roads during construction and operations, until abandonment and final reclamation is completed pursuant to commission rules. Control of weeds shall comply with the standards in code chapter 7.18.

HH. *Well abandonment.* The operator shall comply with the COG regulations regarding well abandonment. Upon plugging and abandonment of a well, the operator shall provide the director with surveyed coordinates of the abandoned well and shall leave onsite a physical marker of the well location.

II. *Federal and state regulations.* The operator shall comply with all applicable federal and state regulations including, without limitation, the OGC act and the COG regulations.

JJ. *Building permits.* A building permit shall be obtained for all structures as required by the International Fire Code and/or International Building Code as adopted in the city code.

KK. *Floodplains.* All oil and gas operations shall be prohibited within the city's floodway districts as defined and established in code chapter 18.45. Oil and gas operations shall be permitted within the city's flood fringe districts as defined and established in code chapter 18.45, provided such operations comply with all applicable requirements of chapter 18.45.

LL. *Trash and recycling enclosures.* All applications for oil and gas operations shall comply with the requirements contained in code chapter 7.16, to the maximum extent feasible.

MM. *Representations.* The approved project development plan shall be subject to all conditions and commitments of record, including verbal representations made by the applicant on the record of any hearing or review process and in the application file, including without limitation compliance with all approved mitigation plans.

NN. *Domestic water supply.* Oil and gas operation sites shall be connected to a domestic water supply if a domestic water supplier agrees to make such a connection and the site is located in reasonably close proximity to such connection at the supplier's customary rates, fees and charges. Domestic water service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of imported water may be allowed until such water service is provided.

OO. *Seismic operations.* The operator shall provide at least a fifteen (15) day advance notice to the director and the Loveland Rural Fire Authority whenever seismic activity will be conducted within the city.

PP. *Access roads.* All private roads used to access the tank battery or the wellhead shall, at a minimum, be:

1. A graded gravel roadway at least twenty (20) feet wide with a minimum unobstructed overhead clearance of thirteen (13) feet six(6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the City Engineer. The aggregate material, at a minimum, shall meet the requirements for a Class 6, Aggregate Base Course as specified in the *Colorado Department of Highways Standard Specifications for Road and Bridge Construction*, latest edition.

2. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage to waterway (i.e. roadside swells,

gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of culvert pipes shall be subject to approval by the city engineer.

QQ. *Visual impacts.*

1. To the maximum extent practicable, oil and gas facilities shall be:
 - (a) Located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings, and other landmarks;
 - (b) Located to avoid crossing hills or ridges;
 - (c) Located to avoid the removal of trees; and
 - (d) Located at the base of slopes to provide a background of topography and/or natural cover.
2. Access roads shall be aligned to follow existing grades and minimize cuts and fills.
3. One (1) or more of the landscaping practices may be required on a site specific bases:
 - (a) Establishment and proper maintenance of adequate ground cover, shrubs and trees;
 - (b) Shaping cuts and fills to appear as natural forms;
 - (c) Cutting rock areas to create irregular forms; and
 - (d) Designing the facility to utilize natural screens.

RR. *COG regulations for odor.* All oil and gas operations shall comply with COG rule 805.

SS. *COG regulations for abandonment of pipelines.* Any pipelines abandoned in place shall comply with COG rule 1103 and the operator's notice to the commission of such abandonment shall be promptly filed thereafter by the applicant with the director.

18.77.065 Enhanced Standards for Administrative Review Process.

All applications considered in the administrative review process and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the standards and requirements in code section 18.77.060:

A. *Setbacks.* The following setbacks shall apply to the oil and gas operations. Unless specified otherwise herein, setbacks shall be measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building.

1. Except as required under subparagraph 5, below, all oil and gas operations shall be located at least five hundred (500) feet from any building, or such greater distance as may be required by the commission.
2. All oil and gas operations shall be at least two hundred (200) feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility, or such greater distance as may be required by the commission.
3. All oil and gas operations shall be located at least five hundred (500) feet from: (i) the boundary of any natural area or wetland; (ii) the property line of any property managed by the city's Parks and Recreation Department and any city park; (iii) the operating high water line of any surface water body; (iv) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and (v) the property line of any property subject to a conservation easement managed by a public or non-profit entity, or such greater distance as required by the commission.
4. All oil and gas operations shall be located at least five hundred (500) feet from any domestic or commercial water well, or such greater distance as required by the commission.
5. All oil and gas operations shall be located at least one thousand (1,000) from any building with an occupancy rating for fifty (50) persons or more and any outdoor assembly area with a capacity of fifty (50) persons or more, or such greater distance as required by the commission.

B. *Commission mitigation regulations.* All oil and gas operations shall comply with the mitigation measures required under commission Rule 604.c, as amended.

C. *Bufferyards.* The bufferyards set forth in Table 1 below, shall be established around the entire perimeter of the oil and gas operation sites, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation system shall be provided, maintained and operated for xeriscape plant types for a period of two years from planting.

Table 1 - Bufferyards			
Base Standard (plants per 100 linear feet)	Optional Width	Plant Multiplier	Option: add 6 foot opaque

	(feet)		masonry wall
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	
4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

D. *Air quality standards.* Air emissions from oil and gas facilities shall be in compliance with the permit and control provisions of the Environmental Protection Agency, Air Quality Control Commission and Colorado Oil and Gas Conservation Commission. In addition, the operator of the oil and gas facility agrees to employ the following enhanced standards for air quality mitigation.

1. *General duty to minimize emissions.* All continuously operated equipment, including but not limited to, storage vessels and dehydrators shall route vapors to a capture and control device with at least a ninety-eight percent (98%) destruction efficiency. Operators shall submit to the director test data of like equipment or manufacturer's data demonstrating the control device can meet the destruction efficiency. Any combustion device, auto ignition system, recorder, vapor recovery device or other equipment used to meet the destruction efficiency shall be installed, calibrated, operated and maintained in accordance with the manufacturer's recommendations, instruction and operating manuals.
2. *Combustion devices.* All flares shall be designed and operated as follows:
 - (a) The combustion devices shall be designed and operated in a matter that will ensure it complies with 40 Code of Federal Regulations ("CFR") §60.18 (General control device and work practice requirements);
 - (b) The combustion device shall be operated with a pilot flame present at all times vapors may be routed to it. Presence of a pilot flame shall be continuously monitored and recorded; and
 - (c) Combustion devices shall be equipped with automatic flame ignition systems in the event the pilot flame is extinguished.
3. *Fugitive emissions.* The operator shall develop and follow a leak detection and repair plan to minimize emissions from fugitive components. The plan will be submitted to the director for incorporation into the permit.
4. *Pneumatic controllers.* The operator shall use only no- or low-bleed pneumatic controllers, where such controllers are available for the proposed application. High-bleed pneumatic controllers may be used where air is the motive gas for operation of the controller and valve.

5. *Well completion practices.* For each well completion operation, the operator shall minimize emissions from the operation as set forth below:
 - (a) For the duration of flowback, route the recovered gas to the sales pipeline once the well has enough gas to safely operate the separator, or like device, and liquid control valves;
 - (b) If flow and gathering lines are not available to comply with subparagraph (a) above, the operator shall capture the recovered gas to a completion combustion device, equipped with a continuous ignition system, to oxidize the recovered gas stream except in conditions that may result in a fire hazard or explosion, or where high heat emissions from the completion device may negatively impact a sensitive area or nearby structure;
 - (c) Operators shall have a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback; and
 - (d) Operators shall maintain a log for each well completion operation. The log shall be completed in accordance with the methods outlined in the Environmental Protection Agency's Code of Federal Regulations, specifically 40 CFR Part 60, Subpart OOOO.
 6. *Well maintenance and blowdowns.* The operator shall utilize best management practices during well maintenance and blowdowns to minimize or eliminate venting emissions.
 7. *Capture of produced gas from wells.* Gas produced during normal production shall be captured, to the maximum extent feasible, and not flared or vented, except in situations where flaring or venting is required to ensure that associated natural gas can be safely disposed of in emergency shutdown situations.
 8. *Rod-packing maintenance.* Operators shall replace rod-packing from reciprocating compressors located at facilities approved after April 15, 2013, every twenty-six thousand (26,000) hours of operation or thirty-six (36) months, whichever occurs first.
- E. *Pipelines.* Any newly constructed or substantially modified pipelines on site shall meet the following requirements:
1. Flowlines, gathering lines and transmission lines shall be sited at a minimum of fifty (50) feet away from residential and non-residential buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within one hundred fifty (150) feet of residential or non-residential building or the high water

mark of any surface water body shall incorporate leak detection, secondary containment or other mitigation, as appropriate;

2. To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance;
3. To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts; and
4. Operators shall use boring technology when crossing streams, rivers, irrigation ditches or wetlands with a pipeline to minimize negative impacts to the channel, bank and riparian areas.

F. All oil and gas facilities shall comply with the sound limitation standards set forth in code chapter 7.32 after development of the well is complete. A noise mitigation study shall be submitted with the application to demonstrate compliance with said code chapter. If necessary to comply with said chapter, a noise screen shall be constructed along the edge of the oil and gas facility between the facility and existing residential development or land zoned for future residential development.

18.77.070 Application Requirements.

All applications submitted to current planning shall contain the information required for an APD and any additional information required by the city's "Oil and Gas Development Application Submittal Checklist" approved by the city manager.

18.77.075 Prohibited Oil and Gas Facilities.

Notwithstanding any provision in this chapter or code to the contrary, the following oil and gas operations and oil and gas facilities shall be prohibited within the city:

- A. Pits;
- B. Commercial disposal facilities regulated by the Colorado Department of Public Health and Environment;
- C. Centralized exploration and production waste management facilities; and
- D. Temporary housing at any oil and gas operations, including without limitation trailers, modular homes and recreational vehicles, except for such housing customarily required during twenty-four hour drilling and fracking operations.

18.77.080 Variances.

A. *Variance Request.* In both the planning commission review and administrative review processes, an applicant may request a variance from any provision of this chapter. A request for a variance under this section may be included in the applicant's application and shall be processed, reviewed and granted, granted with conditions or denied in accordance with and as part of the planning commission review process or the administrative review process, as applicable. The variance provisions of chapter 18.60 shall not be applicable to a variance request under this chapter.

B. *Grounds for Variance.* A variance from the application of any provision in this chapter shall be granted on the basis of one or more of the following grounds:

1. The provision is in operational conflict with the OGC act or the COG regulations, meaning the application of the provision would have the effect of materially impeding or destroying a state interest as expressed in the COG act or the COG regulations.
2. There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting a variance from the operation of the provision will not have an adverse effect on the public health, safety or welfare or on the environment.
3. Protection of the public health, safety and welfare and of the environment would be enhanced by an alternative approach not contemplated by the provision.
4. Application of the provision will constitute a regulatory taking of property without just compensation by the city under Article II, Section 3 of the Colorado Constitution.
5. Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas operations, which may include, without limitation, topographical conditions, shape or dimension of the operation site, inadequate public infrastructure to the site, or close proximity of occupied buildings.

18.77.085 Transfer of Permits.

Oil and gas permits may be assigned to another operator only with the prior written consent of the director and upon a showing to the director that the new operator can and will comply with all conditions of the transferred permit and with all of the applicable provisions of this chapter, the APD and the COG regulations. The existing operator shall assign the permit to the new operator on a form provided by the city and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this chapter.

18.77.090 Other Applicable Code Provisions.

In addition to the provisions of this chapter, all oil and gas operations conducted within the city shall comply with all applicable provisions of the following code chapters: 3.16, Sales and Use Tax; 7.12, Nuisances - Unsanitary Conditions; 7.16, Solid Waste Collection and Recycling; 7.18, Weed Control; 7.26, Accumulations of Waste Materials; 7.30, Graffiti; 7.36, Fire Protection; 10.04, Traffic Regulations; 10.20, Parking; 12.16, Use of City Rights-of-Way; 12.28, Prohibited Uses of Streets and Other Public Places; 13.18, Stormwater Management; 13.20, Stormwater Quality; 15.08, Building Code; 15.12, Property Maintenance Code; 15.14, Floodplain Building Code; 15.16, Mechanical Code; 15.24, Electrical Code; 15.28, Fire Code; 16.38, Capital Expansion Fees; 16.41, Adequate Community Facilities; 16.42, Street Maintenance Fee; 18.45, Floodplain Regulations; 18.50, Signs; 13.04, Water Service; 13.06, Cross Connection Control; and 19.06, Irrigation.

18.77.095 Emergency Response Costs.

The operator shall reimburse the Loveland Fire Rescue Authority for any emergency response costs incurred by the Authority in connection with fire, explosion or hazardous materials at the well or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by mistake of the Authority or in response to solely a medical emergency.

18.77.100 Application and Inspection Fees.

The city council may establish by resolution fees to be collected at the time an application is filed with current planning for the city's reasonable costs in processing applications under this chapter and for fees thereafter imposed for the city's reasonable costs to conduct inspections to ensure compliance with this chapter. Fees established for inspections shall be nondiscriminatory to only cover the city's reasonable costs to inspect and monitor for road damage and for compliance with the city's fire code, building codes and the conditions of any permit issued under this chapter. However, such inspection fees shall not be based on any costs the city might incur to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order or permit condition administered by the commission.

18.77.105 Capital Expansion Fees.

Oil and gas operations within the city shall be subject to the capital expansion fees established under code chapter 18.38. The city council may adopt and set such fees by resolution.

18.77.110 Reimbursement for Consultant Costs.

If the city contracts with an outside consultant to review and advise the city concerning any applicant's application or in connection with any applicant's hearing conducted under this chapter, the applicant shall reimburse the city for the city's reasonable costs incurred with that consultant. No permit shall be issued and no suspended permit shall be reinstated until the applicant reimburses the city in full for any such costs.

18.77.115 Adequate Transportation Facilities.

All applications submitted and all permits issued under this chapter shall be subject to all of the applicable adequate community facilities requirements of code chapter 16.41 as they relate solely to the transportation facilities required in code section 16.41.110.

18.77.120 Insurance and Performance Security.

A. *Insurance.* Every operator granted a permit under this chapter shall procure and maintain throughout the duration of the operator's oil and gas operations a policy of comprehensive general liability insurance, or a self-insurance program approved by the Colorado Insurance Commission, insuring the operator and naming the city as an additional insured, against any liability for personal injury, bodily injury or death arising out of the operator's permitted operations, with coverage of at least one million dollars (\$1,000,000) per occurrence. Unless the operator is self-insured, insurance required by this paragraph A. shall be with companies qualified to do business in the State of Colorado and may provide for a deductible as the operator deems reasonable, but in no event greater than ten thousand dollars (\$10,000). The operator shall be responsible for payment of any deductible. No such policy shall be subject to cancellation or reduction in coverage limits or other modification except after thirty (30) days prior written notice to the city. The operator shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the operator changes to "occurrence," the operator shall carry a twelve (12) month tail. The operator shall not do or permit to be done anything that shall invalidate the policies. In addition, the insurance required by this paragraph A. shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, disbursement, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. Further, the policies required by this paragraph A. shall be deemed to be for the mutual and joint benefit and protection of the operator and the city and shall provide that although the city is named as additional insured, the city shall nevertheless be entitled to recover under said policies for any loss occasioned to the city or its officers, employees or agents by reason of negligence of the operator or of its officers, employees, agents, subcontractors or business invitees and such policies shall be written as primary policies not contributing to or in excess of any insurance coverage the city may carry. Prior to the issuance of the operator's permit, the operator shall furnish to the city certificates of insurance evidencing the insurance coverage required herein. In addition, the operator shall, upon request by the city and not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the city with a certificate of insurance evidencing either new or continuing coverage in accordance with the requirements of this section.

B. *Performance Security for Road Damage.* Prior to the issuance of a permit to an applicant, the applicant shall provide the city with a _____ (\$_____) performance security for each well that is permitted while the well is in operation in the form of an irrevocable letter of credit or equivalent financial security acceptable to the director. Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting any damage to the city's public rights-of-way. Reclamation and other activities

and operations which fall under the COG regulations are exempted from this performance security coverage.

18.77.125 Inspections and Right to Enter.

A. *Inspections.* In recognition of the potential adverse impacts associated with oil and gas operations in an urban setting, all oil and gas operations and facilities may be inspected by the city's duly appointed inspectors at reasonable times to determine compliance with the applicable provisions of this chapter and all other applicable provisions in this code.

B. *Right to Enter.* Notwithstanding any other provision in this code to the contrary, for the purpose of implementing and enforcing the provisions of this chapter and the other applicable provisions of this code, the city's inspectors shall have the right to enter upon the private property of a permitted operator after reasonable notification to the operator's designated agent, in order to provide the operator with the opportunity to be present during such inspection. Such notice shall not be required in the event of an emergency that threatens the public's health or safety. By accepting an oil and gas permit under this chapter, the operator grants its consent to this right to enter.

C. *Designated Agent.* The applicant shall include in its application the telephone number and email address of its designated agent and at least one back-up designated agent who can be reached twenty-four hours a day for the purpose of being notified of any proposed city inspection under this section or in case of an emergency.

18.77.130 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.

A. *Violations.* It shall be unlawful and a misdemeanor offense under this chapter for any person to do any of the following:

1. Conduct any oil and gas operation within the city without a validly issued permit;
2. Violate any condition of a permit; or
3. Violate any applicable provision of this chapter and code.

B. *Suspension and Revocation.* If at any time the director has reasonable grounds to believe than an operator is in violation of any provision of this chapter or code, the director may suspend the operator's permit. The director shall give the operator's designated agent written notice of the suspension and, upon receiving such notice, the operator shall immediately cease all operations under the permit, except those reasonably required to protect the public's health and safety. The director's written notice shall state with specificity the operator's violation(s). The suspension shall continue in effect until the director determines that the violation(s) has been satisfactorily corrected. At any time during the suspension, the operator may appeal the director's action to the City Council by filing with the City Clerk a written notice of appeal

stating with specificity the operator's grounds for appeal. Within thirty (30) days of the City Clerk's receipt of that notice, a public hearing shall be held before the City Council. The hearing shall be conducted as a quasi-judicial proceeding with the operator having the burden of proof and with the director defending the suspension of the permit. After hearing and receiving evidence and testimony from the operator, from the director and from other city staff and consultants, and after receiving public comment, the City Council may revoke the permit, terminate the suspension of the permit or take such other action as it deems appropriate under the circumstances taking into consideration and balancing the protection of the public's health, safety and welfare and the operator's rights under this chapter and state law to conduct its oil and gas operations. Within twenty one (21) days after the hearing, the Council shall adopt its written findings and conclusion supporting its decision. The Council's written findings and conclusions shall constitute the Council's final decision that may be appealed to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

C. *Civil Actions.* In addition to any other legal remedies provided under this chapter to enforce violations of this chapter, the city may commence a civil action against an operator committing any such violations in any court of competent jurisdiction and request any remedy available under the law or in equity to enforce the provisions of this chapter, to collect any damages suffered by the city as the result of any violation and to recover any fees, reimbursements and other charges owed to the city under this chapter and code. If the city prevails in any such civil action, the operator shall be liable to the city for all of the city's reasonable attorney's fees, expert witness costs and all other costs incurred in that action.

D. *Penalties.* A violation of any provision of this chapter shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment. A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

18.77.135 Conflicting Provisions.

In the event of any conflict between any provision of this chapter and any other provision of this code, the provision of this chapter shall control.

Section 2. That a new Chapter 18.78 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 18.78

Building Setbacks from Oil and Gas Facilities

Sections:

18.78.010	Purpose
18.78.020	Building Setbacks from Oil and Gas Facilities
18.78.030	Variances.

18.78.010 Purpose.

The purpose of this chapter is to generally protect the public's health, safety and welfare and more specifically to establish setbacks for new development from existing or abandoned oil and gas facilities.

18.78.020 Building Setbacks from Oil and Gas Facilities.

All "buildings," as defined in code section 18.77.025, except such buildings with an occupancy rating for fifty (50) persons or more, shall be setback a minimum distance of five hundred (500) feet from an existing or abandoned oil and gas facility. All such buildings with an occupancy rating for fifty (50) persons or more and "outdoor assembly areas," as this term is defined in code section 18.77.025, shall be set back a minimum of one thousand (1,000) feet from any existing or abandoned "oil and gas well," as this term is defined in code section 18.77.025. Land included in such setback areas shall be designated as open space and uses such as open space play fields and parks shall not be permitted within such areas.

18.78.030 Variances.

The owner of any real property subject to the setback requirements of section 18.78.020 may request a variance from those setbacks in accordance with the provisions of section 18.77.080 using the planning review process set out in Chapter 18.77.

Section 3. That Ordinance No. 5685 and Ordinance No. 5735 are hereby repealed.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this ____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



Development Services Department

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To: City Council

From: Greg George, Development Services Director
 John Duval, City Attorney

Date: March 5, 2013

Re: Regulations for oil and gas development

I. ATTACHMENTS

1. Planning Commission draft meeting minutes – February 25, 2013
2. February 25, 2013 Planning Commission staff report w/attachments
3. Map of Greater Wattenberg Area
4. Written comments from citizens
5. Slide show

II. EXECUTIVE SUMMARY

City staff has prepared draft regulations for oil and gas development to be consistent with the Statement of Direction adopted by City Council on August 21, 2012. These regulations address concerns raised by Loveland citizens concerning impacts on public health, safety and welfare and the environment, and the City's legal authority to regulate oil and gas development.

The ordinance would create a new Chapter 18.77, which would contain all the review procedures, regulations, and standards applicable to oil and gas development. Oil and gas operators would be required to obtain a permit from the City for any oil and gas development within Loveland city limits. The ordinance would also create a new Chapter 18.78 to establish setbacks for new development from existing and abandon oil and gas facilities.

III. PLANNING COMMISSION

The Planning Commission considered the draft ordinance at a public hearing on February 25, 2013. Approximately thirteen citizens testified on the proposed ordinance. Five of the thirteen that testified asked the Planning Commission to recommend that City Council prohibit oil and gas development within city limits. Concerns were expressed regarding air and water quality impacts and the lack of scientific evidence demonstrating that hydraulic fracturing is safe. Concerns were also raised about reduced property values in the vicinity of an oil and gas facility. For more detail on the discussion at the meeting and the motions made, please refer to the draft minutes of the meeting (**Attachment 1**). The key concerns articulated by commission members near the end of the meeting were:

- A. Appeal of Director's decision:** There was some concern that the ordinance should include a process for appeal to City Council of the Director's decision to issue a permit under the administrative review process.

- B. Groundwater sampling and monitoring:** Concerns were raised about there being no requirement under the enhanced standards for groundwater monitoring and sampling on a more frequent and continuous schedule than required by the COGCC. At the hearing there was some confusion regarding the exact location of the Greater Wattenberg Area and, therefore, which COGCC groundwater monitoring rules would apply within Loveland city limits. Nevertheless, several commissioners thought the COGCC groundwater sampling requirements were insufficient for both inside the Great Wattenberg Area or statewide, outside the Greater Wattenberg Area. The concern was that sampling is required only once following completion of the well and not required on a more frequent basis throughout the production life of the oil and gas facility. The fact that the City of Loveland and its entire Growth Management Area is within the Greater Wattenberg Area, as stated in City staff reports, is confirmed based on the map obtained from the COGCC and included as **Attachment 3**.
- C. Air quality monitoring:** There was considerable discussion regarding the lack of air quality monitoring requirements in either the baseline standards or enhanced standards. The concern was that when an oil and gas facility is in close proximity to residential land uses, it's impossible to convince citizens living in the neighborhood that the air is safe without data from air quality monitoring.

Planning Commission members discussed these issues and others for nearly five hours, but they were unable to pass a motion making a recommendation to City Council. Comments by commission members during the discuss indicated that many of them wanted City Council to direct City staff to do more research on standards for air and water quality monitoring, consistent with best practices, and to include those standards in the draft ordinance before adoption by City Council.

IV. PLANNING COMMISSION STAFF REPORT – FEBRUARY 25, 2013

Please refer to the Planning Commission staff report (**Attachment 2**) for a detailed description of the proposed regulations and key issues as of February 19, 2013.

V. KEY ISSUES

Key issues arising after preparation of the Planning Commission staff report on February 19, 2013 are summarized below.

- A. Citizen concerns:** In addition to the testimony from citizen at the February 25, 2013 Planning Commission public hearing, City staff has received written comments (see **Attachment 4**) from citizens.
- B. Preemption of Baseline Standards:** On February 21, 2013, City staff met with representative of the Colorado Oil and Gas Conservation Commission (the “Commission”); Bob Frick, Hearings Officer and Jake Matter, Assistant Attorney General, Natural Resources and Environment Section. The primary purpose for the meeting was to receive input from the Commission’s staff as to their opinion whether the proposed baseline standards would be preempted by State law. With some minor revisions, technical corrections and clarifications, which are included in the attached ordinance, Mr. Frick and Mr. Matter thought that the baseline standards would, for the most part, not be preempted. However, they stressed the fact that this was just their opinion and not the official opinion of the Commission. Ultimately, it would be the courts that decide whether the City’s baseline standards would be preempted.

B. Setback for plugged and abandoned wells: City staff has understood that under the current Commission Rule 603 when an operator re-enters an existing or plugged and abandoned well, the well site is exempt from current Commission rules on setbacks for new oil and gas facilities. However, under the new Commission Rule 604 it appears that, with some exceptions, this is no longer the case.

1. **COGCC staff response:** This question of whether the setback requirements will apply to re-entered wells was raised at the meeting with Mr. Frick and Mr. Matter on February 21, 2013. Mr. Matter said he would research it and provide a response. Mr. Matter provided the following responses:
 1. February 21:

“With respect to the plugged and abandoned well issue, rest assured that a [plugged and abandoned] well would be subject to the new heightened setback requirements in their entirety. The operator would need to obtain a new APD from the Commission to re-enter the well.”
 2. February 22:

“The Commission would deny the permit unless the operator requested and received a variance under Commission Rule 502 and complied with the other requirements of new rule 604. See new rule 604.a.(1).A.i. Under Rule 502.b.(1), the operator would have the burden to prove the following:

 - a. *Variances to any Commission rules, regulations, or orders may be granted in writing by the Director without a hearing upon written request by an operator to the Director, or by the Commission after hearing upon application.*
 - b. *The operator or the applicant requesting the variance shall make a showing that it has made a good faith effort to comply, or is unable to comply with the specific requirements contained in the rules, regulations, or orders, from which it seeks a variance, including, without limitation, securing a waiver or an exception, if any, and that the requested variance will not violate the basic intent of the Oil and Gas Conservation Act.”*

Whether a variance would be granted is a fact specific inquiry that depends upon the totality of the circumstances in a given request. The Commission does not grant variances lightly.”

Mr. Matter’s statement that the Commission would deny the permit unless the operator requested and received a variance under Commission Rule 502 and complied with the other requirements of new rule 604 is important because rule 604.a.(1)A.i. requires the operator to obtain a waiver from each “Building Unit” owner within five hundred feet of the proposed oil and gas location.

It should be noted that Mr. Frick’s and Mr. Matter’s opinions and comments described above are their own, and not those of the Commission.

2. **Director’s response:** In response to this same question, City staff received the following e-mail from the Director of the Commission, Matt Lepore, on February 25, 2013:

Gentlemen:

I want to clarify that a well that has been plugged and abandoned is no longer considered an oil and gas location; it is as if the well had never existed. "Re-entering" that well is treated just as an application for an entirely new well or oil and gas location would be treated, from a regulatory point of view. Please let me know if you have additional questions or concerns,

Matt Lepore

This statement from the Director seems to clearly establish that an application to re-enter a plugged and abandoned well would be considered a new permit application and subject to the new Commission setback and mitigation rules.

- D. Anadarko review of proposed ordinance:** On February 25, 2013 City staff received comments from Susan Aldridge, Anadarko Legal Counsel, on the proposed ordinance. The majority of Ms. Aldridge's comments were technical in nature. The technical corrections have been included in the accompanying ordinance. The following describes the more substantive comments and City staff's response. Those substantive revisions that City staff agreed to also are included in the accompanying ordinance.

Definitions

1. **Section 18.77.025.II:** Made it clear that the definition of "outdoor assembly area" does not include the backyards of residential buildings.

Review process

2. **Section 18.77.040:** Added a provision for submitting an application after the CRT meeting allowing the applicant to proceed to file its application within three months following the CRT meeting in the event Current Planning does not provide DRT's written comments to the applicant in a timely manner.
3. **Section 18.77.045.C:** Added language allowing the Director to waive the requirement for a neighborhood meeting prior to the Planning Commission meeting, if the Director deems that the City's notice and neighborhood meeting requirements would be duplicative of those of the COGCC.
4. **Section 18.77.050.D:** Added language allowing the Director to waive the requirement for a neighborhood meeting prior to the Director's administrative approval of a permit, if the Director deems that the City's notice and neighborhood meeting requirements would be duplicative of those of the COGCC.

Baseline Standards

5. **Section 18.77.060. F:** Removed standard for anchoring mechanical equipment and rely on COGCC requirements.
6. **Section 18.77.060.N:** All the revisions made to the emergency response standards were agreed to by Randy Mirowski, Fire Chief, Loveland Fire Rescue Authority.
7. **Section 18.77.060.O:** Added language to clarify that the additional noise mitigation measures may be required only to the extent that they are feasible and not inconsistent with the operations of the well.

VI. PROPOSED ORDINANCE

The revisions to the proposed ordinance (shown in blue font) reflect changes to the ordinance included in the City Council packet for the February 12, 2013 study session. The revisions are in response to comments made at that study session, City staff's meeting with representative from the COGCC on February 21, 2013, concerns and issues discussed by Planning Commission members and citizens at the February 25, 2013 public hearing, comments received from City of Loveland department directors and the Loveland Fire Rescue Authority Fire Chief, and comments received from representatives of Anadarko.

1. **Zoning regulations for oil and gas development.**

This item is a public hearing to consider amending the Loveland Municipal Code by adding a new Chapter 18.77 to establish zoning regulations for oil and gas development in the City of Loveland. These new regulations have been drafted to be consistent with the Statement of Direction adopted by City Council on August 21, 2012. The regulations address concerns raised by Loveland citizens regarding impacts on public health, safety and welfare and the environment and recognize the City's legal authority to regulate oil and gas development. This matter is legislative in nature; as the City Council has final authority on this matter, the Planning Commission's role is to make a recommendation on the proposal to the City Council.

Greg George, Director of Development Services, introduced this item to the Planning Commission and outlined changes to the regulations as a result of the February 12, 2013 City Council Study Session. Mr. George noted that there are currently no development standards in place for oil and gas development because it was never anticipated that oil and gas drilling would be permitted in the City Limits.

He clarified that a moratorium on oil and gas development has been in place for nine months and City Council has directed staff to develop regulations that would not be pre-empted by State Law. He briefly updated the Planning Commission on the two-component process contained in the proposed regulations. Baseline standards, which are mandatory, would apply to all new oil and gas development. The Planning Commission would have approval authority for applications addressing only the baseline standards. Enhanced standards are voluntary and supplement the baseline requirements. The Development Services Director would have the authority to approve applications which comply with the enhanced standards. Once approved by the Director, the approval could not be appealed to the Planning Commission or City Council.

Mr. George indicated that the COGCC had recently adopted new setback and mitigation measures, and that the proposed ordinance has taken those new provisions into account.

Mr. George also indicated that staff had worked with Anadarko Petroleum in developing the enhanced standards and that Anadarko indicated a willingness to comply with those standards.

Mr. George reported that abandoned well sites were originally exempted from the setback rules established by the State, but the Director of the COGCC had recently indicated that re-entering any existing or abandoned well would be considered the same as permitting for a new well and would be subject to compliance with the COGCC's new setback and mitigation rules.

Commissioner Krenning questioned how an appeal of an approval of the enhanced standards would be handled.

Mr. Duval clarified that all appeals would go to the District Court. Mr. Duval stated that setbacks will also apply to abandoned wells.

Mr. George summarized the new state regulations. He noted that the enhanced standards in the proposed ordinance would establish a 500 foot setback from the boundaries of natural areas, wetlands and conservation easements managed by a government or non-profit entity.

Public Comment

Citizen comments, Thirteen citizens spoke against the proposed regulations.

- Five of those who testified asked for a ban on oil and gas development within the city.
- Seven of the thirteen raised concerns about impacts on quality of life and public health.
- One citizen has concerns about reduced real estate values near an oil and gas development.

Susan Aldridge, 1099 18th Street, Suite 1800, Denver Colorado representing Anadarko, commented that she is hearing and understands the concerns made by the citizens. She clarified that Anadarko has been working with staff to come up with the enhanced measures and was available for questions.

Corby Bracken, representing Anadarko, stated he too understood the concerns of the citizens. As an air quality expert, he urged concerned citizens to contact their State Representatives to support the budget amendment for the 1.3 million dollar air quality study for the Front Range. He responded air quality concerned raised by the Planning Commission and citizens, and he indicated that Anadarko would install up-to-date air quality mitigation devices on their production facilities.

There was a discussion regarding air and groundwater monitoring standards and current impacts on air quality resulting from oil and gas development in the region.

Brian Cain, representing Anadarko, thanked the citizens for their time and valuable input. He emphasized there is a right and wrong way to produce energy and clarified that Anadarko is the only oil company to be recognized by the Environmental Protection Agency for its best practices. He responded to questions and reported that 90 percent of all oil and gas wells are hydraulically fracked and the fracking process lasts from three to five days.

Paul Schneider, representing Anadarko, spoke of water quality issues and clarified that a small portion of the east side of Loveland is in the Greater Wattenberg Area.

COMMISSION COMMENTS

There was discussion of the proposed regulations, including the following:

- the need for enhanced water and air quality regulations and monitoring;
- the lack of an appeal process for the administrative approval process;
- the lack of incentives for applicants to pursue the enhanced standards process;
- the unknown effects of oil and gas production on public health and the environment; and
- the potential loss of property values due to oil and gas development.

Commissioner Molloy expressed frustration that the City is required to update its Comprehensive Plan only to have the State or the COGCC pre-empt it through regulations that would mandate large setback areas that would preclude urban-level development.

There was a discussion regarding how setbacks from potential drilling sites could negatively affect new development within the City.

The following motions were made:

Vice Chair Middleton made a motion to recommend that City Council adopt the accompanying ordinance to regulate oil and gas development within the City of Loveland, subject to any revisions recommended by the Commission. Upon a second by Commissioner Molloy, the motion failed 1-7. Yeas: Commissioner Middleton. Nays: Commissioners: Massaro, Crescibene, Molloy, Meyers, Ray, Krenning, Prior and Ray.

Commissioner Krenning stated he would support a motion that would allow for a direct appeal to the City Council under the administrative approval process. He stated his biggest opposition was that he felt the community should have the right to appeal without filing a lawsuit in District Court. He further stated that the original motion could be supplemented with language to read that the Planning Commission would encourage City Council to consider the options of monitoring and testing air quality and water quality.

Commissioner Molloy indicated that he did not believe the regulations were rigorous enough for urban areas.

Commissioner Ray stated that if he were going to make a motion he would suggest recommending approval of the regulations as they stand but establish zoning regulations to prohibit drilling next to a residential property unless the operator agrees to regulations that protect neighborhoods and human health and the environment.

He stated no one knows what if any health or environmental issues will be caused by oil and gas production, and he could not support going forward, stating these regulations are not good enough. He stated in an urban area there is not enough information one way or another to know if this is a safe practice.

Commissioner Massaro thanked everyone for attending the meeting and stated he was inclined to vote no; he stated the health issue continues to concern him.

Commissioner Prior suggested adding language regarding air and water quality issues in the baseline standards, commenting that it would alert companies ahead of time so they can consider if they want to do the baseline process or would it be worth it to go to litigation.

Commissioner Krenning made a motion to recommend that City Council adopt the proposed ordinance to regulate oil and gas development within the City of Loveland, subject to modification that the administrative issuance of a permit is subject to an appeal to City Council. Upon a second by Chairman Meyers the motion failed 2-6. Yeas: Commissioners

Krenning and Meyers. Nays: Commissioners: Massaro, Crescibene, Prior, Middleton, Ray, and Molloy.

Commissioner Ray made a motion to recommend that the City Council adopt the accompanying ordinance to regulate oil and gas development within the City of Loveland, subject to these revisions recommended by the Loveland Planning Commission:

- 1. Enhanced groundwater monitoring regulations proposed by an environmental expert;**
- 2. Air monitoring regulations more stringent than the ones provided and that are protective of human health and the environment consistent with point source monitoring at facilities while drilling and while an active site that the proposal either complies with these two things;**
- 3. Specifically exclude drilling within residential districts; and**
- 4. Include an administrative appeal process.**

Commissioner Krenning stated he was not comfortable drafting a motion from the "hip". There was no second made on Commissioner Ray's motion.

Commissioner Krenning made a motion to adjourn; upon a second by Vice Chair Middleton, the motion was unanimously adopted.



Development Services Department

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Planning Commission Staff Report

February 25, 2013

Agenda #1: Regular Agenda – PUBLIC HEARING

Title: Zoning regulations for oil and gas development

Applicant: City of Loveland

Request: Recommend zoning regulations for oil and gas development to the Loveland City Council

Location: The proposed regulations would apply to all oil and gas development within the incorporated limits of the City of Loveland.

City staff:

Greg George, Development Services Director
 John Duval, City Attorney

Staff Recommendation: Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Move to recommend that City Council adopt the accompanying ordinance to regulate oil and gas development within the City of Loveland, subject to any revisions recommended by the Commission.

I. ATTACHMENTS

- A. Statement of Direction
- B. Building Setback Areas Map
- C. February 12, 2013 City Council staff memorandum
- D. Groundwater Baseline Sampling Analysis
- E. Oil and Gas Drilling Activities Map
- F. Draft ordinance with redlines

II. EXECUTIVE SUMMARY

This item is a public hearing to consider amending the Loveland Municipal Code by adding a new Chapter 18.77 to establish zoning regulations for oil and gas development in the City of Loveland. These new regulations have been drafted to be consistent with the Statement of Direction (see **Attachment A**) adopted by City Council on August 21, 2012, address concerns raised by Loveland citizens regarding impacts on public health, safety and welfare and the environment and recognize the City's legal authority to regulate oil and gas development.

- A. **City Council:** The ordinance considered by the Planning Commission at their public hearing on January 28, 2013 was presented to City Council at a study session on February 12, 2013. A copy of the City Council staff memorandum for the study session is included as **Attachment C**. City Council asked questions concerning the permit process and regulations proposed in the draft ordinance and there was general concurrence from Council to have City staff proceed. The staff memorandum for the study session include the recommendation from Planning Commission that the moratorium be extended for two months to allow the Colorado Oil and Gas Conservation Commission (the "Commission") to complete

their rulemaking on building setbacks, but City Council gave staff direction to proceed under the current schedule (see Section III of this report) for adoption of the ordinance.

B. Revisions to draft ordinance: Following the City Council study session, City staff made some revisions to the ordinance to reflect comments made at the study session and to correct technical errors and omissions (see **Attachment F**). The following is a description of the substantive revisions made to the draft ordinance after the City Council study session.

1. **Page 13, paragraph E:** Change an incorrect citation of Commission regulations and require the operator to provide a copy to the Director of the approval granted by the Commission of the plugging method.
2. **Page 21, paragraph TT:** Require the abandonment of pipelines to comply with Commission rules and to file the notice of abandonment with the local governmental designee.
3. **Page 22, paragraph 3:** Require oil and gas facilities to be setback 500 feet from the property line of any property subject to a conservation easement managed by a public or non-profit entity.
4. **Page 22, paragraph 5:** Require a 1,000 foot setback from outdoor assembly areas with a capacity of 50 persons or more.
5. **Page 25, paragraph 4:** Require operators to use boring technology when crossing wetlands.
6. **Page 25, paragraph F:** Require oil and gas facilities to comply with the City's noise limitations after development of the facility is complete and the facility is under production.
7. **Page 30, Section 18.78.020:** Require that land included in development setbacks from existing or abandoned oil and gas facilities be designated as open space and prohibit uses such as open space play fields and parks from being located in these areas.

III. CURRENT SCHEDULE

Planning Commission 1st public hearing:	January 28, 2013
City Council study session:	February 12, 2013
Planning Commission 2nd public hearing:	February 25, 2013
City Council public hearing - Ordinance 1st reading:	March 5, 2013
City Council - Ordinance 2nd reading:	March 19, 2013
Ordinance legally effective:	April 2, 2013

IV. ABBREVIATIONS

Planning Commission Review Process	PCRP
Administrative Review Process	ARP
Colorado Oil and Gas Conservation Commission	Commission
Greater Wattenberg Area	GWA
Designated Outdoor Activity Area	DOAA
Local Government Designee	LGD
Colorado Department of Public Health and Environment	CDPHE

V. PURPOSE OF ORDINANCE

- A. Zoning conflicts with State law:** Currently, oil and gas development as a land use is only permitted in the Industrial and Developing Resource zoning districts as a special review use. Therefore, under the City's zoning code, oil and gas development would be prohibited in any of the other zoning districts in the City. Any absolute prohibition of oil and gas development by a local municipality would be in conflict with existing State law and would be preempted under Commission rules. To resolve this potential conflict with State law, the proposed amendments would allow oil and gas development in all zoning districts, subject to issuance of a permit by the City.
- B. Lack of development standards:** The Loveland Municipal Code contains no development standards specifically for oil and gas development. A municipality may enforce zoning regulations on oil and gas development that do not create an operational conflict with Commission regulations. In general, a regulation adopted by a municipality would be preempted by State law if it were to apply a standard more restrictive than a Commission standard. For example, a municipality could not enforce regulations on setbacks or air quality mitigation greater than those established in Commission regulations. However, a local municipality may adopt and enforce regulations in areas that the Commission does not regulate, provided those regulations do not create an operational conflict. Examples of regulations that would likely not be preempted are standards for fencing, landscape buffers, lighting, transportation and circulation, and road repair.

VI. PROPOSED PERMIT PROCESS

The ordinance proposes two different procedures for obtaining a permit for oil and gas development.

- A. Planning Commission Review Process (PCRP):** Applications filed under this process would be required to comply with regulations referred to as Baseline Standards designed specifically to avoid preemption by State law and legal challenges by oil and gas companies. The PCRP would require a neighborhood meeting and approval by the Planning Commission at a fully noticed public hearing. The Planning Commission could grant, grant with conditions or deny the permit. The decision of the Planning Commission could be appealed to City Council by "any party of interest", defined as the applicant, the Development Services Department Director, two or more City Council members, any person receiving mailed notice of the public hearing or any person who provided written or verbal testimony at the Planning Commission public hearing.
- B. Administrative Review Process (ARP):** Applicants willing to comply with regulations designed to provide a higher level of mitigation for impacts on public health, safety and welfare and the environment, referred to as Enhanced Standards, would receive a permit under the ARP. The ARP would require a neighborhood meeting. The notice for the neighborhood meeting would inform recipients that they have a specified number of days after the meeting to submit written comments to the Director. Any other person may also file comments within a specified number of days for the Director's consideration. Any comments submitted to the Director must be considered by the Director in his or her decision on the permit. The Director would be allowed to negotiate with the applicant for additional standards to be added as conditions on the permit to further protect public health, safety and welfare or minimize impacts on surrounding land uses or the environment. The Director's decision must be based solely on compliance with the Enhanced Standards and any additional standards agreed to by the applicant. The applicant's refusal to agree to any additional standards may not be used by the Director as a basis to deny the permit. The Director's final decision may not be appealable to the Planning Commission or City

Council. The Director's decision may only be appealed by the applicant or "any party of interest" to the district court for Larimer County under rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Compliance with the Enhanced Standards and, therefore, access to the ARP would be strictly voluntary. The primary objective for the Enhanced Standards process is to create an incentive for an applicant to agree to comply with higher standards than currently being required by the Commission. Absent agreement by the applicant, these higher standards would likely be preempted by State law. Enhanced Standards require : (i) additional setbacks from residential and non-residential buildings and sensitive natural features, such as natural areas, parks, rivers, streams and wetlands; (ii) that all oil and gas facilities inside city limits comply with the new mitigation measures required by the Commission for oil and gas facilities located within Designated Setback Locations; (iii) bufferyards around oil and gas facility; (iv) mitigation measures for air quality impacts; (v) compliance with locational requirements for pipelines; and (vi) compliance with the City's noise standards. The Building Setback Areas map (see **Attachment B**) shows the setback areas for oil and gas facilities under the Commission's rules in yellow and, in green, the additional setback areas proposed under the Enhanced Standards.

VII. STAKEHOLDER ENGAGEMENT AND CITY COUNCIL ACTION

- A. Emergency ordinance:** On May 15, 2012, City Council adopted an emergency ordinance imposing a nine month moratorium on oil and gas development in the City of Loveland. The primary purpose of the moratorium was to give City staff and City Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate oil and gas development occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the public's health, safety and welfare and the environment.
- B. Study Session:** At a study session on June 12, 2012, City Council received information from six panelists representing different stakeholder groups on issues related to oil and gas development.
- C. Statement of Direction:** On August 21, 2012, City Council adopted a Statement of Direction for the development of regulations on oil and gas development. City staff was directed to develop an ordinance that would impose minimum regulations not likely to be preempted by State law and enhanced regulations and standards that would be voluntary.
- D. Public Forum:** On October 23, 2012, a joint City Council/Planning Commission public forum was held to receive comments from citizens on oil and gas development.
- E. Extension of moratorium:** On December 18, 2012, City Council adopted an ordinance extending the moratorium on oil and gas development until an ordinance is adopted by City Council to enact local oil and gas regulations becomes legally effective or April 15, 2013. The primary reason for extending the moratorium was to allow time for the Commission to complete their rule making which was expected to be completed in early January 2013.

VIII. KEY ISSUES

- A. Feasibility of enhanced regulations:** Successful implementation of enhanced regulations depends on the extent to which the regulations are economically practicable and technically feasible for the operator and the ability of the City to provide an incentive sufficient to achieve voluntary compliance. The challenge is to develop a set of enhanced standards that applicants are willing to comply with in order to have

access to the ARP. If the enhanced standards are too arduous, then applicants will decide to comply with the Baseline Line Standards and utilize the PCRP, even though the process would take additional time and is less certain.

- B. Cost for additional inspections:** It may be necessary for the City to inspect oil and gas sites to ensure compliance with standards adopted by the City, particularly with respect to Enhanced Standards. At the discretion of the Commission, standards agreed to by an applicant and a local government may be placed as conditions on the Commission permit. However, to ensure compliance with the Enhanced Standards, the City may have to inspect oil and gas sites. One option would be to contract with a qualified inspector, on an as-needed basis, to perform the necessary inspections.
- C. Creation of “no-build” areas within city limits:** City Council has directed City staff to recommend zoning restrictions to establish setbacks for new development from existing or abandoned oil and gas facilities. Any such setbacks could create significant “no-build” areas within the City and, in the future, within our southeastern Growth Management Area. A 500 foot setback would create an 18 acre “no-building” zone and a 1,000 foot setback a 72 acre “no-building” zone around an existing or abandoned oil and gas facility. If the oil and gas facility is within 500 feet from a Building Unit or 1,000 feet from a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area, the Commission’s new rules on building setbacks require a significant number of new mitigation measures (i.e. closed loop drilling system, higher standards for containment berms, consolidation of well sites and blowout prevention equipment). However, there are locations with the current city limits and, more so, within the Growth Management Area where Commission rules would not require these new mitigation measures.
- D. Setbacks for new development:** For those oil and gas facilities that are not required to adhere to the Commission’s new mitigation rules, City staff would recommend a 1,000 foot setback for new development and a 500 foot setback from those facilities that do include the new mitigation measures. To minimize the size of potential “no-build” areas within the city and better protect public health, safety and welfare and the environment, City staff is recommending, as an Enhanced Standard, that all oil and gas facilities within city limits adhere to the Commission’s new mitigation rules regardless of how close the facility is at time of permit issuance to an existing Building Unit or High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. This requirement would apply to permits issued to reenter abandoned oil and gas facilities, would minimize obstacles for new development and provide more land area available for development in the future.

IX. NEW COMMISSION RULES

- A. Groundwater baseline sampling and monitoring:** The Commission adopted new rules for groundwater baseline sampling and monitoring on January 7, 2013. The new rules will become legally effective on May 1, 2013. The new rules that apply state-wide, except within the Greater Wattenberg Area (GWA), require operators to collect water samples from all available water sources, up to a maximum of four, within a one-half mile radius of a proposed oil and gas well. The first sample must be taken within twelve months prior to drilling and again between sixty and seventy-two months following completion of the well. The City of Loveland and surrounding area in Larimer County are located within the GWA. In this area, operators are required to sample one available water source within the quarter section in which the proposed well is to be located. The first samples must be taken within twelve months prior to drilling and the second between six and twelve months following completion of the well. The official press release from the Commission states that the rules in the GWA were adjusted due to the combination of energy development, agricultural and other industrial and residential uses unique to the area. The

required analysis for all baseline sampling is described in **Attachment D**. Due to these new groundwater sampling and monitoring requirements, City staff is no longer recommending additional requirements for groundwater sampling and monitoring as part of the proposed Enhanced Standards.

- B. Building setback rules:** The Commission adopted its new rules for building setbacks on February 11, 2013. Section X, below, explains the Commission's new setback rules. The adopted rules are virtually the same as those explained in the January 28, 2013 Planning Commission staff report.
- C. New mitigation rules:** **Table 2** in Section XII identifies the new mitigation measures (those in the blue cells) that the Commission requires for oil and gas facilities that are within 500 feet of a Building Unit or within 1,000 feet of a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. City staff proposes to require these new mitigation rules for all oil and gas facilities within city limits, regardless of how close the oil and gas facility is to existing buildings.

X. COMMISSION'S ADOPTED SETBACK RULES

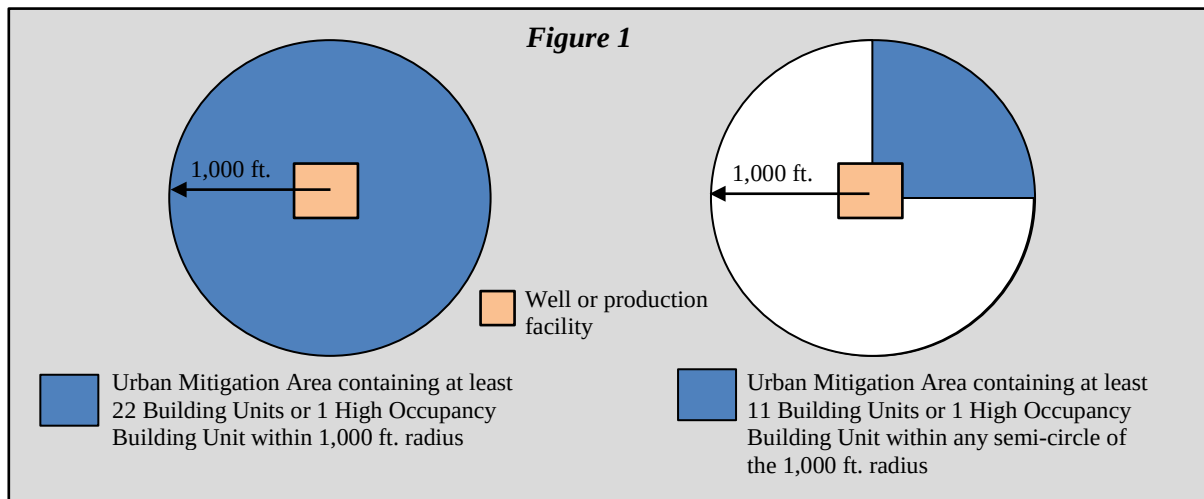
The adopted setback rules require new mitigation measures when oil and gas facilities are located within a Designated Setback Location or Urban Mitigation Area. The new rules expand notice and outreach to local communities; and establish greater setback distances between oil and gas facilities and residential and other occupied buildings. The new rules would establish a new statewide setback and two new setback areas defined as Designated Setback Locations and Urban Mitigation Areas. The size of each of the setback areas is shown in **Table 1**.

Table 1

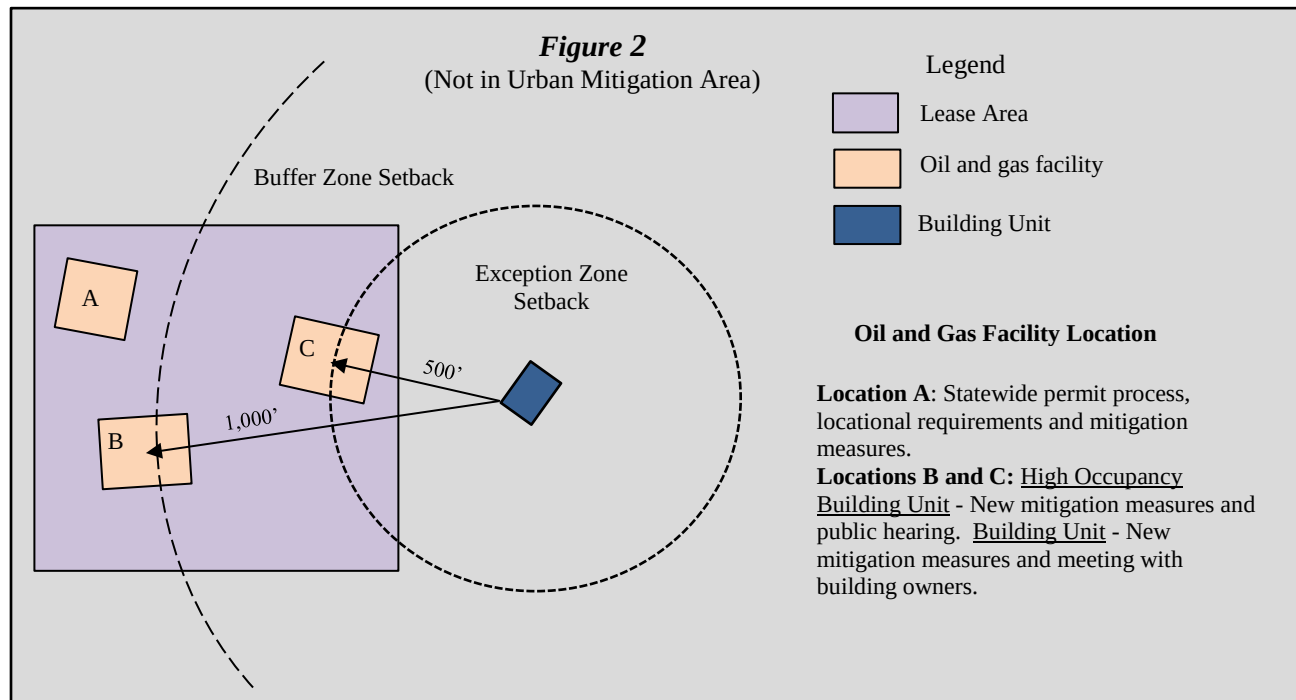
Setback	Radius	Size of Circle	Area of Each Zone
Statewide	200'	3 acres	3 acres
Exception Zone	500'	18 acres	15 acres
Buffer Zone	1,000'	72 acres	54 cres

A. Definitions:

- 1. Residential Building Unit:** A building designed for use as a place of residency by a person, a family or families.
- 2. Building Unit:** A Residential Building Unit and every 5,000 sq. ft. of commercial building floor area or every 15,000 sq. ft. of warehouse building square footage.
- 3. High Occupancy Building Unit:** As all are defined in State Statutes, any operating Public School, Nonpublic School, Nursing Facility, Hospital, Life Care Institution and Correctional Facility, provided the facility or institution serves 50 or more persons, and Child Care Centers.
- 4. Urban Mitigation Areas:** An area where at least twenty-two Building Units or one High Occupancy Building Unit (existing or under construction) are located within a radius of 1,000 feet from the center of the well or production facility or at least eleven Building Units or one High Occupancy Building Unit are within any semi-circle of the 1,000 foot radius (see **Figure 1**).



- B. Statewide location requirements:** A well must be a minimum of 200 feet from buildings, public roads, major above ground utility lines and railroads and a minimum of 150 feet from a surface property line. This setback was 150 feet under the previous setback rules.
- C. Designated Setback Locations:**
1. **Exception Zone Setback:** An area described as a circle with a radius of 500 feet measured from the center of the well or production facility.
 2. **Buffer Zone Setback:** An area described as a circle with a radius of 1,000 feet measured from the center of the well or production facility.
 3. **High Occupancy Building Unit:** An area within 1,000 feet of a High Occupancy Building Unit as measured from the nearest wall or corner of the building.
 4. **Designated Outdoor Activity Area:** An area within 350 feet of the boundaries of a Designated Outdoor Activity Area (DOAA). Upon application and a hearing, DOAAs and their boundaries are established by the Commission. DOAAs may include outdoor recreation uses, such as playgrounds, sports fields, amphitheaters, or other similar places of public assembly owned or operated by a local government.
- D. Commission's New Mitigation Measures:** The Commission's new mitigation measures, set forth in Commission Rule 604 (c), are required for all oil and gas facilities located within a Designated Setback Location, as listed above.
- E. Setbacks and mitigation:** The following describes building setbacks and mitigation measures adopted by the Commission on February 11, 2013.
1. **Exception Zone (Figure 2, Site C) :**
 - a. If the building is a High Occupancy Building Unit, then no oil and gas facility can be located within 500 feet, unless:
 - (1) Commission approval following a public hearing; and
 - (2) The permit is subject to the Commission's new mitigation rules.
 - b. If the building is a Building Unit, then no oil and gas facility can be located within 500 feet, unless
 - (1) Operators certify that they met with Building Unit owners if requested to do so by the Local Government Designee (LGD); and
 - (2) The permit is subject to the Commission's new mitigation rules.

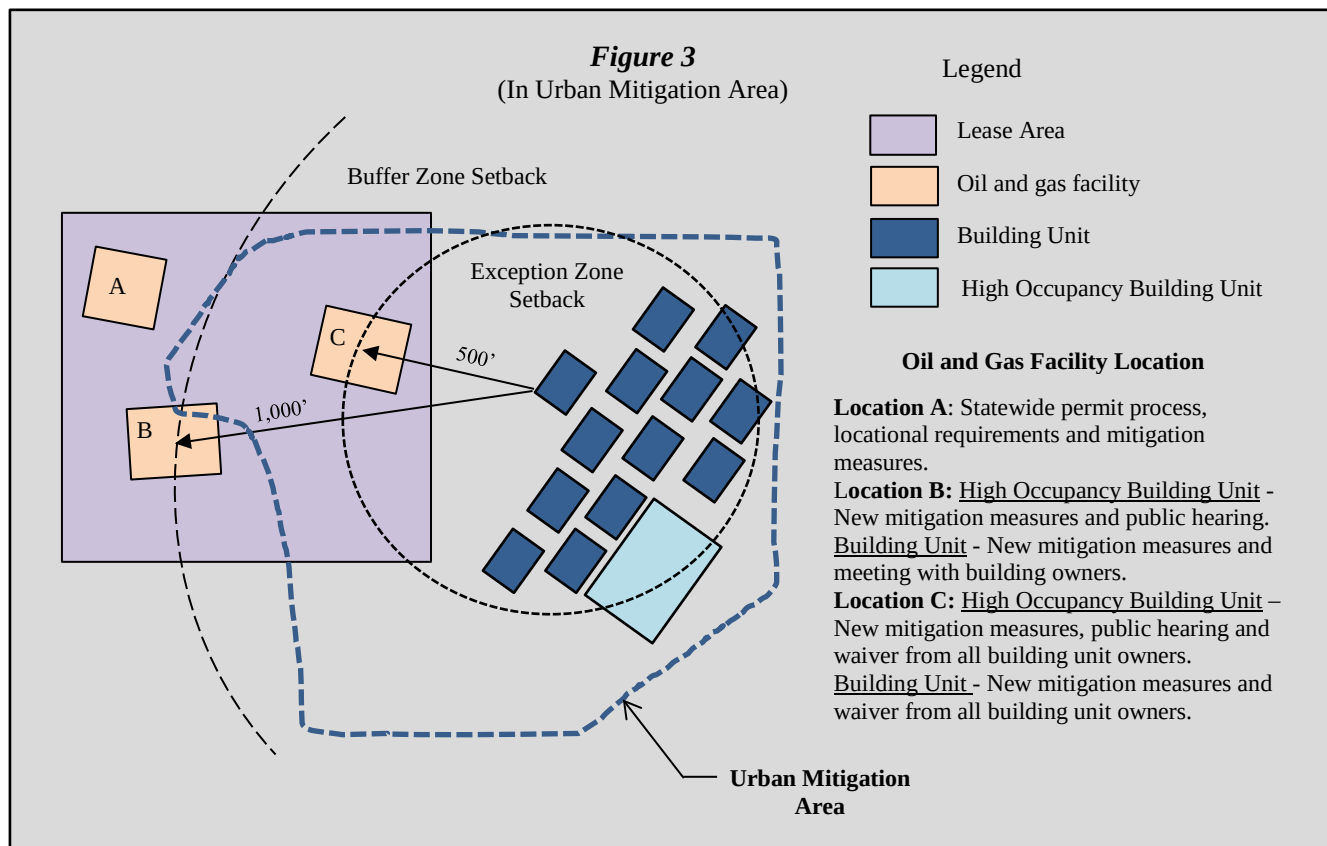


2. Buffer Zone (Figure 2, Site B):

- a. If the building is a High Occupancy Building Unit, then no oil and gas facility can be located within 1,000 feet, unless:
 - (1) Commission approval following a public hearing; and
 - (2) The permit is subject to the Commission's new mitigation rules.
- b. If the building is a Building Unit, then no oil and gas facility can be located within 1,000 feet from a the building, unless:
 - (1) Operators certify that they met with Building Unit owners if requested to do so by the LGD; and
 - (2) The permit is subject to the Commission's new mitigation rules.
- c. Oil and gas facilities located beyond 1,000 feet from a High Occupancy Building Unit and a Building Unit (**Figure 2, Site A**) are subject to statewide permit process, locational requirements and mitigation measures.

3. Urban Mitigation Area (Figure 3):

- a. If the building is located within an Exception Area and an Urban Mitigation Area (**Figure 3, Site C**) and is a High Occupancy Building Unit, then no oil and gas facility can be located within 500 feet, unless:
 - (1) The operator submits waivers from each Building Unit owner within 500 feet of the oil and gas facility;
 - (2) Operators certify that they met with Building Unit owners if requested to do so by the LGD;
 - (3) The permit is subject to the Commission's new mitigation rules; and
 - (4) Commission approval following a public hearing.



- b. If the building is located within an Exception Area and an Urban Mitigation Area (**Figure 3, Site C**) and is a Building Unit, then no oil and gas facility can be located within 500 feet, unless:
 - (1) The operator submits waivers from each Building Unit owner within 500 feet of the oil and gas facility;
 - (2) Operators certify that they met with Building Unit owners if requested to do so by the LGD; and
 - (3) Permit is subject to the Commission's new mitigation rules.
 - c. If the building is located within an Buffer Zone Setback and an Urban Mitigation Area (**Figure 3, Site B**) and is a High Occupancy Building Unit, then no oil and gas facility can be located within 1,000 feet, unless:
 - (1) Commission approval following a public hearing; and
 - (2) The permit is subject to the Commission's new mitigation rules.
 - d. If the building is located within an Buffer Zone Setback and an Urban Mitigation Area (**Figure 3, Site B**) and is a Building Unit, then no oil and gas facility can be located within 1,000 feet, unless:
 - (1) Operators certify that they met with Building Unit owners if requested to do so by the LGD; and
 - (2) The permit is subject to the Commission's new mitigation rules.
 - e. Oil and gas facilities located beyond 1,000 feet from a High Occupancy Building Unit and a Building Unit (**Figure 3, Site A**) are subject to statewide permit process, locational requirements and mitigation measures.
4. **Designated Outdoor Activity Areas:** No oil and gas facility can be located within 350 feet of a Designated Outdoor Activity Area. The Commission may establish a setback greater than 350 feet

based on the totality of the circumstances. If the well or production facility is to be located within 1,000 feet of a Designated Outdoor Activity Areas, then the Commission's new mitigation measures are required.

5. **Maximum Achievable Setback:** If the applicable setback would extend beyond the area on which the operator has a legal right to locate, then the operator may seek a variance from the Commission to reduce setbacks to the maximum achievable.

XI. PROPOSED REGULATIONS

The regulations proposed by City staff are in the accompanying ordinance (**Attachment F**), which establishes a new Section 18.77 in the Loveland Zoning Code. The regulations are in three categories: (i) Baseline Standards (Section 18.77.055) that apply to the PCRP; (ii) Baseline Standards (Section 18.77.060) that apply to both the PCRP and the ARP; and (iii) Enhanced Standards (Section 18.77.065) that apply only to the ARP. Revisions to the ordinance since the City Council study session on February 12, 2013 are shown in red font.

XII. COMMISSION MITIGATION MEASURES

Table 2
Regulations Comparison

Commission Rule	Current City Code Regulations
Noise	
1. During well site development involving pipeline or gas facility installation or maintenance or use of a drilling rig noise levels shall not exceed 70 dB(A) day, 65 dB(A) night, measured at nearest building unit.	1. Measured at property line of adjacent land use: - Residential: 55 dB(A) day, 50 dB(A) night - Commercial: 60 dB(A) day, 55 dB(A) night - Industrial: 75 dB(A) day, 70 dB(A) night
2. Measured 350 feet from sound source: - Adjacent land use: ✓ Residential: 55 dB(A) day, 50 dB(A) night ✓ Commercial: 60 dB(A) day, 55 dB(A) night ✓ Light Industrial: 70 dB(A) day, 65 dB(A) night ✓ Industrial: 80 dB(A) day, 75 dB(A) night	
3. All facilities within 400 feet of a Building Unit with engines or motor which are not electrically operated shall be equipped with quiet design mufflers.	
Water Quality	
4. Closed loop drilling system and pit restrictions shall be required.	None

(Continued)

Commission Rule	Current City Code Regulations
Water Quality	
5. Containment berms meeting the following standards shall be required: ✓ Constructed around crude oil, condensate, and production water storage tanks ✓ Within the Exception Zone, berms shall be constructed of steel rings ✓ Secondary containment areas shall be constructed with synthetic or engineering liners ✓ Within 500 feet of a surface water body, an earthen berm shall be required around the entire production facility ✓ Within an Urban Mitigation Area, no more than 2 crude oil or condensate storage tanks shall be located within a single berm.	None
Air Quality	
6. Closed loop drilling system and pit restrictions shall be required.	None
Traffic	
7. If required by local government, a traffic plan shall be coordinated with the local government prior to commencement of move in and rig up.	2. Compliance with Larimer County Urban Area Street Standards.
Multi-Well Pads	
8. Where technologically feasible and economically practicable, wells shall be consolidated to create multi-well pads located as far from building units as possible.	None
Leak Protection	
9. The oil and gas facility operator shall develop a plan to monitor production facilities on a regular schedule to identify fluid leaks.	None
Blowout Preventer Equipment	
10. Blowout prevention equipment shall be required.	None
Pit Level Indicators	
11. Pit level indicators shall be used.	None
Drill Stem Tests	
12. Closed chamber drill stem tests shall be allowed	None
Well Services Operations	
13. Adequate blowout prevention equipment and backup stabbing valves shall be used on well servicing operations.	None
Security	
14. Well sites shall be adequately fenced to restrict access by unauthorized persons.	None
Surface Trash	
15. All surface trash, debris, scrap or discarded material shall be removed from the site and disposed of in a legal manner.	3. Title 7: Accumulation of Waste Material

(Continued)

Commission Rule	Current City Code Regulations
Tank Specifications	
16. All crude oil and condensate storage tanks shall be designed, constructed and maintained in accordance with National Fire Protection Association (NFPA) Code 30 (2008 version).	None
Emergency Access	
17. All leasehold roads shall be constructed and maintained to accommodate local emergency vehicle access.	4. International Fire Code
Well Site Clean Up	
18. Within 90 days after a well is plugged and abandon, the well site shall be cleared of all non-essential equipment, trash and debris.	None
Identification of Plugged and Abandon Wells	
19. Operator shall identify the location of the well bore with a permanent monument with the well number and date of plugging imbedded on the monument.	None
Development of Existing Well Pads	
20. Where possible, operators shall provide for the development of multi reservoirs by drilling on existing pads or by multiple completions or commingling in existing wellbores.	None
Visual	
21. Production facilities, regardless of construction date, that can be seen from any public highway shall be painted a uniform, non-contrasting color tone that matches but is slightly darker than the surrounding landscape.	5. Bufferyards – Type EX. Plant density and width unspecified, allowing City to require bufferyard in excess of Type E as necessary to buffer high intensity uses, such as an industrial batch plant or gravel mine from residential or commercial uses. 6. Screening of unsightly areas – Such areas shall be screened from view from public sidewalks, streets, and other public areas. Whenever plants are used for screening, the plants should be coniferous and provide an opaque screen within three years.
Lighting	
22. To the extent practicable, site lighting shall be directed downward and inward and shielded so as to avoid glare on public roads and building units within 1,000 feet.	7. Elimination: (i) Minimum horizontal luminance – 0.2 foot candles (ii) Maximum uniform ratio – 10:1 (iii) Maximum average luminance – 1 foot candle (iv) Minimum vertical luminance – 0.1 foot candle (v) Maximum on-site lighting levels: 10 foot candles – 20 foot candles for vehicle display lots (vi) Light shall be glare-shielded or directed away from residential zones (vii) Light spill-over levels shall not exceed 0.1 foot candles measure 20 feet from property line as a result of on-site lighting.

(Continued)

Commission Rule	Current City Code Regulations
Structure Height	
None – drilling rigs are typically 150 feet in height, or less.	8. In the Industrial zone – East of County Road 9 – 50 feet. Other locations in the Industrial zone - 40 feet 9. It is unlawful to construct any tower or other structure which may constitute a hazard to the safe navigation of aircraft at the Fort Collins/Loveland Airport
Vibration	
None	10. Vibration at the level of human perception shall not be permitted beyond the lot lines.
Floodplain	
Best practices	11. Flood Fringe – Non-residential structures shall be placed on fill so that the lowest portion of the structure is at or above the regulatory flood protection elevation or comply with the floodproofing requirements set forth in the International Building Code. 12. Floodway – No use shall limit or restrict the floodway capacity, include fill or storage of material or equipment, increase flood heights during base flood, any well shall be protected from inundation from flood discharge and no new mobile home shall be permitted.
Stormwater quality	
	13. Compliance with City of Loveland Storm Criteria Manual
Odors and Dust	
23. Odor: (i) Compliance with Department of Public Health and Environment Air quality Control and odor Emissions regulations, plus specific regulations on crude oil, condensate, and produced water tanks, glycol dehydrators, pits, and pneumatic devices. (ii) Green completions practices required on wells that are likely to produce naturally flowing hydrocarbon gas in flammable concentrations. 24. Fugitive dust: Operator shall employ practices such as speed controls, regular road maintenance, restrictions on construction activity during high-wind conditions, silica dust controls when handling sand, road surfacing, wind breaks and automation of well site to reduce truck traffic.	14. Odor: Title 7: Nuisance Abatement
Weed Control	
25. All well and surface production facilities shall be kept free of weeds, rubbish, and other waste material.	15. Compliance with Title 7: Weed Control Ordinance

Statement of Direction for the Development of Regulations on Oil and Gas Development in the City of Loveland

Generally

City staff will promptly develop an approach to oil and gas regulation which includes regulation by ordinance, and also incorporates operating agreements to be negotiated with oil and gas companies. Care will be taken in the drafting of the ordinance to ensure critical health and safety concerns and minimize impacts of oil and gas on neighbors, while at the same time providing for access to mineral rights and harmonizing with state law and regulation. The draft ordinance will draw upon the successful experience of other jurisdictions, and avoid conflicts with state law or regulation that would draw legal challenge from the State of Colorado.

Regulations by Ordinance

Method: Oil and gas development shall be listed in all City zoning districts as a special review use. This process requires notification of affected property owners and a neighborhood meeting. The current provisions for obtaining a special review permit, which provide for ultimate denial of the permit, will be amended to avoid legal preemption based on an operational conflict.

Standards: The City staff will explore and develop standards in the draft ordinance to address the following areas:

1. Closed loop/pitless wastewater disposal systems
2. Hazardous materials disclosure
3. Road damage/repair
4. Odor
5. Visual Screening
6. Setbacks (not in excess of those allowable by State law and regulation)
7. Construction traffic and routing
8. Safety and spill prevention
9. Emergency preparedness plan
10. Fire inspections

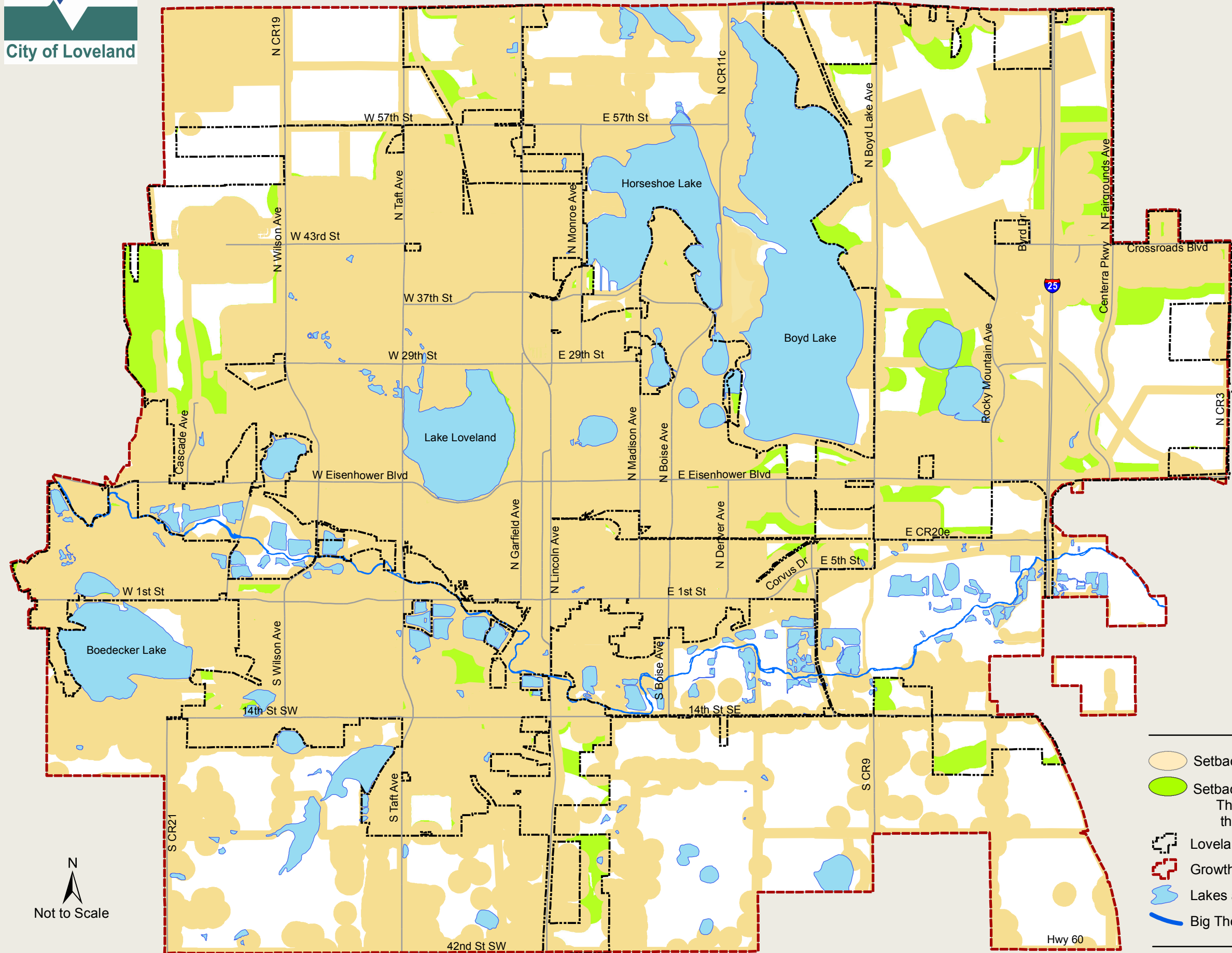
Fees: The draft ordinance shall include the development of a fee structure for permitting to recover City costs of service, to the extent not in conflict with State law and regulation. These will include System Impact Fees as well.

Use of Operator Agreements

The City will incorporate into its practice the use of individually negotiated agreements with individual oil and gas companies, as recommended by the Colorado Oil and Gas Association. These agreements can result in the application of more stringent standards than might otherwise be preempted by state law, in addition to the minimum standards mentioned above. The Colorado Oil and Gas Commission will typically include the requirements of any such agreement as conditions on permits it issues.

City of Loveland

Please note: The new COGC regulations are applied to areas within the Loveland Growth Management Area (GMA). The proposed City Enhanced Standards are applied only within the city limits shown in the black dashed line.



- Setback Areas as defined by New COGC Regulations
- Setback Areas as defined by Proposed City Enhanced Standards
This map layer only shows where the standards are greater than the COG regulations within City Limits
- Loveland City Limits
- Growth Management Area
- Lakes and Ponds
- Big Thompson River

N



Not to Scale



Development Services Department

500 East Third Street, Suite 310 • Loveland, CO 80537
 (970) 962-2346 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

To: City Council

From: Greg George, Development Services Director
 John Duval, City Attorney

Date: February 12, 2013

Re: Regulations for oil and gas development

I. ATTACHMENTS

- A. Oil and Gas Drilling Activities map
- B. Groundwater Baseline Sampling Analysis
- C. January 28, 2013 Planning Commission public hearing staff report
- D. January 28, 2013 Planning Commission minutes (draft)
- E. January 14, 2013 Planning Commission minutes (draft)

II. EXECUTIVE SUMMARY

City staff has prepared draft regulations on oil and gas development to be consistent with the Statement of Direction adopted by City Council on August 21, 2012, address concerns raised by Loveland citizens concerning impacts on public health, safety and welfare and the environment, and the City's legal authority to regulate oil and gas development.

City staff proposes to create a new Chapter 18.77, which will contain all the review procedures, regulations, and standards applicable to oil and gas development. Oil and gas operators would be required to obtain a permit from the City for any oil and gas development within Loveland city limits. To avoid redundancy, please refer to Section I (page 1 of 12) in the attached January 28 Planning Commission staff report for a description of the two different procedures (Planning Commission Review and Administrative Review) for obtaining a permit from the City and the nature of the two sets of standards (Baseline Standards and Enhance Standards) that would apply to each process. Section V (page 3 of 12) of the Planning Commission staff report explains why it is necessary for the City to amend its zoning code. The key issues, and the remainder of this memorandum, have been updated from the Planning Commission report.

City staff is also proposing a new Chapter 18.78 to establish building setbacks for new development from existing and abandon oil and gas facilities.

III. SCHEDULE

Planning Commission: 1st public hearing - January 28, 2013
 City Council study session: February 12, 2013
 Planning Commission: 2nd public hearing - February 25, 2013

City Council: public hearing - Ordinance 1st reading - March 5, 2013
 City Council: Ordinance 2nd reading - March 19, 2013
 Legally effective: April 2, 2013

IV. KEY ISSUES

A. Baseline Standards for Planning Commission Review: The intent of the Baseline Standards in Section 18.77055 is to apply standards that mitigate adverse impacts to the extent possible, while not being preempted by State law. Baseline Standards include Colorado Oil and Gas Commission (the “Commission”) rules dealing with impacts typically addressed by current City standards on heavy industrial uses. Commission rules dealing with the technical aspect of oil and gas development are not included in these Baseline Standards.

B. Baseline Standards for Planning Commission and Administrative Review: The intent of the Baseline Standards in Section 18.77.060 is to apply standards to mitigate impacts that are either not addressed in Commission rules or to mitigate impacts to a higher standard. In either case, the intent is to not create an operational conflict and, therefore, avoid a standard being preempted by State law.

C. Enhanced Standards for Administrative Review: The standards in Section 18.77 065 are voluntary standards intended to mitigate impacts to a higher level than those of the Commission. These standards would likely be preempted by State law if they were not voluntary. Successful implementation of enhanced regulations will depend on the extent to which the standards are economically practicable and technically feasible for the applicant and the ability of the City to provide an incentive sufficient to achieve voluntary compliance. City staff has collaborated with representatives from Anadarko to create standards that are technically feasible and economically practicable. One possibility for increasing the incentive for compliance with these standards is to reduce or waive the filing fee or specific Capital Expansion Fees that might otherwise be applicable. Another possibility is that the surface owner may participate in the cost to implement the enhanced standards to reduce setbacks for new development in the future (see paragraph D, below concerning “no build” areas)

D. Creation of “no-build” areas within city limits: City Council has directed City staff to recommend zoning restrictions to establish setbacks for new development from existing or abandoned oil and gas facilities (see **Attachment A**). Any such setbacks could create significant “no-build” areas within the city and, in the future, within our Growth Management Area. A 500 foot setback would create an 18 acre “no-building” zone and a 1,000 foot setback a 72 acre “no-building” zone around an oil and gas facility. The Commission’s new rules on building setbacks require a significant number of new mitigation measures (i.e. closed loop drilling system, higher standards for containment berms, consolidation of well sites and blowout prevention equipment) if the oil and gas facility is within 500 from a Building Unit or 1,000 feet from a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. However, there are locations with the current city limits and, more so, within the Growth Management Area where Commission rules would not require these new mitigation measures.

E. Setbacks for new development: For those oil and gas facilities that are not required to adhere to the Commission’s new mitigation rules, City staff would recommend a 1,000 foot setback for new development and a 500 foot setback from those facilities that do include the new mitigation measures. To minimize the size of potential “no-build” areas within the city and better protect public health, safety and welfare and the environment, City staff is recommending, as an Enhanced Standard, that all oil and gas facilities within city limits adhere to the Commission’s new mitigation rules regardless of how close the

facility might be at time of permit issuance to an existing Building Unit or High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area. This requirement would minimize obstacles for new development and provide more land area available for development in the future.

F. Additional inspection services: It may be necessary for the City to inspect oil and gas sites to ensure compliance with standards adopted by the City, particularly with respect to requirements that are not included in a Commission permit. Standards agreed to by an applicant and a local government may, at the discretion of the Commission, be placed as conditions on the Commission's permit. Since most of the Baseline Standards are regulations included in the Commission's rules, the City could decide to rely on inspections by Commission personnel to ensure compliance. However, to ensure compliance with the Enhanced Standards, the City may have to inspect oil and gas sites. One option would be to contract with a qualified inspector, on an as-needed basis, to perform the necessary inspections.

V. COMMISSION'S NEW RULES

A. Groundwater baseline sampling and monitoring: The Commission adopted new rules for groundwater baseline sampling and monitoring on January 7, 2013. The new rules will become legally effective on May 1, 2013. The new rules that apply state-wide, except within the Greater Wattenberg Area (GWA), require operators to collect water samples from all available water sources, up to a maximum of four, within a one-half mile radius of a proposed oil and gas well. The first sample must be taken within twelve months prior to drilling and again between sixty and seventy-two months following completion of the well. The City of Loveland and surrounding area in Larimer County are located within the GWA. In this area, operators are required to sample one available water source within the quarter section in which the proposed well is to be located. The first samples must be taken within twelve months prior to drilling and the second between six and twelve months following completion of the well. The official press release from the Commission states that the rules in the GWA were adjusted due to the combination of energy development, agricultural and other industrial and residential uses unique to the area. The required analysis for all baseline sampling is described in **Attachment B**.

B. Building setback rules: The Commission's new rules for building setbacks were given only preliminary approval on January 9, 2013, with the Commission directing their staff to refine the regulations and bring them back for final adoption. On January 24, 2013, the Commission postponed any final decision until a hearing scheduled for February 11, 2013. No date has been established for the new rules to become legally effective. Section VII.B (page 5 of 12) of the Planning Commission report contains a description of the new rules for building setbacks based on the recommendations contained in the Commission's staff report dated January 7, 2013. If the rules change prior to the February 12, 2013, City staff will provide an update at the Council study session.

C. Commission's new mitigation rules: Section VIII (page 9 of 12) of the Planning Commission report includes a table (**Table 2**) that identifies the new mitigation measures (those in the blue cells) that the Commission requires for oil and gas facilities that are within 500 feet of a Building Unit or within 1,000 feet of a High Intensity Building Unit, Designated Outdoor Activity Area or Urban Mitigation Area.

VI. PLANNING COMMISSION RECOMMENDATION

The minutes (draft) for the Planning Commission public hearing on January 28, 2013 are included as Attachment D. The only official recommendation made by the Commission was a motion made by Commissioner Dowding to recommend that City Council consider extending the schedule for completion of City oil and gas regulations and extend the moratorium by 2 months, to permit additional time for finalization of pending state rules and regulations. Upon a second by Vice Chair Middleton the motion was unanimously adopted.

VII. DRAFT REGULATIONS

The regulations on oil and gas development proposed by City staff are in the accompanying ordinance.

Groundwater Baseline Sampling Analysis (source COGCC Rule 318A.E)

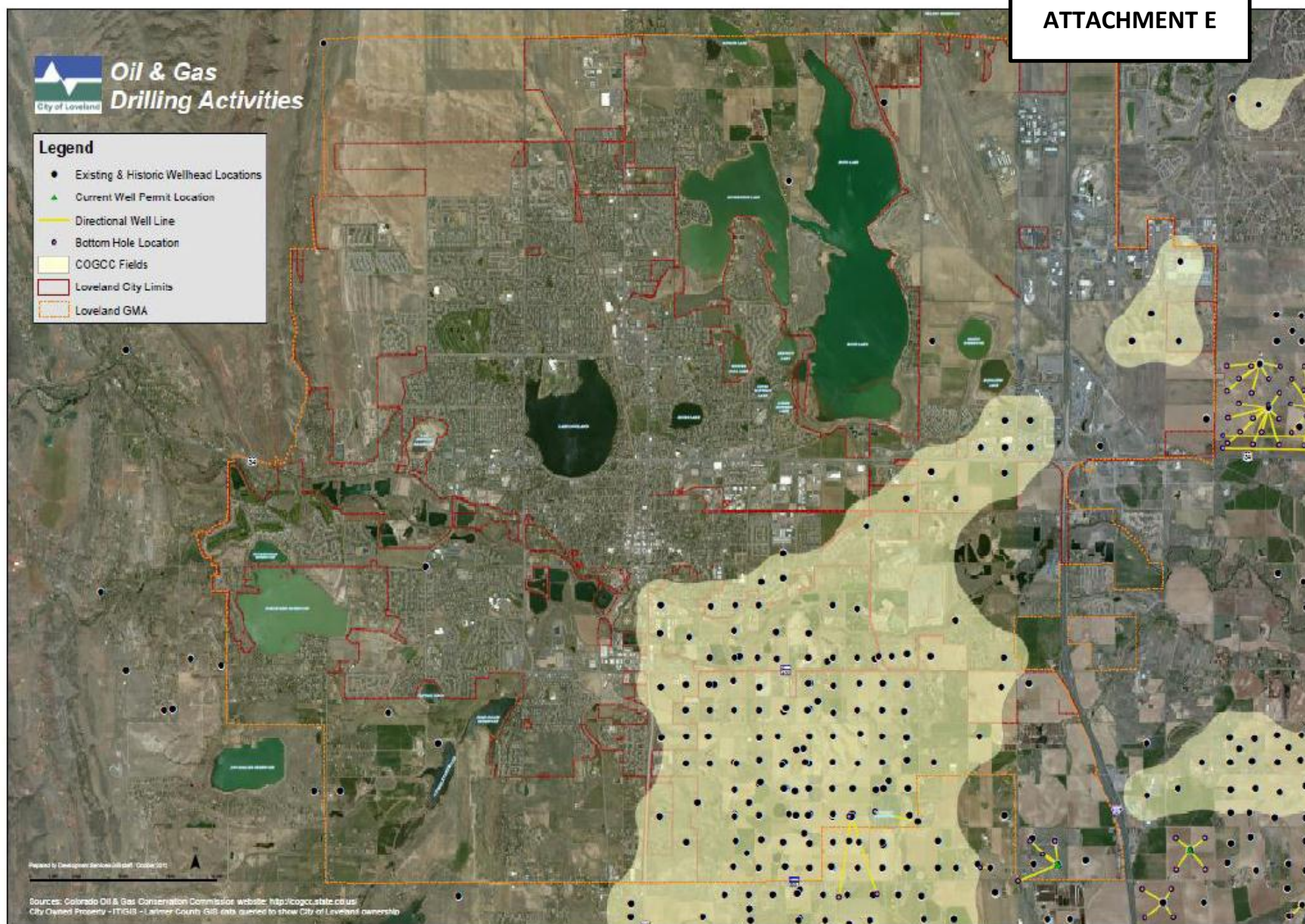
E. Initial Baseline Sampling Analysis. The initial baseline sampling required pursuant to subpart (4)D.i shall include pH, specific conductance, total dissolved solids (TDS), dissolved gases (methane, ethane, propane), alkalinity (total bicarbonate and carbonate as CaCO_3), major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, phosphorus), major cations (calcium, iron, magnesium, manganese, potassium, sodium), other elements (barium, boron, selenium and strontium), presence of bacteria (iron related, sulfate reducing, slime forming), total petroleum hydrocarbons (TPH) and BTEX compounds (benzene, toluene, ethylbenzene and xylenes). Field observations such as odor, water color, sediment, bubbles, and effervescence shall also be documented. The location of the sampled Water Source shall be surveyed in accordance with Rule 215.

F. Subsequent Sampling Analysis. Subsequent sampling to meet the requirements of subpart (4)D.ii shall include total dissolved solids (TDS), dissolved gases (methane, ethane, propane), major anions (bromide, chloride, sulfate, and fluoride), major cations (potassium, sodium, magnesium, and calcium), alkalinity (total bicarbonate and carbonate as CaCO_3), BTEX compounds (benzene, toluene, ethylbenzene and xylenes), and TPH.

G. Methane Detections. If free gas or a dissolved methane concentration greater than 1.0 milligram per liter (mg/l) is detected in a water sample, gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – ^{12}C , ^{13}C , ^1H and ^2H) shall be performed to determine gas type. The operator shall notify the Director and the owner of the water well immediately if:

- i. the test results indicated thermogenic or a mixture of thermogenic and biogenic gas;
- ii. the methane concentration increases by more than 5.0 mg/l between sampling periods; or
- iii. the methane concentration is detected at or above 10 mg/l.

ATTACHMENT E



FIRST READING: _____

SECOND READING: _____

ORDINANCE #

**AN ORDINANCE ADDING A NEW CHAPTER 18.77 TO THE
LOVELAND MUNICIPAL CODE FOR THE REGULATION OF OIL AND
GAS OPERATIONS WITHIN THE CITY OF LOVELAND**

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, ; and

WHEREAS, .

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

Section 1. That a new Chapter 18.77 is hereby added to the Loveland Municipal Code to
read in full as follows:

Chapter 18.77

Oil and Gas Regulations

Sections:

18.77.010	Authority.
18.77.015	Purpose.
18.77.020	Applicability.
18.77.025	Rules of Construction and Definitions.
18.77.030	Zoning.
18.77.035	Alternative Permit Processes.
18.77.040	Conceptual Review.
18.77.045	Planning Commission Review Process.
18.77.050	Administrative Review Process.
18.77.055	Baseline Standards for Planning Commission Review Process.

- 18.77.060** **Baseline Standards for Planning Commission and Administrative Review Processes.**
- 18.77.065** **Enhanced Standards for Administrative Review Process.**
- 18.77.070** **Application Requirements.**
- 18.77.075** **Prohibited Oil and Gas Facilities.**
- 18.77.080** **Variances.**
- 18.77.085** **Transfer of Permits.**
- 18.77.090** **Other Applicable Code Provisions.**
- 18.77.095** **Emergency Response Costs.**
- 18.77.100** **Application and Inspection Fees.**
- 18.77.105** **Capital Expansion Fees.**
- 18.77.110** **Reimbursement for Consultant Costs.**
- 18.77.115** **Adequate Transportation Facilities**
- 18.77.120** **Insurance and Performance Security.**
- 18.77.125** **Inspections and Right to Enter.**
- 18.77.130** **Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.**
- 18.77.135** **Conflicting Provisions.**

18.77.010 Authority.

This Chapter 18.77 is enacted pursuant to the city's police powers and land-use authority under Article XX of the Colorado Constitution, Title 31 of the Colorado Revised Statutes, the OGC Act, the COG regulations and under all other applicable laws, rules and regulations. However, it is not the intent of this chapter that these powers and authority be exercised in a manner that would create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict would arise if any application of this chapter has the effect of materially impeding or destroying a state interest as expressed in the OGC Act or the COG regulations. It is therefore the intent of this chapter that its provisions be interpreted and applied in a manner that is consistent and in harmony with any conflicting provisions of the OGC Act or the COG regulations, so as to avoid any operational conflict.

18.77.015 Purpose.

The purpose of this chapter is to generally protect the public's health, safety and welfare and the environment and more specifically to regulate oil and gas operations within the city so as to minimize the potential land use conflicts and other adverse impacts that will negatively affect existing and future land uses when oil and gas operations occur within the city near those uses. This purpose is intended to be achieved in a manner that recognizes the state's interests in oil and gas operations as expressed in C.R.S. § 34-60-102, which include: fostering the responsible and balanced development of the state's oil and gas resources in a manner consistent with the protection of the public's health, safety and welfare, including protection of the environment and wildlife resources; protecting public and private interests against waste in both the production and use of oil and gas; and allowing Colorado's oil and gas pools to produce up to their maximum efficient rate subject to the prevention of waste, protection of the public's health, safety and welfare, protection of the environment and wildlife resources, and the protection and

enforcement of the rights of owners and producers to a common source of oil and gas so that each owner and producer obtains a just and equitable share of production from that source.

18.77.020 Applicability.

Except as otherwise provided in this section, the provisions of this chapter shall apply to all oil and gas operations occurring within the city's boundaries. Prior to any person commencing any such operations within the city, that person shall apply for and receive an oil and gas permit from the city in accordance with the provisions of this chapter. This chapter, however, shall not apply to those oil and gas operations for which a drilling permit was issued under the COG regulations prior to April 15, 2013, the effective date of this chapter, and under which permit the oil and gas operations were commenced before April 15, 2013. It shall also not apply to any oil and gas operations occurring on real property annexed into the city on or after April 15, 2013, provided those operations are occurring as of the effective date of the annexation pursuant to a drilling permit issued under the COG regulations. This chapter shall apply to all other oil and gas operations occurring within the city's boundaries after April 15, 2013.

18.77.025 Rules of Construction and Definitions.

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations and in chapter 18.04 of this code. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or federal or state legal holiday, that day shall be excluded in the count.

C. "Abandonment" shall mean the concreting of a well, the removal of its associated production facilities, the removal or abandonment in-place of its flow line, and the remediation and reclamation of the wellsite.~~process of plugging: (i) a dry well or a well at which the operator no longer plans to conduct oil and gas operations; and (ii) a seismic core or other exploratory hole.~~

CD. "Act" or "OGC Act" shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

DE. "Adverse effect" or "adverse impact" shall mean the impact of an action, after mitigation, that is considerable or substantial and unfavorable or harmful. The term includes

social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

~~EF~~. “Administrative review process” shall mean the expedited review process set out in section 18.77.050.

~~FG~~. “APD” shall mean an application for a permit to drill, deepen, re-enter or recomplete and operate under the COG regulations.

~~GH~~. “Applicant” shall mean any person possessing the legal right to develop oil or gas underlying land located within the city’s boundaries and who has applied for an oil and gas permit under this chapter.

~~HI~~. “Application” shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

~~IJ~~. “Baseline standards” shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

~~JK~~. “Best management practices” shall mean practices that are designed to prevent or reduce adverse impacts caused by oil and gas operations to air, water, soil or biological resources, and to minimize adverse impacts to public health, safety and welfare, including the environment and wildlife resources.

~~KL~~. “City manager” shall mean the city’s duly appointed city manager or his or her designee.

~~LM~~. “Code” shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

~~MN~~. “COG rule” or “COG regulations” shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. T. 400.

~~NO~~. “Commission” shall mean the Oil and Gas Conservation Commission of the State of Colorado.

~~OP~~. “Completion” shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging and abandonment are complied with as set out in the COG regulations. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive

testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

~~PQ.~~ -“Completion combustion device” shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

~~QR.~~ “Current planning” shall mean the city’s current planning division.

~~S.~~ “Day” shall mean a calendar dayperiod of twenty four (24) consecutive hours.

~~RT.~~ “Designated agent” shall mean the designated representative of any operator.

~~SU.~~ “Development review team” or “DRT” shall mean the city’s development review team.

~~TV.~~ “Director” shall mean the director of the city’s development services department or his or her designee.

~~UW.~~ “Enhanced standards” shall mean those review standards and operation requirements set out in section 18.77.065.

~~VX.~~ “Flow line” shall mean a pipeline connecting individual well sites to gathering lines.

~~WY.~~ “Fracking” shall mean the technique of using explosive charges and water, sand and certain chemicals injected under pressure into an oil and gas well to create fractures that extend from the well bore into rock, shale or coal formations thereby allowing oil and gas to travel more easily from those formations, where the oil or gas is trapped, to the production well.

~~XZ.~~ “Gas” shall mean all natural gases and all hydrocarbons not defined in this section as oil.

~~YAA.~~ _____ -“Gathering line” shall mean a pipeline transporting produced gas, oil or water from multiple well sites to a centralized facility.

~~ZBB.~~ -“Inspector” shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

~~AACC.~~ _____ -“Minimize adverse impacts” shall mean, whenever reasonably practicable, to avoid adverse impacts to wildlife resources or significant adverse impacts to the environment from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

~~BBDD.~~ ___–“Most effective performance technologies and practices” shall mean the application of proven emerging techniques and technologies or other best management practices used in conducting oil and gas operations which avoid, neutralize, exclude, eliminate, mitigate or minimize adverse on- and off-site impacts to the public health, the environment, landowners, and natural resources, and which may reduce conflicts between operators and potentially affected landowners.

~~EE.~~ “Natural area” shall mean those areas described or as-identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

~~CCFF.~~ “Oil” shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

~~DDGG.~~ “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas.

~~EEHH.~~ “Oil and gas operations” or “operations” shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flow lines and gathering systems; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

~~FFII.~~ “Operator” shall mean a person who has the legal right to drill into and produce from a pool and to appropriate the oil or gas produced either for the operator or for the operator and an owner.

~~JJ.~~ “Outdoor assembly area” shall mean an improved facility, not within a building, designed to accommodate and provide a place for persons to congregate.

~~GGKK.~~ “Owner” shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

~~HHLL.~~ “Permit” or “oil and gas permit” shall mean a permit issued by the city to an applicant under this chapter.

~~HMM.~~ “Person” shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

~~JNN~~. “Pit” shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils.

~~KOO~~. “Planning commission” shall mean the city’s planning commission as established in code section 2.60.210.

~~LLPP~~. “Planning commission review process” shall mean the review process set out in section 18.77.045.

~~QQ~~. “Residential or non-residential building” shall mean any structure designed and permitted to be occupied by persons.

~~MMRR~~. “Seismic operations” shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

~~NNSS~~. “Setback” shall mean the distance between the following: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a residential or non-residential building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.

~~OOTT~~. “Significant degradation” shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

~~PPUU~~. “State” shall mean the State of Colorado.

~~VV~~. “Surface water body” shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

~~QQWW~~. “Surface owner” shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

~~RRXX~~. “VOC” shall mean volatile organic compounds.

~~SSYY~~. “Well” shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected.

~~TTZZ~~. “Well blowdown” shall mean the maintenance activity designed to remove unwanted fluids from mature wells during which time gas is often vented to the atmosphere.

~~UUAAA~~. “Well completion” shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and fracking, allows for the flowback of petroleum or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

~~VVB~~. “Wellhead” shall mean the equipment attached to the casing of an oil, gas or injection well above the surface of the ground.

CCC. “Wetlands” shall mean as defined in code section 18.41.110.

18.77.030 Zoning.

Notwithstanding any provision in this code to the contrary, oil and gas operations shall be permitted in all of the city’s zoning districts, planned unit developments, unit developments and within any other city-approved land uses, but only if a permit has been issued to the extent required by this chapter and an APD has been issued by the commission for those oil and gas operations.

18.77.035 Alternative Permit Processes.

Any person applying for a permit under this chapter must proceed under the planning commission review process as provided in section 18.77.045, unless the applicant voluntarily chooses to proceed under and qualifies for the expedited administrative review process as provided in section 18.77.050. The permit application under the planning commission review process shall be reviewed and granted or denied on the basis of the applicable baseline standards set out in sections 18.77.055 and 18.77.060 and any other applicable standards and requirements in this chapter and code. A permit application under the administrative review process shall be reviewed and granted or denied under the applicable baseline and enhanced standards set out in sections 18.77.060 and 18.77.065 and any other applicable standards and requirements in this chapter and code.

18.77.040 Conceptual Review.

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city’s development review team. Current planning shall schedule such meeting within fourteen (14) days after a written request for the meeting has been received. At least fourteen (14) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy sets of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission under the COG regulations to obtain an APD for the oil and gas operations proposed to be conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city’s development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city’s application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited administrative review process rather than the planning commission review process. Within five (5) days after the meeting, current planning shall provide the prospective applicant with the development review team’s written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have

three (3) months thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations.

18.77.045 Planning Commission Review Process.

A. *Application Completeness Review.* After an application has been filed with current planning, the director shall review the application for completeness to determine its compliance with the applicable requirements of section 18.77.070. If the director determines that any of those applicable requirements have not been satisfied, the director shall, within fourteen (14) days after the application is filed, notify the applicant in writing of any deficiencies in the application. This process of review and notice of deficiency shall continue until the director determines the application satisfies all applicable requirements of section 18.77.070 and is, therefore, a complete application. The director shall notify the applicant in writing that the application is complete within fourteen (14) days after the later of the filing of the application or the filing of the last application resubmittal in response to a notice of deficiency from the director. Promptly thereafter, current planning shall post the complete application on the city's website for public review, but excluding any information required in this chapter to be kept confidential.

B. *Development Review Team.* After an application is filed with current planning and has been determined by the director to be a completed application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application ~~has been determined by the director to be a complete application, is filed with current planning,~~ the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

C. *Neighborhood Meeting.* Promptly after the director has issued the written determination that the application is complete, current planning shall schedule a neighborhood meeting to be held within ~~forty-five~~^{fifteen} (145) days of the director's written determination of completeness. Once that neighborhood meeting has been scheduled, notices of the neighborhood meeting shall be provided in accordance with all applicable requirements of code chapter 18.05. The mailed notice required for neighborhood meetings under chapter 18.05 shall also be sent to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are proposed to be located. In addition to the other contents required for the mailed notice under chapter 18.05, the mailed notice shall state that the application can be reviewed prior to the neighborhood meeting on the city's website or at current planning's office. The neighborhood meeting shall be conducted by current planning. The applicant or a representative of the applicant shall attend the neighborhood meeting and be available to answer questions concerning

the application. The objective of a neighborhood meeting shall be to inform noticed persons and other interested citizens attending the meeting of the scope and nature of the proposed oil and gas operations and how the operations will be regulated under this chapter and the COG regulations.

D. *Planning Commission Hearing.* Current planning shall schedule the application for a public hearing before the planning commission within ~~forty-five~~^{thirty} (45³⁰) days after the DRT has finished its review of the application. Notice of the hearing shall be provided in accordance with all applicable requirements of 18.05. The mailed notice required in chapter 18.05 for this hearing shall also be mailed to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are to be located. In addition, the mailed and published notices shall state that the complete application can be reviewed by the public on the city's website or at current planning's office.

E. *Planning Commission Hearing Procedures.* The planning commission's public hearing shall be conducted as a quasi-judicial proceeding. Subject to the planning commission chairperson's discretion to limit the time and scope of testimony and to make allowances for the adequate presentation of evidence and the opportunity for rebuttal, the order of the hearing shall be as follows: (1) explanation and nature of application by current planning staff; (2) applicant's presentation of evidence and testimony in support of the application; (3) public comment and presentation of evidence; (4) applicant's rebuttal presentation; and (5) motion, discussion and vote by the planning commission on the application. No person making a presentation and providing testimony or comment at the hearing shall be subject to cross-examination. However, during the hearing members of the planning commission and the city attorney may make inquiries for the purposes of eliciting new information and to clarify information presented.

F. *Planning Commission Decision.* The planning commission shall consider the application based solely on the testimony and evidence submitted at the hearing, the applicable provisions of this chapter and any other applicable provisions of this code. At the conclusion of the presentation of testimony and evidence, the planning commission shall vote to grant, grant with conditions or deny the oil and gas permit requested in the application under consideration. A condition may only be imposed on the grant of an oil and gas permit if the applicant agrees to that condition on the record of the hearing. An applicant's refusal to agree to any such condition shall not be used by the planning commission as a basis, in whole or part, to deny the applicant's requested oil and gas permit. In granting, granting with conditions or denying an application for an oil and gas permit, the planning commission shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing.

G. *Appeal of Planning Commission Decision.* The planning commission's decision described in paragraph F. of this section may be appealed to the city council by the applicant and any "party in interest" as defined in section 18.80.020. The written notice of appeal shall be filed with current planning within ten (10) days of the effective date of the planning commission's final decision, which date shall be the date the planning commission adopts its written findings and conclusions. The appeal shall be filed and conducted in accordance with the applicable provisions in chapter 18.80 for appeals from the planning commission to the city council. The council's decision in the appeal hearing to grant, grant with conditions or deny the applicant's request for an oil and gas permit shall, like the planning commission's decision, be based on the

applicable provisions of this chapter and any other applicable provisions of this code. The council shall also not impose any condition on its grant of the oil and gas permit unless the applicant agrees to the condition on the record of the council's appeal hearing.

18.77.050 Administrative Review Process.

A. *Applicant's Election to Use Administrative Review Process.* As an alternative to processing an application using the planning commission review process set out in section 18.77.045, an applicant may elect to use the expedited administrative review process set out in this section. In electing to use this administrative review process, the applicant must acknowledge and agree in its application to all of the following: (1) that by using this administrative review process to obtain an expedited review, the applicant's application will not only be subject to the baseline standards in section 18.77.060, but also the enhanced standards in section 18.77.065, which enhanced standards could reasonably be interpreted to be in operational conflict in one or more respects with the COG regulations; (2) that the applicant is waiving any such operational conflicts for the purpose of pursuing this expedited approval of its application under this administrative review process; and (3) that if for any reason the applicant wishes to revoke its election to use this administrative review process or to withdraw from the process once started, but still desires an oil and gas permit under this chapter, it will be required to follow and meet all of the requirements of the planning commission review process.

B. *Application Completeness Review.* An application reviewed under this section shall be reviewed by the director for completeness using the same process used in the planning commission review process as set out in section 18.77.045.A.

C. *Development Review Team.* After an application is filed with current planning and determined by the director to be a complete application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application ~~has been determined by the director to be a complete application, is filed with current planning,~~ the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

D. *Neighborhood Meeting.* The neighborhood meeting for an application reviewed under this section shall be scheduled, noticed and conducted in the same manner as under the planning commission review process as set out in section 18.77.045.E., but with one addition. The notices mailed under section 18.77.045 shall state that the application is being reviewed under the administrative review process and notify the recipients of the notice that they will have until ~~fifteen~~ (150) days after the neighborhood meeting is held in which to submit to current planning for the director's consideration any comments and information, in written, electronic or photographic form, related to the subject application as provided in paragraph E. of this section.

E. *Public Comment.* Within ~~fifteen~~ (15) days after the neighborhood meeting is held, any person may file with current planning for the director's consideration and to be included in any record on appeal taken under paragraph H. of this section, any comments and information, in written, electronic or photographic form, relevant to the director's consideration of the subject application under this section. Current planning shall preserve all of the comments and information received under this section to ensure that they are included in any record of appeal. These comments and information shall also be made available for review by the applicant. The applicant may supplement its application in response or rebuttal to the comments and information submitted by the public. The applicant must file this supplemental information with current planning within ~~fifteen~~ (15) days after the deadline for the public's submittal of its comments and information. Any comments and information received by current planning after the deadlines set forth herein, shall not be considered by the director in his or her decision and shall not be included in the record of any appeal under paragraph H. of this section.

F. *Director's Negotiations with Applicant.* After receiving the DRT report and all of the public comments and information provided under paragraph E. of this section, the director may, in his or her discretion, negotiate with the applicant for standards to be added as conditions to the oil and gas permit in addition to or in substitution of those baseline standards required in section 18.77.060 and the enhanced standards in section 18.77.065, if in the director's judgment such conditions will result in the increased protection of the public's health, safety or welfare or further minimize adverse impacts to surrounding land uses, the environment or wildlife resources. The director shall have ten (10) days after the last of the public comments and information have been submitted under paragraph E. of this section in which to conduct those negotiations. If after those negotiations the applicant agrees in writing to these new standards, they shall be added as conditions to the oil and gas permit if the permit is granted by the director. If the applicant does not agree to these conditions, they shall not be added as conditions to any granted oil and gas permit. In addition, the applicant's refusal to agree to any such conditions shall not be used by the director as a basis, in whole or part, to deny the applicant's requested oil and gas permit.

G. *Director's Decision.* Within ~~fifteen~~ (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application's compliance or noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

H. *Appeal of Director's Decision.* The director's decision as set out in his or her written findings and conclusions shall constitute the director's final decision. The director's final decision is not appealable to the planning commission or the city council. The director's final decision may only be appealed by the applicant or a "party in interest," as defined in section

18.80.020, to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The record to be considered in the appeal shall consist of the director's written findings and conclusion, the application, the applicant's supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

18.77.055 Baseline Standards for Planning Commission Review Process.

All applications considered in the planning commission review process and all oil and gas operations approved under this process shall be subject to and comply with the setback and mitigation requirements set forth in COG rule 604, as amended, ~~for setbacks and mitigation measures~~, in addition to the standards and requirements in code section 18.77.060.

18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.

All applications considered in the planning commission review process and the administrative review process and all oil and gas operations approved under either process shall be subject to and comply with the following standards and requirements, as applicable:

A. *COG regulations for setback requirements.* All oil and gas operations shall comply with COG rule 603, as amended.

B. *COG regulations for groundwater baseline sampling and monitoring.* All permits for oil and gas operations shall comply with COG rule 318.A.e, as amended.

C. *COG regulations for protection of wildlife resources.* All permits for oil and gas operations shall comply with COG rule series 1200, as amended. The operator shall notify the director if consultation with Colorado ~~Parks and~~ Division of Wild-~~L~~ife is required pursuant to COG rule 306.c.

D. *COG regulations for reclamation.* All permits for oil and gas operations shall comply with COG rule series 1000, as amended. The operator shall provide copies of the commission's drill site reclamation notice to the director at the same time as it is provided to the surface owner.

E. *COG regulations for well ~~soil protection and plugging and~~ abandonment.*

1. All ~~oil and gas facilities permits for oil and gas operations~~ shall comply with the requirement for well abandonment ~~soil protection and plugging and abandonment~~ set forth in COG rule ~~706319~~, as amended. The operator shall provide a copy of the approval granted by the commission for the abandonment plugging method to the director within thirty (30) days from receiving such approval.

2. The operator shall provide copies of the commission's plugging and abandonment report to the director at the same time as it is provided to the commission.
 3. The operator shall notify the Loveland Fire and Rescue Authority not less than two (2) hours prior to commencing plugging operations.
- F. *Anchoring.* All mechanized equipment associated with oil and gas operations shall be anchored so as to minimize transmission of vibrations through the ground.
- G. *Applications and permits.* Copies of all county, state and federal applications and permits that are required for the oil and gas operation shall be provided to the director.
- H. *Burning of trash.* No burning of trash shall occur on the site of any oil and gas operations.
- I. *Chains.* Traction chains on heavy equipment shall be removed before entering a city street.
- J. *COG regulations for hydraulic fracturing chemical disclosure.* All permits for oil and gas operations shall comply with COG rule 205.A, as amended. The operator shall provide copies of the commission's chemical disclosure registry form to the Loveland Fire and Rescue Authority at the same time as it is provided to the commission.
- K. *Color.* Oil and gas facilities, once development of the site is complete, shall be painted in a uniform, non-contrasting, non-reflective color, to blend with the surrounding landscape and with colors that match the land rather than the sky. The color should be slightly darker than the surrounding landscape.
- L. *Cultural and historic resources standards.* The installation and operation of any oil and gas operation shall not cause significant degradation of cultural or historic resources, of sites eligible as City Landmarks, or the State or National Historic Register, as outlined in code section 15.56.030.
- M. *Stormwater quality and dust control.* All permits for oil and gas operations shall comply with COG rule 805, as amended, plus code chapter 13.20.
- N. *Electric equipment.* The use of electric-powered motors for pumping or drilling systems shall be required if a provider of electric power agrees at the provider's customary rates, fees and charges to provide electric service to an oil and gas facility and the oil and gas facility is located in reasonably close proximity to available electric distribution lines. Electric service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of generators may be used until electric service is provided.
- O. *Emergency response standards.*

1. In General. Oil and gas operations shall not cause an unreasonable risk of emergency situations such as explosions, fires, gas, oil or water pipeline leaks, ruptures, hydrogen sulfide or other toxic gas or fluid emissions, hazardous material vehicle accidents or spills.

2. Emergency Preparedness Plan. Each operator with an operation in the city is required to develop an emergency preparedness plan for each specific facility site, which shall be in compliance with the applicable provisions of the International Fire Code as adopted in the city code. The plan shall be filed with the Loveland Fire Rescue Authority and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). The emergency preparedness plan shall contain at least all of the following information:

(a) Name, address and phone number, including 24-hour emergency numbers, for at least two persons responsible for emergency field operations.

(b) An as-built facilities map in a format suitable for input into the city's geographical information system depicting the locations and type of above and below ground facilities, including sizes and depths below grade of all oil and gas gathering and transmission lines and associated equipment, isolation valves, surface operations and their functions, as well as transportation routes to and from exploration and development sites for emergency response and management purposes. The information concerning pipelines and isolation valves shall be held confidentially by the Loveland Fire Rescue Authority, and shall only be disclosed in the event of an emergency. The city shall deny the right of inspection of the as-built facilities maps to the public pursuant to C.R.S. § 24-72-204.

(c) Detailed information addressing each potential emergency that may be associated with the operation, which shall include any or all of the following: explosions, fires, gas, oil or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills. For each potential emergency, threshold/trigger levels shall be pre-identified to determine when a state of emergency should be declared.

(d) A provision that any spill outside of the containment area that has the potential to leave the facility or to threaten waters of the state shall be reported to the Loveland Fire Rescue Authority emergency dispatch at 911 and the director immediately.

(e) Detailed information identifying access or evacuation routes and health care facilities anticipated to be used.

(f) A project-specific emergency preparedness plan for any operation that involves drilling or penetrating through known zones of hydrogen sulfide gas.

(g) A provision obligating the operator to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency.

(h) Detailed information showing that the applicant has adequate personnel, supplies and funding to implement the emergency response plan immediately at all times during construction and operations.

(i) A provision obligating the applicant to have immediately available on each oil and gas operation site a current Material Safety Data Sheets (MSDS) for all chemicals used or stored on the site. The MSDS sheets shall be provided immediately upon request to the director, a public safety officer or a health professional.

(j) The plan shall include a provision establishing a process by which the operator engages with the surrounding neighbors to educate them on the risks of the on-site operations and to establish a process for surrounding neighbors to communicate with the operator.

P. *Noise mitigation.* All permits for oil and gas operations shall comply with COG rule 802, as amended, plus the following:

1. The exhaust from all engines, motors, coolers and other mechanized equipment shall be vented up and in a direction away from the closest existing residences.

2. Additional noise mitigation may be required based on specific site characteristics, including, but not limit to, the following:

(a) Nature and proximity of adjacent development;

(b) Prevailing weather patterns, including wind direction:

(c) Vegetative cover on or adjacent to the site; and

(d) Topography.

3. The level of required noise mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and the level of noise emitted by the well site. One (1) or more of the following additional noise mitigation measures may be required:

(a) Acoustically insulated housing or cover enclosures on motors, engines and compressors;

- (b) Vegetative screens consisting of trees and shrubs;
- (c) Solid wall or fence of acoustically insulating material surrounding all or part of the facility;
- (d) Noise mitigation plan identifying and limiting hours of maximum noise emissions, type, and frequency, and level of noise to be emitted and proposed mitigation measures; and
- (e) Lowering the level of pumps or tank batteries.

Q. *Fencing.* Permanent perimeter fencing six (6) feet in height shall be installed around the entire perimeter of the oil and gas operations site, including gates at all access points. Such gates shall be locked when employees of the operators are not present on the site. Such fencing and gates shall be solid, opaque and consist of masonry, stucco, steel or other similar materials. The director may allow chain link fencing if solid and opaque fencing creates a threat to public safety.

R. *Flammable material.* All land within twenty five (25) feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.

S. *Land disturbance standards.* The following mitigation measures shall be used to achieve compatibility and reduce land use impacts:

1. Pad dimensions for a well shall be the minimum size necessary to accommodate operational needs while minimizing surface disturbance.
2. Oil and gas operations shall use structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.
3. Oil and gas operations shall be located in a manner that minimizes the amount of cut and fill.
4. To the maximum extent feasible, oil and gas operations shall use and share existing infrastructure, minimize the installation of new facilities and avoid additional disturbance to lands in a manner that reduces the introduction of significant new land use impacts to the environment, landowners and natural resources.
5. Landscaping plans shall include drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. The operator shall submit to the city a temporary irrigation plan and implement said plan, once approved by the city, for the first two years after the plant material has been planted. If it is practicable to provide a permanent irrigation system, the operator

shall submit an irrigation plan for permanent watering and the operator shall provide a performance guarantee for such landscaping that is acceptable to the director. Produced water may not be used for landscaping purposes.

6. The application shall include an analysis of the existing vegetation on the site to establish a baseline for re-vegetation upon temporary or final reclamation or abandonment of the operations. The analysis shall include a written description of the species, character and density of existing vegetation on the site and a summary of the potential impacts to vegetation as a result of the proposed operations. The application shall include any commission-required interim and final reclamation procedures and any measures developed from a consultation with current planning regarding site specific re-vegetation plan recommendations.

T. *Landscaping.* When an oil and gas operation site is less than one hundred (100) feet from a public street, a Type D Bufferyard shall be required between the oil and gas operation and the public street in accordance with the City of Loveland Site Development Performance Standards and Guidelines as adopted in code chapter 18.47.

U. *Lighting.* All permits for oil and gas operations shall comply with COG rule 803, as amended, plus the following:

1. Except during drilling, completion or other operational activities requiring additional lighting, down-lighting shall be required, meaning that all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture; and
2. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and on any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures.

V. *Maintenance of machinery.* Routine field maintenance of vehicles and mobile machinery shall not be performed within three hundred (300) feet of any water body.

W. *Mud tracking.* An operator shall take all practical measures to ensure that the operator's vehicles do not track mud or leave debris on city streets. Any such mud or debris left on city streets by an operator's operation shall be promptly cleaned up by the operator.

X. *Reclamation plan.* The application shall include any interim and final reclamation requirements required by the COG regulations.

Y. *Recordation of flow lines.* The legal description of all flow lines, including transmission and gathering systems, shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flow lines shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days after abandonment.

Z. *Removal of debris.* When oil and gas operations become operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried on-site.

AA. *Removal of equipment.* All equipment used for drilling, re-drilling, maintenance and other oil and gas operations shall be removed from the site within thirty (30) days of completion of the work. Permanent storage of equipment on well pad sites shall be prohibited.

BB. *Signs.* A sign permit shall be obtained for all signs at the oil and gas operations site or otherwise associated with the oil and gas operations in accordance with code chapter 18.50, except as otherwise required by the COG regulations.

CC. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including the Emergency Planning and Community Right to Know Act, the Comprehensive Environmental Response Compensation and Liability Act, the Oil and Pollution Act, and the Clean Water Act, as applicable. If a spill or release impacts or threatens to impact a water well, the operator shall notify the affected or potentially affected water well owner immediately following discovery of the release, and the spill or release shall be reported to the director within twenty-four (24) hours of becoming aware of the spill or release.

DD. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state in accordance with COG rule series 1000.

EE. *Development standards for street, electric, water/wastewater, and stormwater infrastructure.* All permits for oil and gas operations shall comply with the development standards for street, electric, water/wastewater and stormwater infrastructure set forth in code chapter 16.24.

FF. *Transportation and circulation.* All applicants shall include descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste and all other material to be hauled on the city's streets. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, and any other information required by the city engineer. In addition to any other bonding or indemnification requirements of the city as may be reasonably imposed, all applicants shall provide the city with a policy of insurance in an amount determined by the city engineer to be sufficient to protect the city against any damages that may occur to the city's streets, roads or rights-of-way as a result of any weight stresses or spillage of hauled materials including, without limitation, water, sand, waste fluids, waste solids and mixed wastes.

GG. *Water supply.* The operator shall identify on the site plan its source for water used in both the drilling and production phases of operations. The sources and amount of water used in the city shall be documented and ~~this~~ record shall be provided to the city annually or sooner, upon request of the city's Water and Power Department director, or his or her designee. The

disposal of water used on site shall also be detailed including anticipated haul routes, approximate number of vehicles needed to supply and dispose of water, and the final destination for water used in operation.

HH. *Weed control.* The applicant shall be responsible for ongoing weed control at oil and gas operations sites, pipelines and along access roads during construction and operations, until abandonment and final reclamation is completed pursuant to commission rules. Control of weeds shall comply with the standards in code chapter 7.18.

II. *Well abandonment.* The operator shall comply with the COG regulations regarding well abandonment. Upon plugging and abandonment of a well, the operator shall provide the director with surveyed coordinates of the abandoned well and shall leave onsite a physical marker of the well location.

JJ. *Federal and state regulations.* The operator shall comply with all applicable federal and state regulations including, without limitation, the OGC act and the COG regulations.

KK. *Building permits.* A building permit shall be obtained for all structures as required by the International Fire Code and/or International Building Code as adopted in the city code.

LL. *Floodplains.* All oil and gas operations shall comply with code chapter 18.45.

~~MM. *Temporary housing.* Temporary housing at any oil and gas operations, including without limitation, trailers, modular homes, and recreational vehicles shall be prohibited.~~

~~MMNN.~~ *Trash and recycling enclosures.* All applications for oil and gas operations shall comply with the requirements contained in code chapter 7.16, to the maximum extent feasible.

~~NNOO.~~ *Representations.* The approved project development plan shall be subject to all conditions and commitments of record, including verbal representations made by the applicant on the record of any hearing or review process and in the application file, including without limitation compliance with all approved mitigation plans.

~~OOPP.~~ *Domestic water supply.* Oil and gas operation sites shall be connected to a domestic water supply if a domestic water supplier agrees to make such a connection and the site is located in reasonably close proximity to such connection at the supplier's customary rates, fees and charges. Domestic water service to the oil and gas facility shall be provided within the shortest time period reasonably practicable. Temporary use of imported water may be allowed until such water service is provided.

~~PPQQ.~~ *Seismic operations.* The operator shall provide at least a fifteen (15) day advance notice to the director and the Loveland Rural Fire Authority whenever seismic activity will be conducted within the city.

~~QQRR.~~ *Access roads.* All private roads used to access the tank battery or the wellhead shall, at a minimum, be:

1. A graded gravel roadway at least twenty (20) feet wide with a minimum unobstructed overhead clearance of thirteen (13) feet six(6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the City Engineer. The aggregate material, at a minimum, shall meet the requirements for a Class 6, Aggregate Base Course as specified in the *Colorado Department of Highways Standard Specifications for Road and Bridge Construction*, latest edition.

2. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage to waterway (i.e. roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of culvert pipes shall be subject to approval by the city engineer.

RRSS. *Visual impacts.*

1. To the maximum extent practicable, oil and gas facilities shall be:
 - (a) Located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings, and other landmarks;
 - (b) Located to avoid crossing hills or ridges;
 - (c) Located to avoid the removal of trees; and
 - (d) Located at the base of slopes to provide a background of topography and/or natural cover.
2. Access roads shall be aligned to follow existing grades and minimize cuts and fills.
3. One (1) or more of the landscaping practices may be required on a site specific bases:
 - (a) Establishment and proper maintenance of adequate ground cover, shrubs and trees;
 - (b) Shaping cuts and fills to appear as natural forms;
 - (c) Cutting rock areas to create irregular forms; and
 - (d) Designing the facility to utilize natural screens.

~~STF.~~ *COG regulations for odor.* All oil and gas operations facilities permits shall comply with COG rule 805.

TT. COG regulations for abandonment of pipelines. Any pipelines abandoned in place shall comply with COG rule 1103 and the notice to the commission~~COG~~ of such abandonment shall be promptly filed with the director~~local governmental designee.~~

18.77.065 Enhanced Standards for Administrative Review Process.

All applications considered in the administrative review process and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the standards and requirements in code section 18.77.060:

A. *Setbacks.* The following setbacks shall apply to the oil and gas operations. Unless specified otherwise herein, setbacks shall be measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building.

1. Except as required under subparagraph 5, below, a All oil and gas operations shall be located at least five hundred (500) feet from any residential or non-residential occupied~~building~~, or such greater distance as may be required by the commission.
2. All oil and gas operations shall be at least two hundred (200) feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility, or such greater distance as may be required by the commission.
3. All oil and gas operations shall be located at least five hundred (500) feet from: (i) the boundary property line~~of any natural area or wetlands;~~ (ii) the property line of any property managed by the city's Parks and Recreation Department and any city park; (iii) the operating high water line of any surface water body ~~including, but not limited to, rivers, streams, ditches, wetlands, reservoirs and lakes;~~ (iii) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and ~~(iv) any "Designated Outdoor Activity Area (v) the property line of any property subject to a conservation easement managed by a public or non-profit entity," as defined in COG regulations;~~ or such greater distance as required by the commission.
4. All oil and gas operations shall be located at least five hundred (500) feet from any domestic or commercial water well, or such greater distance as required by the commission.
5. All oil and gas operations shall be located at least one thousand (1,000) from any residential or non-residential building with an occupancy rating for fifty (50) persons or more and any outdoor assembly area with a capacity of fifty (50) persons or

~~more. “High Occupancy Building” as defined in the COG regulations, or such greater distance as required by the commission.~~

B. *Commission mitigation regulations.* ~~All Permits for~~ oil and gas operations ~~to be located within city limits, whether within or outside any “Designated Setback Location” as defined in the COG regulations,~~ shall comply with the mitigation measures required under ~~C~~commission Rule 604.c, as amended.

C. *Bufferyards.* The bufferyards set forth in Table 1 below, shall be established around the entire perimeter of the oil and gas operation sites, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation system shall be provided for xeriscape plant types.

Table 1 - Bufferyards			
Base Standard (plants per 100 linear feet)	Optional Width (feet)	Plant Multiplier	Option: add 6 foot opaque masonry wall
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	
4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

D. *Air quality standards.* Air emissions from oil and gas facilities shall be in compliance with the permit and control provisions of the Environmental Protection Agency, Air Quality Control Commission and Colorado Oil and Gas Conservation Commission. In addition, the operator of the oil and gas facility agrees to employ the following enhanced standards for air quality mitigation.

1. *General duty to minimize emissions.* All continuously operated equipment, including but not limited to, storage vessels and dehydrators shall route vapors to a capture and control device with at least a ninety-eight percent (98%) destruction efficiency. Operators shall submit to the director test data of like equipment or manufacturer’s data demonstrating the control device can meet the destruction efficiency. Any combustion device, auto ignition system, recorder, vapor recovery device or other equipment used to meet the destruction efficiency shall be installed, calibrated, operated and maintained in accordance with the manufacturer’s recommendations, instruction and operating manuals.

2. *Combustion devices.* All flares shall be designed and operated as follows:

(a) The combustion devices shall be designed and operated in a matter that will ensure it complies with 40 Code of Federal Regulations (“CFR”) §60.18 (General control device and work practice requirements);

(b) The combustion device shall be operated with a pilot flame present at all times vapors may be routed to it. Presence of a pilot flame shall be continuously monitored and recorded; and

(c) Combustion devices shall be equipped with automatic flame ignition systems in the event the pilot flame is extinguished.

3. *Fugitive emissions.* The operator shall develop and follow a leak detection and repair plan to minimize emissions from fugitive components. The plan will be submitted to the director for incorporation into the permit.

4. *Pneumatic controllers.* The operator shall use only no- or low-bleed pneumatic controllers, where such controllers are available for the proposed application. High-bleed pneumatic controllers may be used where air is the motive gas for operation of the controller and valve.

5. *Well completion practices.* For each well completion operation, the operator shall minimize emissions from the operation as set forth below:

(a) For the duration of flowback, route the recovered gas to the sales pipeline once the well has enough gas to safely operate the separator, or like device, and liquid control valves;

(b) If flow and gathering lines are not available to comply with subparagraph (a) above, the operator shall capture the recovered gas to a completion combustion device, equipped with a continuous ignition system, to oxidize the recovered gas stream except in conditions that may result in a fire hazard or explosion, or where high heat emissions from the completion device may negatively impact a sensitive area or nearby structure;

(c) Operators shall have a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback; and

(d) Operators shall maintain a log for each well completion operation. The log shall be completed in accordance with the methods outlined in the Environmental Protection Agency’s Code of Federal Regulations, specifically 40 CFR Part 60, Subpart OOOO.

6. *Well maintenance and blowdowns.* The operator shall utilize best management practices during well maintenance and blowdowns to minimize or eliminate venting emissions.

7. *Capture of produced gas from wells.* Gas produced during normal production shall be captured, to the maximum extent feasible, and not flared or vented, except in situations where flaring or venting is required to ensure that associated natural gas can be safely disposed of in emergency shutdown situations.

8. *Rod-packing maintenance.* Operators shall replace rod-packing from reciprocating compressors located at facilities approved after April 15, 2013, every twenty-six thousand (26,000) hours of operation or thirty-six (36) months, whichever occurs first.

E. *Pipelines.* Any newly constructed or substantially modified pipelines on site shall meet the following requirements:

1. Flow lines, gathering lines and transmission lines shall be sited at a minimum of fifty (50) feet away from residential and non-residential buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within one hundred fifty (150) feet of residential ~~or~~ non-residential buildings or the high water mark of any surface water body shall incorporate leak detection, secondary containment or other mitigation, as appropriate;

2. To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance;

3. To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts; and

4. Operators shall use boring technology when crossing streams, rivers, ~~or~~ irrigation ditches or wetlands with a pipeline to minimize negative impacts to the channel, bank and riparian areas.

F. All oil and gas facilities shall comply with the sound limitation standards set forth in code chapter 7.32 after development of the well is complete. A noise mitigation study shall be submitted with the application to demonstrate compliance with said code chaptersection. If necessary to comply with said chaptersection, a noise screen shall be constructed along the edge of the oil and gas facility between the facility and existing residential development or land zoned for future residential development.

18.77.070 Application Requirements.

All applications submitted to current planning shall contain the information required for an APD and any additional information required by the city's "Oil and Gas Development Application Submittal Checklist" approved by the city manager.

18.77.075 Prohibited Oil and Gas Facilities.

Notwithstanding any provision in this chapter or code to the contrary, the following oil and gas operations and oil and gas facilities shall be prohibited within the city:

- A. Pits;
- B. Commercial disposal facilities regulated by the Colorado Department of Public Health and Environment;
- C. Centralized exploration and production waste management facilities; and
- D. Temporary housing at any oil and gas operations, including without limitation trailers, modular homes and recreational vehicles, except for such housing customarily required during twenty-four hour drilling and fracking operations.

18.77.080 Variances.

A. *Variance Request.* In both the planning commission review and administrative review processes, an applicant may request a variance from any provision of this chapter. A request for a variance under this section shall be included in the applicant's application and shall be processed, reviewed and granted, granted with conditions or denied in accordance with and as part of the planning commission review process or the administrative review process, as applicable. The variance provisions of chapter 18.60 shall not be applicable to a variance request under this chapter.

B. *Grounds for Variance.* A variance from the application of any provision in this chapter shall be granted on the basis of one or more of the following grounds:

1. The provision is in operational conflict with the OGC act or the COG regulations, meaning the application of the provision would have the effect of materially impeding or destroying a state interest as expressed in the COG act or the COG regulations.
2. There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting a variance from the operation of the provision will not have an adverse effect on the public health, safety or welfare or on the environment.
3. Protection of the public health, safety and welfare and of the environment would be enhanced by an alternative approach not contemplated by the provision.
4. Application of the provision will constitute a regulatory taking of property without just compensation by the city under Article II, Section 3 of the Colorado Constitution.

5. Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas operations, which may include, without limitation, topographical conditions, shape or dimension of the operation site, inadequate public infrastructure to the site, or close proximity of occupied buildings.

18.77.085 Transfer of Permits.

Oil and gas permits may be assigned to another operator only with the prior written consent of the director and upon a showing to the director that the new operator can and will comply with all conditions of the transferred permit and with all of the applicable provisions of this chapter, the ADP and the COG regulations. The existing operator shall assign the permit to the new operator on a form provided by the city and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this chapter.

18.77.090 Other Applicable Code Provisions.

In addition to the provisions of this chapter, all oil and gas operations conducted within the city shall comply with all applicable provisions of the following code chapters: 3.16, Sales and Use Tax; 7.12, Nuisances - Unsanitary Conditions; 7.16, Solid Waste Collection and Recycling; 7.18, Weed Control; 7.26, Accumulations of Waste Materials; 7.30, Graffiti; 7.36, Fire Protection; 10.04, Traffic Regulations; 10.20, Parking; 12.16, Use of City Rights-of-Way; 12.28, Prohibited Uses of Streets and Other Public Places; 13.18, Stormwater Management; 13.20, Stormwater Quality; 15.08, Building Code; 15.12, Property Maintenance Code; 15.14, Floodplain Building Code; 15.16, Mechanical Code; 15.24, Electrical Code; 15.28, Fire Code; 16.38, Capital Expansion Fees; 16.41, Adequate Community Facilities; 16.42, Street Maintenance Fee; 18.45, Floodplain Regulations; 18.50, Signs; 13.04, Water Service; 13.06, Cross Connection Control; and 19.06, Irrigation.

18.77.095 Emergency Response Costs.

The operator shall reimburse the Loveland Fire Rescue Authority for any emergency response costs incurred by the Authority in connection with fire, explosion or hazardous materials at the well or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by mistake of the Authority or in response to solely a medical emergency.

18.77.100 Application and Inspection Fees.

The city council may establish by resolution fees to be collected at the time an application is filed with current planning for the city's reasonable costs in processing applications under this chapter and for fees thereafter imposed for the city's reasonable costs to conduct inspections to ensure compliance with this chapter.

18.77.105 Capital Expansion Fees.

Oil and gas operations within the city shall be subject to the capital expansion fees established under code chapter 18.38. The city council may adopt and set such fees by resolution.

18.77.110 Reimbursement for Consultant Costs.

If the city contracts with an outside consultant to review and advise the city concerning any applicant's application or in connection with any applicant's hearing conducted under this chapter, the applicant shall reimburse the city for the city's reasonable costs incurred with that consultant. No permit shall be issued and no suspended permit shall be reinstated until the applicant reimburses the city in full for any such costs.

18.77.115 Adequate Transportation Facilities.

All applications submitted and all permits issued under this chapter shall be subject to all of the applicable adequate community facilities requirements of code chapter 16.41 as they relate solely to the transportation facilities required in code section 16.41.110.

18.77.120 Insurance and Performance Security.

A. *Insurance.* Every operator granted a permit under this chapter shall procure and maintain throughout the duration of the operator's oil and gas operations a policy of comprehensive general liability insurance, or a self-insurance program approved by the Colorado Insurance Commission, insuring the operator and naming the city as an additional insured, against any liability for personal injury, bodily injury or death arising out of the operator's permitted operations, with coverage of at least one million dollars (\$1,000,000) per occurrence. Unless the operator is self-insured, insurance required by this paragraph A. shall be with companies qualified to do business in the State of Colorado and may provide for a deductible as the operator deems reasonable, but in no event greater than ten thousand dollars (\$10,000). The operator shall be responsible for payment of any deductible. No such policy shall be subject to cancellation or reduction in coverage limits or other modification except after thirty (30) days prior written notice to the city. The operator shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the operator changes to "occurrence," the operator shall carry a twelve (12) month tail. The operator shall not do or permit to be done anything that shall invalidate the policies. In addition, the insurance required by this paragraph A. shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, disbursement, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. Further, the policies required by this paragraph A. shall be deemed to be for the mutual and joint benefit and protection of the operator and the city and shall provide that although the city is named as additional insured, the city shall nevertheless be entitled to recover under said policies for any loss occasioned to the city or its officers, employees or agents by reason of negligence of the operator or of its officers, employees, agents, subcontractors or business invitees and such policies shall be written as primary policies not contributing to or in excess of any insurance coverage the city may carry. Prior to the issuance of the operator's permit, the operator shall furnish to the city certificates of

insurance evidencing the insurance coverage required herein. In addition, the operator shall, upon request by the city and not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the city with a certificate of insurance evidencing either new or continuing coverage in accordance with the requirements of this section.

B. *Performance Security.* Prior to the issuance of a permit to an applicant, the applicant shall provide the city with a _____ (\$_____) performance security for each well that is permitted while the well is in operation in the form of an irrevocable letter of credit or equivalent financial security acceptable to the director. Conditions of approval covered by this performance security shall consist of mitigation measures addressing specific impacts affecting the general public and any damage to the public right-of-way. Reclamation and other activities and operations which fall under the COG regulations are exempted from this performance security coverage.

18.77.125 Inspections and Right to Enter.

A. *Inspections.* In recognition of the potential adverse impacts associated with oil and gas operations in an urban setting, all oil and gas operations and facilities may be inspected by the city's duly appointed inspectors at reasonable times to determine compliance with the applicable provisions of this chapter and all other applicable provisions in this code.

B. *Right to Enter.* Notwithstanding any other provision in this code to the contrary, for the purpose of implementing and enforcing the provisions of this chapter and the other applicable provisions of this code, the city's inspectors shall have the right to enter upon the private property of a permitted operator after reasonable notification to the operator's designated agent, in order to provide the operator with the opportunity to be present during such inspection. Such notice shall not be required in the event of an emergency that threatens the public's health or safety. By accepting an oil and gas permit under this chapter, the operator grants its consent to this right to enter.

C. *Designated Agent.* The applicant shall include in its application the telephone number and email address of its designated agent and at least one back-up designated agent who can be reached twenty-four hours a day for the purpose of being notified of any proposed city inspection under this section or in case of an emergency.

18.77.130 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.

A. *Violations.* It shall be unlawful and a misdemeanor offense under this chapter for any person to do any of the following:

1. Conduct any oil and gas operation within the city without a validly issued permit;
2. Violate any condition of a permit; or

3. Violate any applicable provision of this chapter and code.

B. *Suspension and Revocation.* If at any time the director has reasonable grounds to believe than an operator is in violation of any provision of this chapter or code, the director may suspend the operator's permit. The director shall give the operator's designated agent written notice of the suspension and, upon receiving such notice, the operator shall immediately cease all operations under the permit, except those reasonably required to protect the public's health and safety. The director's written notice shall state with specificity the operator's violation(s). The suspension shall continue in effect until the director determines that the violation(s) has been satisfactorily corrected. At any time during the suspension, the operator may appeal the director's action to the City Council by filing with the City Clerk a written notice of appeal stating with specificity the operator's grounds for appeal. Within thirty (30) days of the City Clerk's receipt of that notice, a public hearing shall be held before the City Council. The hearing shall be conducted as a quasi-judicial proceeding with the operator having the burden of proof and with the director defending the suspension of the permit. After hearing and receiving evidence and testimony from the operator, from the director and from other city staff and consultants, and after receiving public comment, the City Council may revoke the permit, terminate the suspension of the permit or take such other action as it deems appropriate under the circumstances taking into consideration and balancing the protection of the public's health, safety and welfare and the operator's rights under this chapter and state law to conduct its oil and gas operations. Within twenty one (21) days after the hearing, the Council shall adopt its written findings and conclusion supporting its decision. The Council's written findings and conclusions shall constitute the Council's final decision that may be appealed to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

C. *Civil Actions.* In addition to any other legal remedies provided under this chapter to enforce violations of this chapter, the city may commence a civil action against an operator committing any such violations in any court of competent jurisdiction and request any remedy available under the law or in equity to enforce the provisions of this chapter, to collect any damages suffered by the city as the result of any violation and to recover any fees, reimbursements and other charges owed to the city under this chapter and code. If the city prevails in any such civil action, the operator shall be liable to the city for all of the city's reasonable attorney's fees, expert witness costs and all other costs incurred in that action.

D. *Penalties.* A violation of any provision of this chapter shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment. A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

18.77.135 Conflicting Provisions.

In the event of any conflict between any provision of this chapter and any other provision of this code, the provision of this chapter shall control.

Section 2. That a new Chapter 18.78 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 18.77

Building Setbacks from Oil and Gas Facilities

Sections:

18.78.010 Purpose

18.78.020 Building Setbacks from Oil and Gas Facilities

18.78.010 Purpose.

The purpose of this chapter is to generally protect the public's health, safety and welfare and more specifically to establish setbacks for new development from existing or abandoned oil and gas facilities.

18.78.020 Building Setbacks from Oil and Gas Facilities.

All "residential and non-residential buildings," as defined in code section 18.77.025, except such buildings with an occupancy rating for fifty (50) persons or more, buildings intended to be occupied shall be setback a minimum distance of five hundred (500) feet from an existing or abandon oil and gas facility. and a All such buildings with an occupancy rating for fifty (50) persons or more and outdoor assembly areas "High Occupancy Building Units," as defined in the rules and regulations of the Colorado Oil and Gas Conservation Commission, shall be set back a minimum of one thousand (1,000) feet from any existing or abandoned "oil and gas facility," as defined in code section 18.77.025. Land included in such setback areas shall be designated as open space and uses such as open space play fields and parks shall not be permitted within such areas.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this ____ day of _____, 2012.

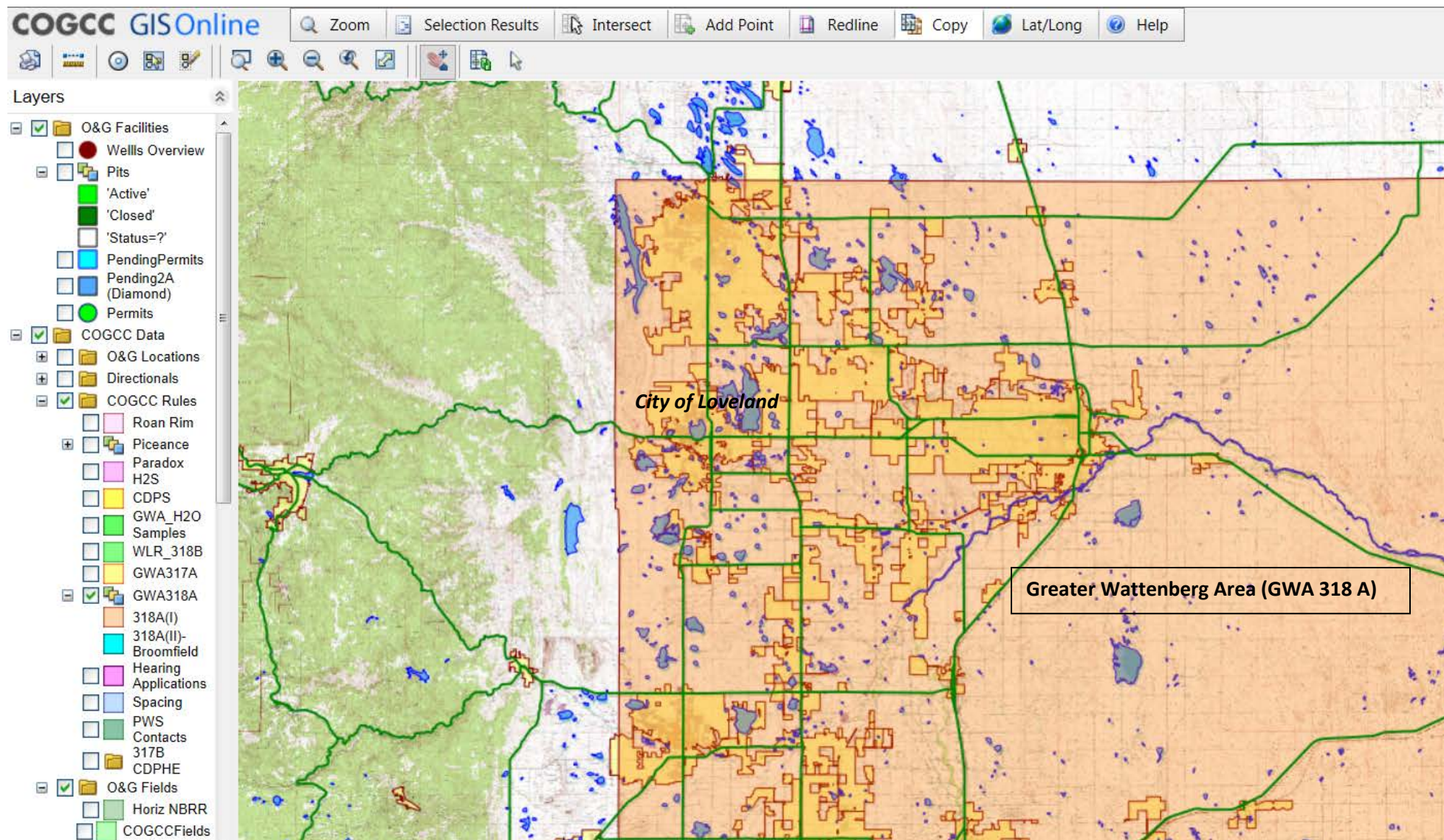
Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



Written Comments Received from Citizens

From: Jennifer Monk [mailto:jennifer.monk@rocketmail.com]

Sent: Tuesday, February 26, 2013 9:32 AM

To: Mayor - Cecil Gutierrez; Ward I - Daryle Klassen; Ward I - Chauncey Taylor; Ward II - Joan Shaffer; Ward II - Phil Farley; Ward III - Hugh McKean; Ward III - John Fogle; Ward IV - Ralph Trenary; Ward IV - Dave Clark; Robert Paulsen

Subject: Environment -- Gateway to Rocky Mountain National Park

February 26, 2013

Loveland City Council and Loveland Planning
Commission
500 E. 3rd Street
Loveland, Colorado 80537

Dear City Council Members and Loveland Planning Commission,

I have owned a business in Loveland, and my husband and I own two houses here, both of which are areas that would be directly affected by drilling and fracking operations. Our daughters have grown up and attended schools in the Thompson School District where I have volunteered countless hours over the last 15 years. My family and I have invested much time and commitment into our community and are proud to call Loveland our home town. Our pride is threatened.

It is unfortunate that Ft. Collins and Longmont are putting up such a great fight against the Big Oil Business while little old Loveland sits around and worries about being too small to fight. Too bad their fight will be for nothing as Loveland becomes the main polluter of water and air in our region.

I am not sure if you have seen this article, <http://ecowatch.org/2013/fort-collins-bans-fracking/>, but I think it is indicative of things to come. Even if Loveland does not fight the oil companies now, we citizens are not going to give up easily. Many of my neighbors, friends and local community supporters agree. In fact, we are learning more and more every day that our vote counts at every level of government. We are awakening.

There are some points in the article that touched me which I would like to highlight for you. "With fracking, threat has bred opportunity, and democracy has come alive in Colorado. While it's profoundly unfortunate that thousands of homeowners are now threatened with the impacts of fracking, it's also deeply important and powerful that these same homeowners and suburban moms and dads learn how to be active and informed citizens in our democracy. Not only the promise of democracy—but the responsibility of democracy—is becoming real to thousands of people who just a year earlier were likely focused on normal suburban activities." The reason this comment affected me is I am one of those citizens who was going along unthreatened and not really participating except in elections until I heard that fracking and drilling were going to happen so close to our homes, schools and businesses. I had

followed what oil companies have done across the nation and never thought it would happen here in Loveland, the gateway to Rocky Mountain National Park. I thought we would be safe. I am now learning as, “threat has bred opportunity,” to speak up and be active to save our clean air and our clean water, not for just us, but all those people who are downstream from us.

Another part of this article says it better than I can, “activists spent hundreds of hours (and miles) pressing the case that fracking is a serious concern, and left unregulated, fracking could turn many suburban communities into mirrors of Weld County, Colorado (in the northern part of the state) which has more active oil and gas wells (more than 18,000) than any county in the U.S. With those wells has come health problems, air quality problems, water pollution problems, water supply problems, social problems, real estate problems and financial problems.” This observation has ignited my resolve to keep standing up for this fight.

It is, “No surprise, but this exploitative extractive industry tends to take the oil and gas—as well as all of the money—and leaves local governments and people with pollution and financial trouble in its wake.” Will we give in to greed?

I was very disheartened when I attended a City Council Meeting three months ago and found that I had no real voice at the meeting even though it was an open meeting where citizens and involved parties could speak. I found that although we were invited to this open meeting and thought we were going to be heard, the decision had already been made that drilling and fracking would be happening and that it was being handed over to the planning commission to plan regulations. The City had decided to deal with the situation through state regulations. Big Oil had come in so quickly that by the time most Loveland citizens had heard that it was a possibility, in reality it had already happened. I realized what my great ancestors must have felt having their land stolen from under their feet as they believed that no one owned the land, we are but caretakers. I shudder to think how much faster Big Oil could move in their destructive ways if we actually lived by that concept today. I felt absolutely helpless. Because of Ft. Collins and Longmont, now I do not feel helpless. I have hope, especially since I can say I know no one in this community I have spoken to about the subject that wants fracking or drilling to happen in Loveland. I have great resolve as do a quickly growing number of citizens, regardless of whether fracking or drilling start, the fight will go on. It would be wise for our town to make the right decision now. The right decision is to ban fracking and drilling in Loveland, Colorado.

So my question is to you is, are you going to be a part of this biggest mistake in Loveland history by letting Oil Companies rule, or are you going to be heroic and do the right thing by your constituency and save our town and our environment as our courageous neighboring towns have done?

Sincerely,
Jennifer Monk
2805 Virginia Drive
Loveland, Colorado 80538
(970)576-8022

From: Jennifer Monk [mailto:jennifer.monk@rocketmail.com]

Sent: Tuesday, February 26, 2013 9:41 AM

To: Ward II - Phil Farley; Ward III - John Fogle; Ward III - Hugh McKean; Ward I - Chauncey Taylor; Robert Paulsen; Ward II - Joan Shaffer; Ward I - Daryle Klassen; Mayor - Cecil Gutierrez

Subject: Information for tonight city council meeting

COGCC allowed 5 people to speak at their January hearing – one lady was even a former commissioner from the COGCC. They had similar types of stories of their lives in Garfield County, Battlement Mesa – the people got sick when the drilling started – lethargic, headaches, uncontrollable nose bleeds, stomach ailments, etc.

Jonnie Westerop

Fracking our Farms: A Tale of Five Farming Families

- By Alexis Baden-Mayer

February 20, 2013

For related articles and more information, please visit OCA's Environment and Climate Resource Center page.

Author's note: On Sunday, Feb. 17, I marched with the OCA at the Forward on Climate rally in Washington, D.C. At one point, our banner, "Cook Organic Not the Planet," caught the eye of a dairy farmer. He approached. I handed him a flyer and launched into my pitch about how organic agriculture has the power to bring dangerous carbon dioxide levels back down to the safe level of 350 parts-per-million. He nodded politely, then stopped me short with this "If they frack all the farms, there isn't going to be any organic." Back home, I sat down at my computer to research farms and fracking. I learned that there's a growing movement of farmers around the country who are fighting fracking. And I found some stories that should give all of us pause.

Their names are Carol, Steve & Jackie, Susan, Marilyn & Robert, and Christine. They share a bond. Two bonds, actually: They all own, or owned, farms. And those farms, along with their own health and the health of their farm animals, have all been ruined by fracking.

More than 600,000 fracking wells and waste injection sites have popped up across the country, according to ProPublica. The oil and gas industry, along with federal regulators, would have you believe that injecting trillions of gallons of toxic liquid deep into the earth is harmless.

But tell that to Jacki Schilke of North Dakota, who lost two dogs, five cows, chickens – and her health – after 32 oil and gas wells sprouted up within three miles of her ranch. Or Christine Moore, a horse rescuer in Ohio, who sold her farm after a well went up five miles from her farm, creating an oily film on her water and making her too sick to care for her horses.

With hundreds of thousands of fracking wells and waste injection sites in the U.S., it's likely that our food supply already contains water, plants and animals (meat) contaminated with fracking chemicals. While we hear a lot about drinking water contamination, including people's water catching on fire straight out of the faucet, that shouldn't be our only concern. Contaminated crops and farm animals raised for food are also possible avenues for exposing humans to fracking chemicals.

Of course, not all farm animals are destined for the food chain. Those unfortunate enough to live near fracking wells can tell us a lot about the potential danger from fracking chemicals to our own health. Farm animals have the same susceptibility to disease that we have, but because they are exposed continually to air, soil and groundwater, and have more frequent reproductive cycles, they exhibit diseases more quickly, presaging human health problems. A study involving interviews with animal owners who live near gas drilling operations revealed frequent deaths. Animals that survived exhibited health problems including infertility, birth defects and worsening reproductive health in successive breeding seasons. Some animals developed unusual neurological conditions, anorexia, and liver or kidney disease.

What causes those health problems? Among the hundreds of toxic chemicals used in fracking are arsenic, benzene, ethylene glycol (antifreeze), formaldehyde, lead, toluene, Uranium-238, and Radium-226. The American Academy of Pediatrics' list of common health problems from exposure to fracking chemicals includes autism, asthma, cancer, heart disease, kidney failure, infertility, birth defects, allergies, endocrine diseases and immune system disorders.

Farmers fighting back

Thankfully, many farmers are fighting back. Here are the tales of five farmers on the front lines of the fracking fight who are heroically sharing their tragic stories with the world in an attempt to expose the lie that natural gas is "cleaner power."

Carol French, dairy farmer and cofounder of Pennsylvania Landowners Group for Awareness and Solutions (PLGAS). Carol's Bradford County farm is surrounded by nine gas wells. Earlier this month, Carol posted to the Fracking Hell Facebook group that she had just lost three calves in nine days. "I have heard from other farmers with 'changed' water having similar problems," she wrote. At the September 2012, Shale Gas Outrage protest in Philadelphia, Carol told the crowd how, two weeks after their water changed, her daughter developed a fever and diarrhea that turned to blood. She lost ten pounds in seven days. Watch Carol's speech.

Steve and Jacki Schilke North Dakota ranchers. There are 32 oil and gas wells within three miles of Steve and Jacki's 160-acre ranch. Jacki blames the wells for the loss of two dogs, five cows and a number of chickens, as well as the decline of her own health. Her symptoms began a few days after the wells were fracked, when a burning feeling in her lungs sent her to the emergency room. After that, whenever she went outside she became lightheaded, dizzy and had trouble breathing. At times, the otherwise fit 53-year-old, can't walk without a cane, drive or breathe easily. She warns landowners against making deals with frackers: "They're here to rape this land, make as much money as they can and get the hell out of

here. They could give a crap less what they are doing here. They will come on your property look you straight in the eye and lie to you.” Watch Jacki talk about her experience.

Susan Wallace-Babb, Colorado rancher. One day in 2005, Susan Wallace-Babb went out into a neighbor's field near her ranch in Western Colorado to close an irrigation ditch. She stepped out of her truck, took a deep breath and collapsed, unconscious. Later, after Susan came to and sought answers, a sheriff's deputy told her that a tank full of natural gas condensate less than a half mile away had overflowed into another tank. The fumes must have drifted toward the field where she was working, the deputy said. The next morning Susan was so sick she could barely move. She vomited uncontrollably and suffered explosive diarrhea. A searing pain shot up her thigh. Within days she developed burning rashes that covered her exposed skin, then lesions. Anytime she went outdoors her symptoms worsened. In 2006, she moved to Winnsboro, Texas, a small town two hours east of Dallas. In 2007, Susan testified in Congressional hearings on the health impacts of fracking. For three years her symptoms gradually improved, until she could work in her garden and go about her normal daily routine. Then, in early 2010, Exxon launched a project in an old oil field 14 miles away and began fracking wells to get them to produce more oil. Within months, Susan's symptoms returned. Watch Susan's testimony at the Congressional hearings.

Marilyn and Robert Hunt, West Virginia organic farmers. The Hunts own a 70-acre organic farm in Wetzel County, where they raise goats, chickens and cattle. When the landman from Chesapeake Energy approached the Hunts to lease their mineral rights, Marilyn did some research then turned down the offer. But that didn't stop Chesapeake from, as she told ShaleReporter.com, “stealing gas from both sides of our property.” In 2010, Chesapeake received a permit for land disposal near her property and dumped waste on her land. “The water got little white flecks in it, and we started to get sick,” Marilyn said. “We lost a whole lot of baby goats that got gastrointestinal disorders from drinking the water.” Some of the baby chicks her daughter was raising died of nervous system failure, and the ones that survived were deformed. Interestingly, though, the cattle that drink from the spring water on the highest point of her property were spared any adverse impact, leading Marilyn to believe it was the water contaminated by the fracking waste that caused the illnesses.

Christine Moore, Ohio horse rescuer. Christine Moore and her family lived a dream life rescuing horses deep inside Ohio's Amish country. When a well was fracked five miles from her house in January 2012, Christine went door to door, begging her neighbors not to lease their land for fracking. But most of the town, many Amish and Mennonite, didn't listen. Two months after the well near her home was fracked, the water went bad. An oily film formed across the surface of the water in her horses' bowls. The water inside her home, pumped from her well and filtered through a softener, began giving her severe stomachaches. She sent her horses to a no-kill shelter in upstate Ohio and, in July, sold the property to her neighbor who, according to Tuscarawas County records, has oil and gas exploration leases on multiple properties. Watch Christine describe how fracking destroyed her horse farm.

Stop the Frack Attack!

Want to join with farmers fighting fracking? Join the OCA on Mar. 2 – 4 in Dallas, Texas, for the National Summit to Stop the Frack Attack!

The summit is expected to draw hundreds of people who will share stories and learn how to become better spokespeople, learn about clean energy alternatives, celebrate fracking victories, and strengthen this national movement. There will also be a rally in Austin on Mar. 4 to welcome the Texas state government back to work. And to remind them they work for the people, not the oil and gas industry.

If you can't make it to the summit or rally, please consider donating to a scholarship fund so others can attend.

Alexis Baden-Mayer is political director of the Organic Consumers Association.

Link: http://www.organicconsumers.org/articles/article_27073.cfm

From: Jonnie Westerop [mailto:allaboutwindowss@msn.com]

Sent: Tuesday, February 26, 2013 11:17 AM

To: Mayor - Cecil Gutierrez; Ward I - Daryle Klassen; Ward I - Chauncey Taylor; Ward II - Joan Shaffer; Ward II - Phil Farley; Ward III - Hugh McKean; Ward III - John Fogle; Ward IV - Ralph Trenary; Ward IV - Dave Clark; Robert Paulsen

Subject: The destruction of our beautiful city

February 26, 2013

Loveland City Council and Loveland Planning Commission
500 E. 3rd Street
Loveland, Colorado 80537

Honorable City Council Members and Loveland Planning Commission,

I attended the Loveland Planning & Zoning Commission Meeting last night – there were quite a few of us citizens in attendance. I feel the same frustration as the P & Z Commission does with the Loveland City Council. You are NOT well informed and you are NOT listening to any of your constituents – and it shows. The relationship between the city staff, council members and the staff of Anadarko is completely inappropriate. They do not live in this area- they should NOT be making the final decisions for our population and our community.

The City Attorney and Director of Development said many things last night – they seemed to be wanting to hide the truth on a few issues. That we are in the GWA – Greater Wattenburg Area – and thus groundwater testing will be that of Weld County, and not of the new COGCC rules. Members of the P &

Z had to get this out of them. Are they heading for jobs with the oil companies? And also, of their discussion with the Director of the COGCC – who said he is not going to allow the set back loophole to be used in Loveland – that new wells have to meet new COGCC rules - NOT in writing – of course. I was at the Fort Collin's City Council meeting – the first reading of the Ban on Fracking – and COGA, Anadarko and it's followers presented petitions against the ban. It turns out – most of the signatures were falsified. Why would we trust these companies?

You are putting your community at risk – and if you think you are going to avoid legal problems – you may be surprised. As soon as our environment begins to degrade – you as public servants will be blamed for the destruction of our city. The first deaths from speeding, piece-rate drilling efforts (these out of town drillers are not paid hourly, but by how many they do – their money is based on speed). Trucks, accidentally hitting and killing, maiming innocent people – will again bring it to your lack of efforts to protect the citizens of this city. I hope you watched the citizen's testimonies – it is NOT a waste of your time. The value of one house, let alone of all of our homes in Loveland – will cover the legal fees – why would you allow your community's downfall over money?

You need to show some courage - Join Fort Collins and Longmont – Ban the Drillers!!!

Jonnie Westerop
3611 Yaupon Place
Loveland, CO 80538

From: evi buckner-opler [mailto:evi_bavaria@webaccess.net]
Sent: Tuesday, February 26, 2013 2:50 PM
To: Mayor - Cecil Gutierrez; Ward I - Daryle Klassen; Ward I - Chauncey Taylor; Ward II - Joan Shaffer; Ward II - Phil Farley; Ward III - Hugh McKean; Ward III - John Fogle; Ward IV - Ralph Trenary; Ward IV - Dave Clark; Robert Paulsen
Subject: The health of our citizens is at stake!

February 26, 2013

Loveland City Council and Loveland Planning Commission
500 E. 3rd Street
Loveland, Colorado 80537

Dear Mayor and Council Members,

I was at the meeting in Denver a few weeks ago where the COGCC discussed the new rules and listened to our input and concerns I was at the last city council study session and listened to your discussions Last night I attended the Planning and Zoning Commission meeting. And I also stayed until midnight, when the commission finally decided to adjourn as they could not reach a consensus after discussion

with the Anadarko Representatives and three votes, trying to reach a solution to present to you.

During discussions with three of the Anadarko attorneys, as well as their water quality expert, I was amazed (as were the commission members) to find out that according to Greg George and the City Attorney there are 5 different maps showing where the Wattenberg field is ... but nobody seemed to know the exact location and the shape of the field did not seem to agree with what the Anadarko people indicated! And you are trying to make a decision in this matter, without knowing what areas might be affected? The representatives of Anadarko last night did not even volunteer to show where the Wattenberg field is, they only said that it has a rectangular shape!

The whole evening made clear that there are still so many unanswered questions, so many concerns, that you, in spite of having worked hard on this and seem to be quite well informed, have not addressed, or are not aware of. What will happen if you give permission to these "voluntary rules", that Anadarko will agree to, what if Anadarko leaves... will the next oil company adhere to the same rules? To work WITH the company that has already started to put out stakes for seismic testing, appears like asking the fox to design the hen house... and as I had mentioned at last night's meeting: voluntary testing is like asking for voluntary speed limits or voluntary red lights here in town. Who do you think will adhere to that? We need to make sure that we are all well informed....

Yes, Fracking has been done for a long time, but does that mean that it is right? It's not only our front range area that is fighting it, or our country... no, worldwide there seems to be an increased awareness of the damaging effects of Fracking. Fracking may be acceptable in rural areas, but urban areas have different aspects to worry about. Air quality has been affected negatively in areas where Fracking has occurred, not even mentioning the ground water problems that are silenced by the industry. People in many areas where Fracking has taken place have gotten their health badly compromised. How will we help people who will get sick from the air pollution? And how can we control any potential ground water spill and subsequent pollution with such lax testing rules? The past has shown that companies that have had issues with polluted areas just file bankruptcy and are gone... and we, the taxpayers, will have to pay for the damages.... so in the long run: we will have to pay anyway!

So why can't we stand up for what is right? put it up for a vote to the people if you don't feel comfortable about making this decision. Dare to stand up for what is the best for our city in the long run. Don't decide on immediate concerns.... we have to plan long term.... and if we all stand together, if we stand united for what is right, we will prevail!

Thanks you for listening.

Sincerely,

Evi Buckner-Opler

REGULATIONS for OIL AND GAS DEVELOPMENT

City Council
PUBLIC HEARING
March 5, 2013

Purpose

- Zoning conflicts with State law
- Lack of development standards

Significant Events

- May 15, 2012 - Moratorium
- June 12, 2012 - City Council/Planning Commission study session
- August 21, 2012 - City Council Statement of Direction
- October 23, 2012 - City Council/Planning Commission public forum
- December 18, 2012 - Extension of moratorium

Two Types of Standards/Processes

- Baseline Standards
 - Mandatory
 - Planning Commission review process
 - Protect public health, safety and welfare and the environment, while
 - Being in harmony with State law
 - Avoiding litigation

- Enhanced Standards
 - Voluntary
 - Administrative review process
 - Higher level of mitigation of impacts on public health, safety and welfare and the environment

Planning Commission Review Process

- Mandatory
- Baseline standards
- Review by Development Review Team
- Neighborhood meeting – standing to appeal
- Planning Commission approval at fully noticed public hearing
- Could be appealed to City Council
- City Council approval at fully noticed public hearing

Administrative Review Process

- Voluntary
- Enhanced standards
- Neighborhood meeting
- Review by Development Review Team
- Public comment period
- Negotiation with applicant
- Mitigation in addition to Enhanced Standards, only if agreed to by applicant
- Approval by director
- No appeal to Planning Commission or City Council
- Only appeal to Larimer County district court

Commission's New Rules

- Groundwater baseline sampling and monitoring
 - Adopted January 7, 2013
 - Legally effective May 1, 2013
 - Greater Wattenberg Area
- Building setbacks
 - Adopted February 11, 2013
 - Require new mitigation measures within 1,000 feet of Building unit, High Occupancy Building Unit and Designated Outdoor Activity Area
 - Require waiver from all building owners if within Urban Mitigation Area and 500 feet from of a Building Unit

Key Issues

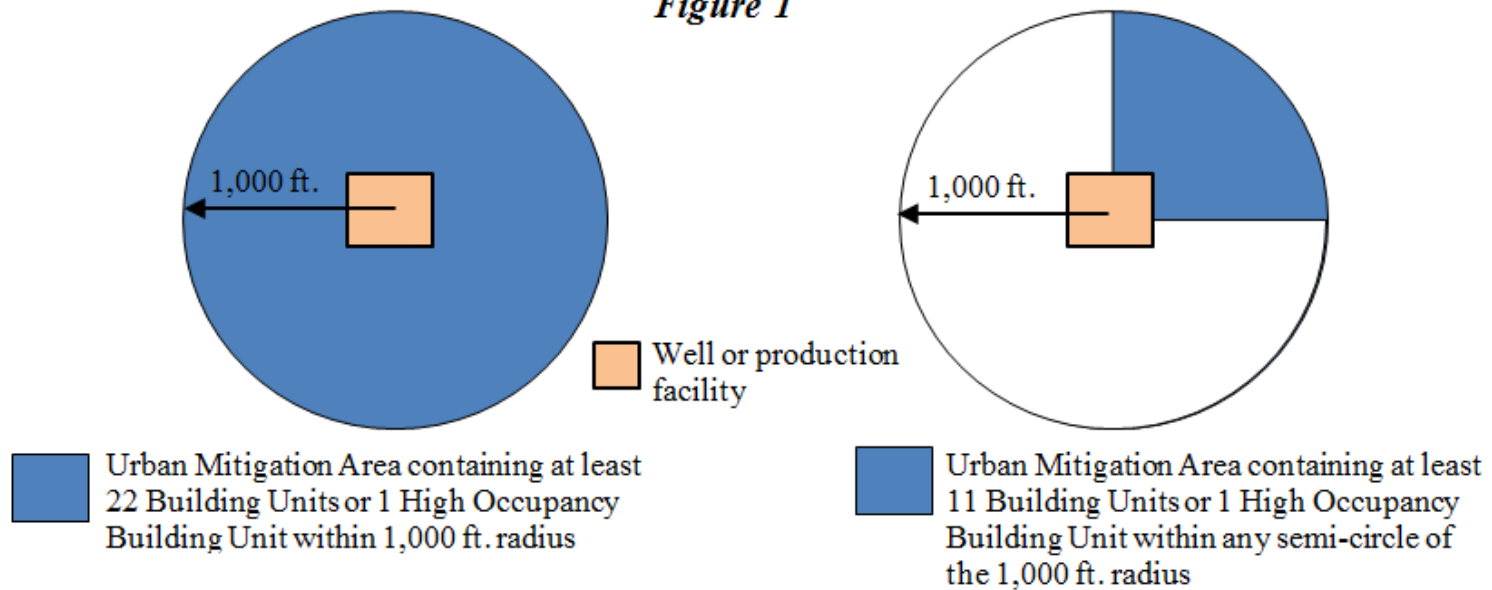
- Feasibility of Enhanced Regulations
- Additional inspection services
- Setbacks for new development from existing and abandoned oil and gas facilities
 - 500 foot radius = 18 acres
 - 1,000 foot radius = 72 acres
- Creation of “no-build” areas within City limits and Growth Management Area

New COGCC Setback Rules

- Definitions
 - Residential Building Unit: Building designed for use a place of residency
 - Building Unit: Residential Building Unit, every 5,000 sq. ft. commercial building and every 15,000 sq. ft. of warehouse building
 - High Occupancy Building Unit: Public school, non-public school, nursing facility, hospital, life care institution, correctional facility (50 or more persons)
 - Urban Mitigation Area: Intent to recognize urban level densities within cities
 - Designated Outdoor Activity Areas:
 - Designated by Commission upon application
 - Playgrounds, permanent sports field, amphitheaters and other similar places of public assembly owned or operated by a local government

Urban Mitigation Area

Figure 1



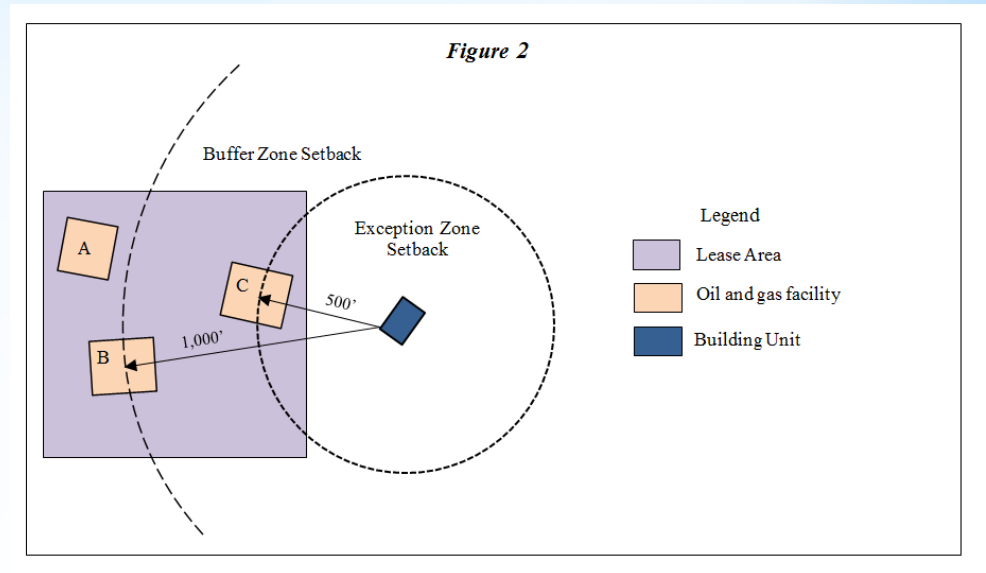
Buffer Zone and Exception Zone

- Mitigation Measures

- Site A: State-wide
- Sites B and C: Commission's new mitigation measures

- Permit Requirements

- Site A: State-wide
- Sites B and C:
 - ✓ If High Occupancy Building Unit, Commission approval following public hearing
 - ✓ If Building Unit, operator must meet with Building Unit owners



Urban Mitigation Area

- Mitigation Measures

- Site A: State-wide
- Sites B and C: Commission's new mitigation rules

- Permit Requirements

- Site A: State-wide
- Site B:
 - ✓ If a High Occupancy Building Unit, Commission approval following public hearing
 - ✓ If a Building Unit, operator must meet with Building Unit owners
- Site C: Operator must obtain waiver from all Building Unit owners and:
 - ✓ If a High Occupancy Building Unit, Commission approval following public hearing
 - ✓ If a Building Unit, operator must meet with Building Unit owners

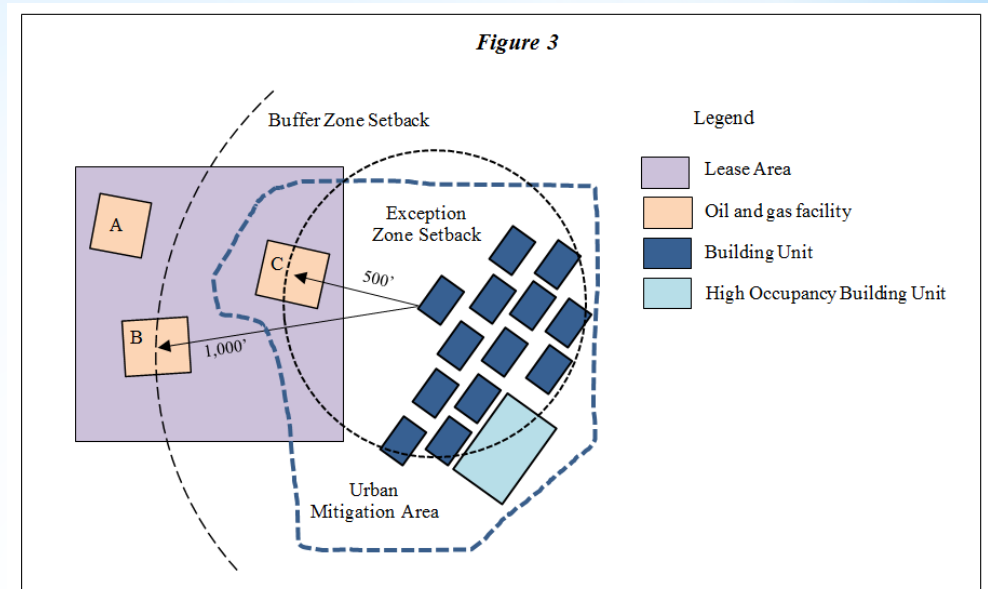


Table 1

Regulations Comparison

Commission Rule	Current City Code Regulation
Noise	
1. During well site development involving pipeline or gas facility installation or maintenance or use of a drilling rig noise levels shall not exceed 70 dB(A) day, 65 dB(A) night, measured at nearest building unit.	1. Measured at property line of adjacent land use: • Residential: 55 dB(A) day, 50 dB(A) night • Commercial: 60 dB(A) day, 55 dB(A) night • Industrial: 75 dB(A) day, 70 dB(A) night
2. Measured 350 feet from sound source: • Residential: 55 dB(A) day, 50 dB(A) night • Commercial: 60 dB(A) day, 55 dB(A) night • Light Industrial: 70 dB(A) day, 65 dB(A) night • Industrial: 80 dB(A) day, 75 dB(A) night	

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Noise	
3. All facilities within 400 feet of a Building Unit with engines or motor which are not electrically operated shall be equipped with quiet design mufflers.	
Water Quality	
4. Closed loop drilling system and pit restrictions. 5. Containment berms meeting specific standards. 6. Within an Urban Mitigation Area, no more than 2 crude oil or condensate storage tanks shall be located within a single berm.	None
Air Quality	
Closed loop drilling system	None

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Traffic	
7. If required by local government, a traffic plan shall be coordinated with the local government prior to commencement of move in and rig up.	2. Compliance with Larimer County Urban Area Street Standards.
Multi-Well Pad	
8. Where technologically feasible and economically practicable, wells shall be consolidated to create multi-well pads located as far from building units as possible.	None
Leak Protection	
9. The oil and gas facility operator shall develop a plan to monitor production facilities on a regular schedule to identify fluid leaks.	None

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Blowout Preventer Equipment	
10. Blowout prevention equipment shall be required.	None
Pit Level Indicators	
11. Pit level indicators shall be used.	None
Drill Stem Tests	
12. Closed chamber drill stem tests shall be allowed	None
Well Services Operations	
13. Adequate blowout prevention equipment and backup stabbing valves shall be used on well servicing operations.	None
Security	
14. Well sites shall be adequately fenced to restrict access by unauthorized persons.	None

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Surface Trash	
15. All surface trash, debris, scrap or discarded material shall be removed from the site and disposed of in a legal manner.	Title 7: Accumulation of Waste Material
Tank Specifications	
16. All crude oil and condensate storage tanks shall be designed, constructed and maintained in accordance with National Fire Protection Association (NFPA) Code 30 (2008 version).	None
Emergency Access	
17. All leasehold roads shall be constructed and maintained to accommodate local emergency vehicle access.	4. International Fire Code

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Well Site Clean Up	
18. Within 90 days after a well is plugged and abandon, the well site shall be cleared of all non-essential equipment, trash and debris.	None
Identification of Plugged and Abandon Wells	
19. Operator shall identify the location of the well bore with a permanent monument with the well number and date of plugging imbedded on the monument.	None
Development of Existing Well Pads	
20. Where possible, operators shall provide for the development of multi reservoirs by drilling on existing pads or by multiple completions or commingling in existing wellbores.	None

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Visual	
21. Production facilities, regardless of construction date, that can be seen from any public highway shall be painted a uniform, non-contrasting color tone that matches but is slightly darker than the surrounding landscape.	3. Bufferyards – Type EX. Plant density and width unspecified, allowing City to require bufferyard in excess of Type E as necessary to buffer high intensity uses, such as an industrial batch plant or gravel mine from residential or commercial uses. 4. Screening of unsightly areas – Such areas shall be screened from view from public sidewalks, streets, and other public areas. Whenever plants are used for screening, the plants should be coniferous and provide an opaque screen within three years.

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Lighting	
22. To the extent practicable, site lighting shall be directed downward and inward and shielded so as to avoid glare on public roads and building units within 1,000 feet.	5. Comprehensive standards for illumination:
Structure Height	
None – drilling rigs are typically 150 feet in height, or less.	6. In the Industrial zone – East of County Road 9 – 50 feet. Other locations in the Industrial zone – 40 feet 7. It is unlawful to construct any tower or other structure which may constitute a hazard to the safe navigation of aircraft at the Fort Collins/Loveland Airport
Vibration	
None	8. Vibration at the level of human perception shall not be permitted beyond the lot lines.

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Floodplain	
None	9. Flood Fringe – Non-residential structures shall be placed on fill so that the lowest portion of the structure is at or above the regulatory flood protection elevation or comply with the floodproofing requirements set forth in the International Building Code. 10. Floodway – No use shall limit or restrict the floodway capacity, include fill or storage of material or equipment, increase flood heights during base flood, any well shall be protected from inundation from flood discharge and no new mobile home shall be permitted.
Stormwater	
Best Management Practices	11. Compliance with City of Loveland Storm Criteria Manual

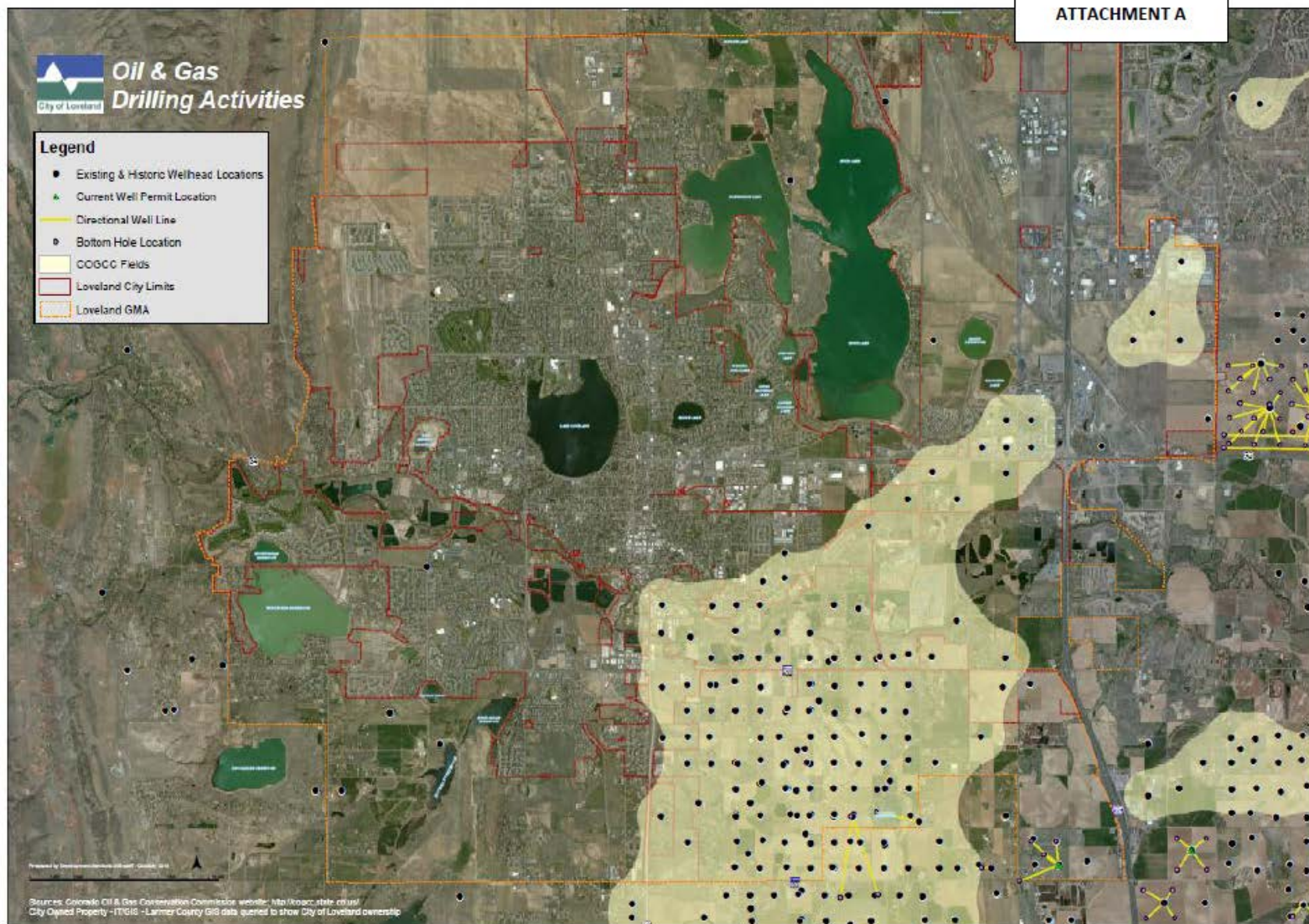
Table 1 (cont.)

Commission Rule	Current City Code Regulation
Odors and Dust	
23. Odor: (i) Compliance with Department of Public Health and Environment Air quality Control and odor Emissions regulations, plus specific regulations on crude oil, condensate, and produced water tanks, glycol dehydrators, pits, and pneumatic devices. (ii) Green completions practices required on wells that are likely to produce naturally flowing hydrocarbon gas in flammable concentrations. 24. Fugitive dust: Operator shall employ practices such as speed controls, regular road maintenance, restrictions on construction activity during high-wind conditions, silica dust controls when handling sand, road surfacing, wind breaks and automation of well site to reduce truck traffic.	12. Odor: Title 7: Nuisance Abatement

Table 1 (cont.)

Commission Rule	Current City Code Regulation
Weed Control	
25. All well and surface production facilities shall be kept free of weeds, rubbish, and other waste material.	13. Compliance with Title 7: Weed Control Ordinance

ATTACHMENT A

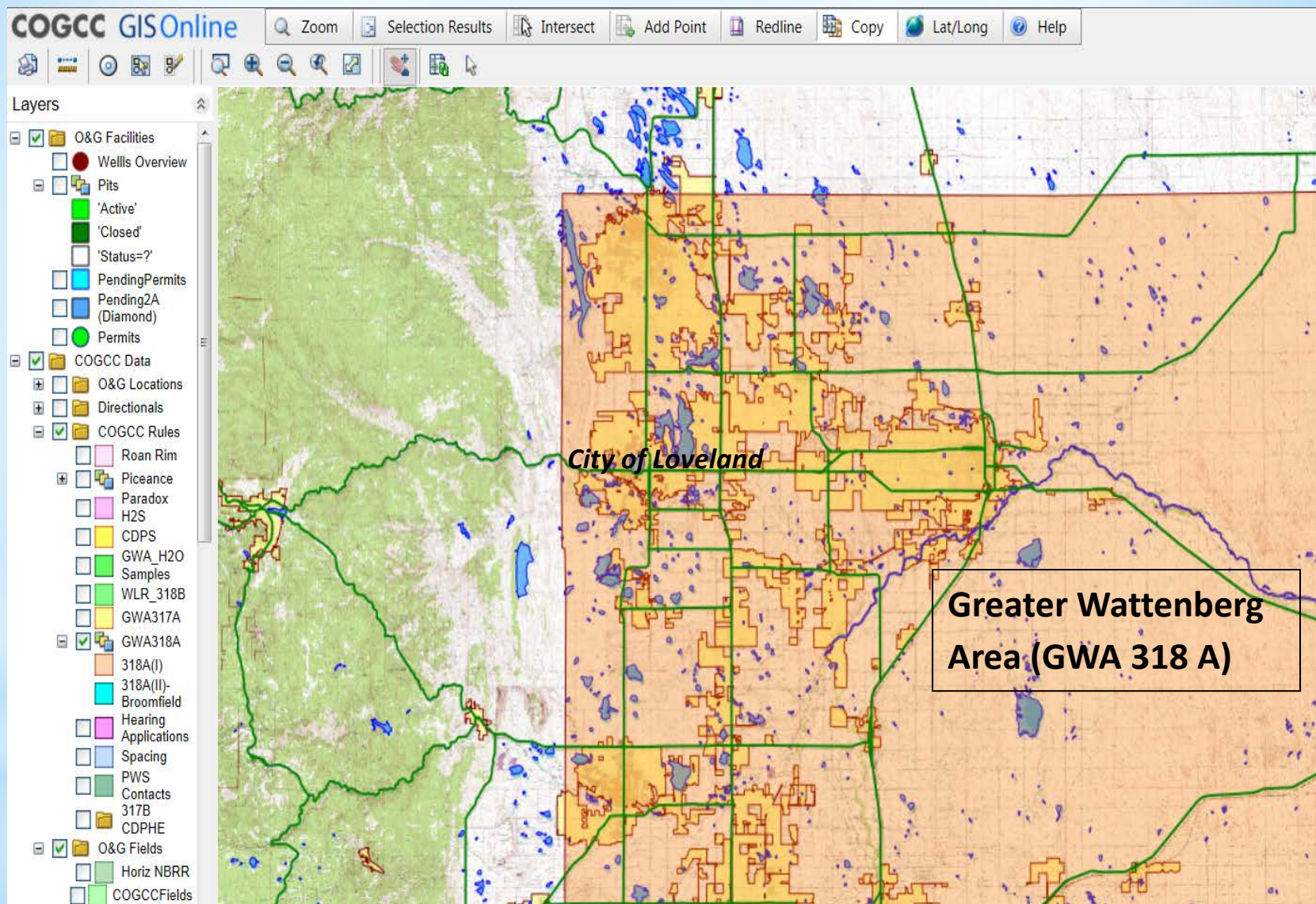


Enhanced Setbacks (applicable to Administrative Review Process)

- Measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building.
- Except for high occupancy buildings, 500 feet from any residential or non-residential occupied building.
- 200 feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility.
- 500 feet from:
 - ✓ The boundary property line of any natural area or wetlands;
 - ✓ The property line of any property managed by the city's Parks and Recreation Department and any city park;
 - ✓ The operating high water line of any surface water body;
 - ✓ The boundary of the FEMA floodway zoning district;
 - ✓ The property line of any property subject to a conservation easement managed by a public or non-profit entity; and
 - ✓ Any domestic or commercial water well.
- 1,000 from any residential or non-residential building with an occupancy rating for fifty (50) persons or more and any outdoor assembly area with a capacity of fifty (50) persons or more.

Enhanced Mitigation (applicable to Administrative Review Process)

- All oil and gas operations shall comply with the COGCC's new mitigation rules, plus the other City of Loveland enhanced mitigation standards.



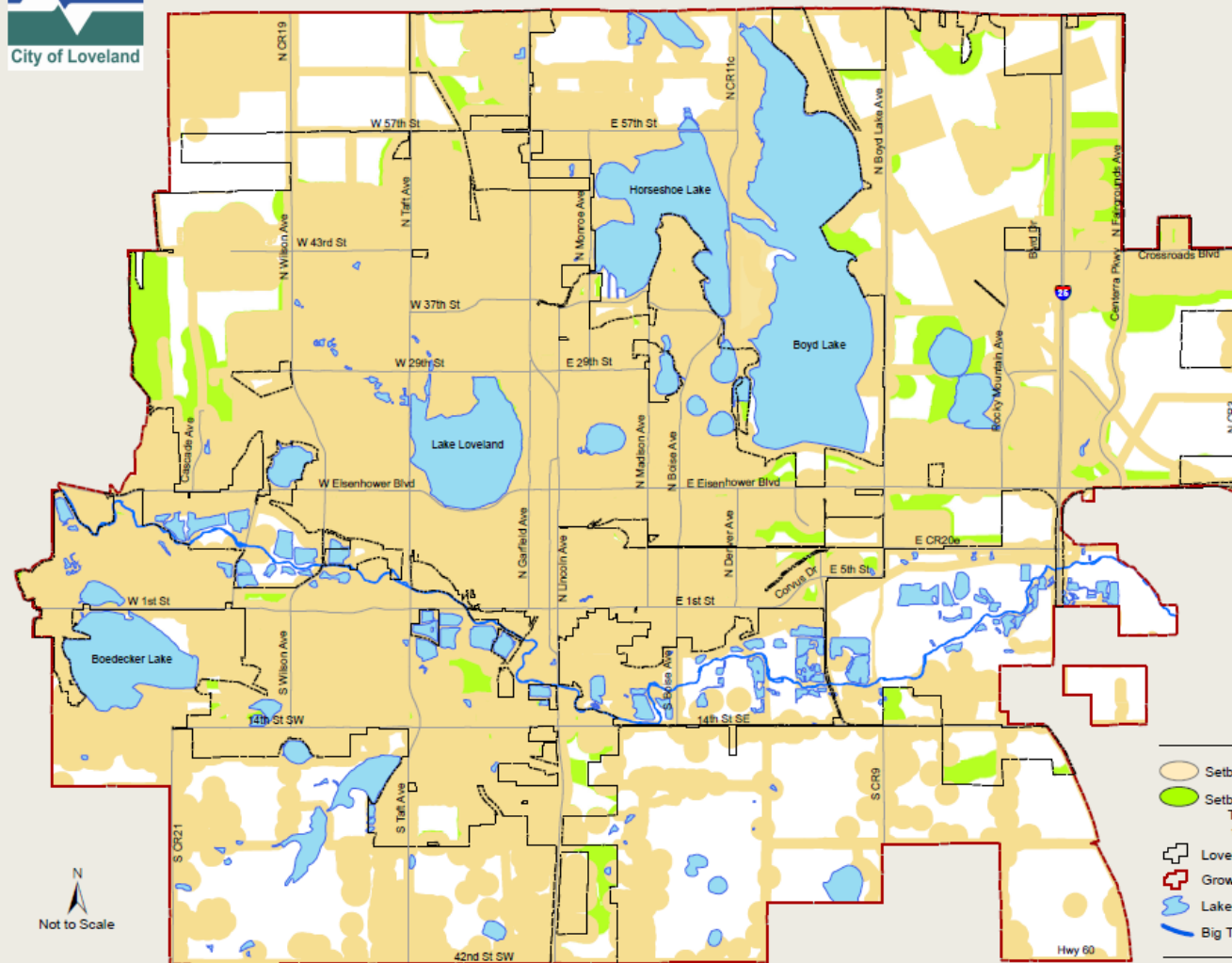


Setback Areas as defined by New COGC Regulations and Proposed Loveland Enhanced Standards

This map represents general application of the Colorado Oil and Gas Conservation (COGC) newly adopted regulations under Section 603, effective August 1, 2013. In addition, this map shows general application of the proposed City of Loveland Enhanced Standards for setbacks. These setbacks apply to new wellheads or facilities.

This map is based on the best available information/GIS data and is considered a generalized analysis of both the COGC and City regulations and does not account for possible variation of how the setback rules are applied. Actual wellhead/facilities locations will be evaluated on a detailed site-specific analysis. This map is subject to change.

Please note: The new COGC regulations are applied to areas within the Loveland Growth Management Area (GMA). The proposed City Enhanced Standards are applied only within the city limits shown in the black dashed line.



Not to Scale

Date Saved: 2/19/2013
Prepared by City of Loveland, Development Services Department

Legend

- Setback Areas as defined by New COGC Regulations
- Setback Areas as defined by Proposed City Enhanced Standards
This map layer only shows where the standards are greater than the COG regulations within City Limits
- Loveland City Limits
- Growth Management Area
- Lakes and Ponds
- Big Thompson River

Attachment B

**CITY OF LOVELAND****FINANCE DEPARTMENT**

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 15
MEETING DATE: 3/5/2013
TO: City Council
FROM: Brent Worthington, Finance
PRESENTER: Brent Worthington

TITLE:

January 2013 Financial Report

RECOMMENDED CITY COUNCIL ACTION:

This is an information only item. No action is required.

DESCRIPTION:

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending January 31, 2013.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible
-

SUMMARY:

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures including detailed reports on tax revenue and health claims as of January 31, 2013. Citywide Revenue (excluding internal transfers) of \$18,534,244 is 96.7% of year to date (YTD) budget or \$625,694 under the budget. Sales Tax collections are 102.2% of the YTD budget or \$85,234 over budget. Building Material Use Tax is 213.3% of YTD budget, or \$96,637 over budget. Sales and Use Tax collections combined were 104.9% of YTD budget or \$203,225 over budget. When the combined sales and use tax for the current year are compared to 2012 for the same period last year, they are higher by 7.6% or \$306,157.

Citywide total expenditures of \$9,938,912 (excluding internal transfers) are 46.3% of the YTD budget or \$11,537,717 under the budget.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Snapshot report for January 2013



Snapshot

January 2013

Brent Worthington
Finance Director

Presented
March 5, 2013

January 2013 Snapshot

- Citywide Revenue
 - \$18.5 million, excluding transfers
 - 3.3% below budget projections

- Citywide Expenditures
 - \$9.9 million, excluding transfers
 - 53.7% below budget projections

- Citywide revenues exceed expenditures by \$8.6 million.

January 2013 Snapshot

- General Fund Revenue: \$6.5 million YTD
 - 4.3% above YTD Budget
 - 13.8% above same period last year
- Sales and Use Tax Revenue: \$4.1 million
 - 5.1% above budget projections
 - 7.6% above same period as last year
- Sales Tax only: \$4.0 million YTD
 - 2.2% above budget projections
 - 7.0% above same period last year

January 2013 Snapshot

Sales & Use Tax 2007 v. 2013



January 2013 Snapshot

Sales & Use Tax 2007 v. 2013 in Constant January 2007 Dollars



January 2013 Snapshot

- General Fund Expenditures
 - \$3.1 million YTD, excluding transfers
 - 13.4% below budget projections

- General Fund Revenues Exceed Expenditures by \$3.3 million

- Health Claims
 - January Claims \$911,898
 - 45.7% above January budget projections
 - 2013 YTD increased from \$696k to \$912k from same time as last year (31%)

January 2013 Snapshot

- Other highlights
 - Lodging tax YTD is \$39,181 (14.8% higher than 2012 YTD).

Lodging Tax Comparison





January 2013 Snapshot

Questions?

Brent Worthington
Finance Director

Presented
March 5, 2013

SnapShot

Monthly Financial Report

January 2013

A Snapshot In Time

- ◇ Citywide Revenue, excluding transfers between funds, \$18.5 million (3.3% below budget projections)
- ◇ Sales & Use Tax Collection, \$4.3 million (4.9% above budget projections)
- ◇ Citywide Expenditures, excluding transfers between funds, \$9.9 million (53.7% below budget projections)
- ◇ Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$8.6 million
- ◇ General Fund Revenue, excluding transfers between funds, \$6.5 million (4.3% above budget projections)
- ◇ General Fund Expenditures, excluding transfers between funds, \$3.1 million, (13.9 % below budget projections)
- ◇ General Fund Revenues exceed Expenditures by \$3.3 million

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Expenditures 2-3

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The Sales Tax Basics

January 2013	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2013	\$ 3,909,960	\$ 141,260	\$ 85,270	\$ 4,136,490
Actual 2013	\$ 3,995,194	\$ 168,734	\$ 181,907	\$ 4,345,836
% of Budget	102.2%	119.4%	213.3%	105.1%
Actual 2012	\$ 3,733,310	\$ 207,261	\$ 99,108	\$ 4,039,679
Change from prior year	7.0%	-18.6%	83.5%	7.6%

Financial Sustainability

The City remains in a strong financial position because of a tradition of conservative fiscal management. To uphold this tradition, the City ensures that operations are paid for by current-year revenues, fund balances are positive and reserves are sufficient to overcome financial challenges, and debt is considered extraordinary and avoided in favor of a pay-as-we-go system. This sound fiscal policy allows the City to achieve Council goals and priorities and to meet challenges as they arise.

In 2011, the City embarked upon a community-wide financial sustainability effort to ensure that shortfalls projected in its General Fund 10-year financial plan were addressed using a balanced plan consisting of 81% expenditure cuts and 19% revenue increases. The Financial Sustainability Strategy, adopted by the City Council on June 7, 2011, includes ongoing processes designed to ensure that the City retains a healthy financial outlook.

Although sales and use tax revenue is greater in 2012 than in 2007, inflation adjustment of the revenue shows that collections in 2012 are still below 2007 collections when inflation is taken into account. For five months in 2012, collections in real dollar terms trended above 2007 amounts, but only slightly, emphasizing the importance of continuing the strategy implementation.

Citywide Revenues & Expenditures

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Combined Statement of Revenues and Expenditures January 2013					
REVENUE		Current Month	YTD Actual	YTD Revised Budget	% of Budget
General Governmental					
1	General Fund	\$ 6,460,283	\$ 6,460,283	\$ 6,193,441	104.3%
2	Special Revenue	646,679	646,679	572,025	113.1%
3	Other Entities	1,859,940	1,859,940	3,328,960	55.9%
4	Internal Service	1,375,161	1,375,161	1,380,470	99.6%
5	Subtotal General Govt Operations	\$ 10,342,062	\$ 10,342,062	\$ 11,474,897	90.1%
6	Capital Projects	882,857	882,857	529,118	166.9%
Enterprise Fund					
7	Water & Power	6,294,333	6,294,333	6,117,340	102.9%
8	Stormwater	356,485	356,485	361,323	98.7%
9	Golf	230,624	230,624	205,990	112.0%
10	Solid Waste	427,883	427,883	471,271	90.8%
11	Subtotal Enterprise	\$ 7,309,325	\$ 7,309,325	\$ 7,155,924	102.1%
12	Total Revenue	\$ 18,534,244	\$ 18,534,244	\$ 19,159,939	96.7%
	Prior Year External Revenue		15,609,365		
	Increase From Prior Year		18.7%		
13	Internal Transfers	106,600	106,600	967,290	11.0%
14	Grand Total Revenues	\$ 18,640,844	\$ 18,640,844	\$ 20,127,229	92.6%
EXPENDITURES					
General Governmental					
15	General Fund	\$ 3,124,678	\$ 3,124,678	\$ 3,606,741	86.6%
16	Special Revenue	399,138	399,138	621,854	64.2%
17	Other Entities	423,044	423,044	4,224,132	10.0%
18	Internal Services	652,704	652,704	1,887,618	34.6%
19	Subtotal General Gov't Operations	\$ 4,599,564	\$ 4,599,564	\$ 10,340,345	44.5%
20	Capital	819,113	819,113	5,943,937	13.8%
Enterprise Fund					
21	Water & Power	4,138,216	4,138,216	4,564,490	90.7%
22	Stormwater	92,275	92,275	128,907	71.6%
23	Golf	88,061	88,061	177,169	49.7%
24	Solid Waste	201,683	201,683	321,781	62.7%
25	Subtotal Enterprise	\$ 4,520,235	\$ 4,520,235	\$ 5,192,347	87.1%
26	Total Expenditures	\$ 9,938,912	\$ 9,938,912	\$ 21,476,629	46.3%
	Prior Year External Expenditures		10,431,310		
	Increase (-Decrease) From Prior Year		-4.7%		
27	Internal Transfers	106,600	106,600	967,290	11.0%
28	Grand Total Expenditures	\$ 10,045,512	\$ 10,045,512	\$ 22,443,919	44.8%
** Based on seasonality of receipts and expenditures since 1995.					

Special Revenue Funds: Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures, Transit, Transportation.

General Government Capital Projects Fund: Capital Expansion Fee Funds, Park Improvement, Conservation Trust, Open Space, Art In Public Places.

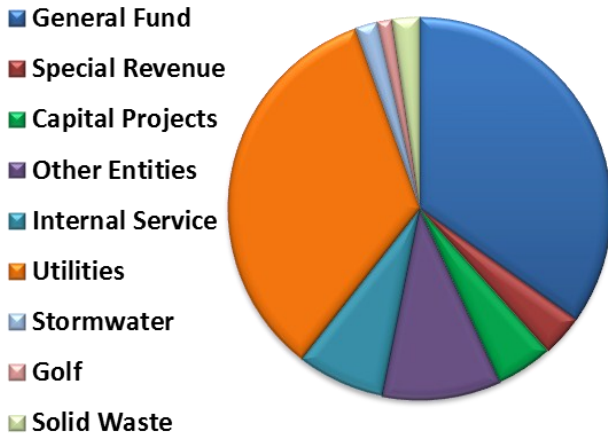
Other Entities Fund: Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

Internal Service Funds: Risk/Insurance, Fleet, Employee Benefits.

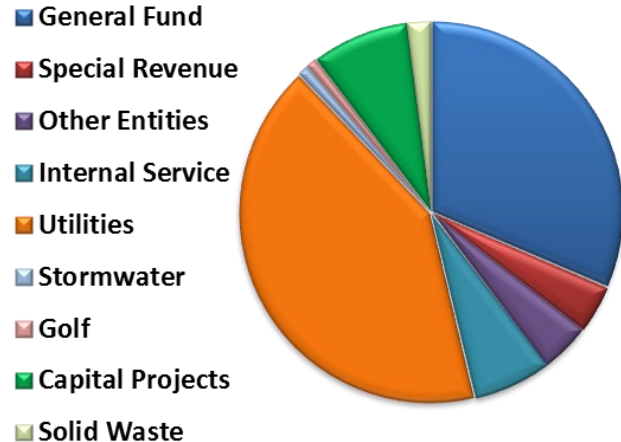
Monthly Financial Report

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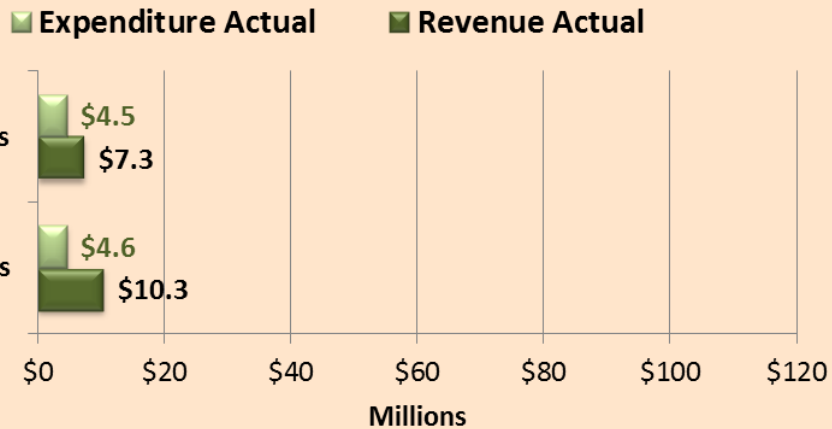
YTD Operating Revenues of \$18.5 Million



YTD Operating Expenditures of \$9.9 Million



By Comparison, Excluding Transfers



- ◆ General Fund Revenue, excluding transfers between funds, \$6.5 million (4.3% above budget projections)
* 13.8% above 2012 YTD
- ◆ General Fund Expenditures, excluding transfers between funds, \$3.1 million (13.4% below budget projections)
* 30.5% below 2012 YTD
- ◆ Water & Power Revenue, excluding transfers between funds, \$6.3 million (2.9% above budget projections)
* 7.3% above 2012 YTD
- ◆ Water & Power Expenditures, excluding transfers between funds, \$4.1 million (9.3% below budget projections)
* 12.4% above 2012 YTD
- ◆ Other Entities Fund Revenue, excluding transfers between funds, \$1.9 million (44.1% below budget projections)
* 136.3% above 2012 YTD
- ◆ Other Entities Expenditures, excluding transfers between funds, \$0.4 million (90.0% below budget projections)
* 15.9% above 2012 YTD

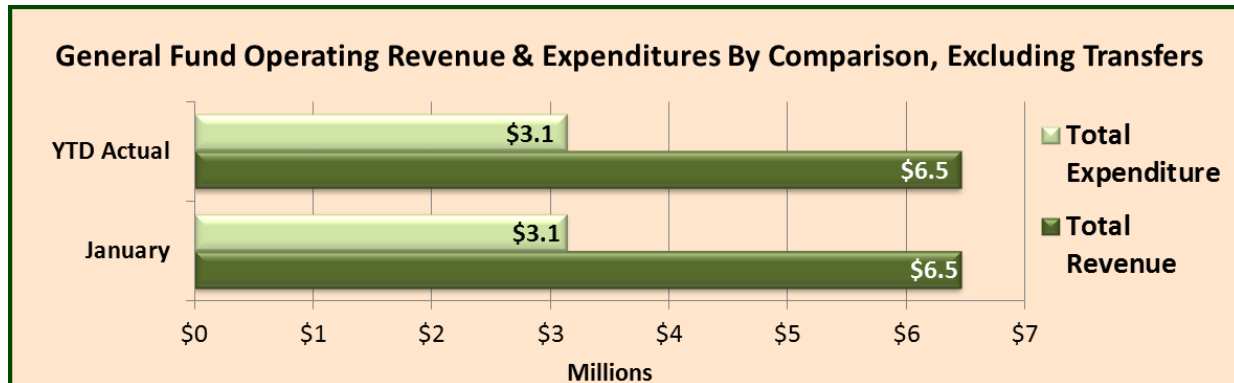
General Fund Revenues & Expenditures

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General Fund Revenue & Expenditures January 2013				
REVENUES	January 2013	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ (1,738)	\$ (1,738)	\$ -	0.0%
3 Sales tax	3,995,194	3,995,194	3,909,960	102.2%
4 Building use tax	181,907	181,907	85,270	213.3%
5 Auto use tax	168,734	168,734	141,260	119.4%
6 Other taxes	309,548	309,548	122,030	253.7%
7 Intergovernmental	4,538	4,538	56,020	8.1%
8 License & permits	-	-	-	
9 Building permits	168,895	168,895	110,220	153.2%
10 Other permits	55,834	55,834	21,067	265.0%
11 Charges for services	988,938	988,938	960,719	102.9%
12 Fines & forfeitures	58,559	58,559	89,170	65.7%
13 Interest income	17,337	17,337	28,340	61.2%
14 Miscellaneous	512,537	512,537	669,385	76.6%
15 Subtotal	\$ 6,460,283	\$ 6,460,283	\$ 6,193,441	104.3%
16 Interfund transfers	56,570	56,570	56,570	100.0%
17 Total Revenue	\$ 6,516,853	\$ 6,516,853	\$ 6,250,011	104.3%
EXPENDITURES				
Operating Expenditures				
18 Legislative	\$ 9,713	\$ 9,713	\$ 15,329	63.4%
19 Executive & Legal	78,979	78,979	128,455	61.5%
20 Economic Development	188,054	188,054	64,002	293.8%
21 Cultural Services	78,810	78,810	135,076	58.3%
22 Development Services	93,351	93,351	169,085	55.2%
23 Finance	151,476	151,476	256,389	59.1%
24 Fire & Rescue	4,975	4,975	-	0.0%
25 Human Resources	43,370	43,370	57,325	75.7%
26 Information Technology	144,654	144,654	588,141	24.6%
27 Library	101,643	101,643	208,896	48.7%
28 Parks & Recreation	309,863	309,863	400,196	77.4%
29 Police	792,470	792,470	972,811	81.5%
30 Public Works	195,529	195,529	321,145	60.9%
31 Non-Departmental	941,913	941,913	322,390	292.2%
32 Subtotal Operating	\$ 3,134,799	\$ 3,134,799	\$ 3,639,241	86.1%
33 Internal Transfers	44,509	44,509	416,470	10.7%
34 Total Expenditures	\$ 3,179,308	\$ 3,179,308	\$ 4,055,711	78.4%

Monthly Financial Report

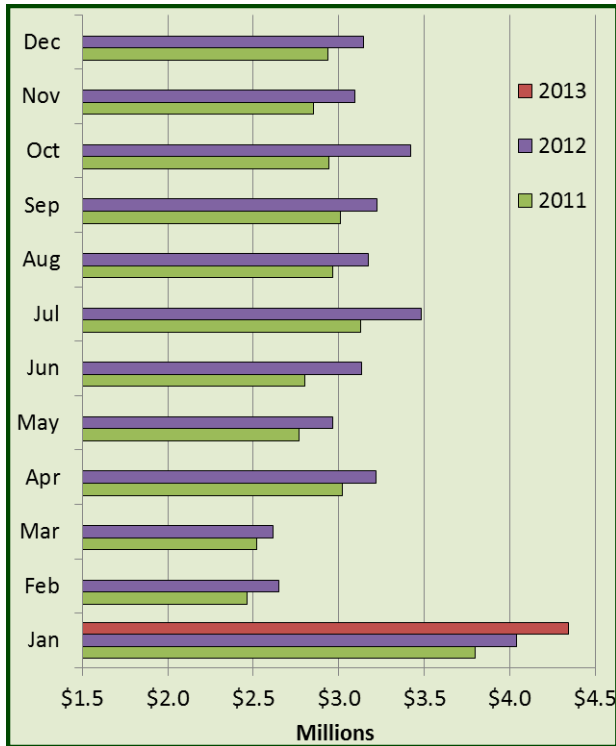
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Capital Projects \$500,000+

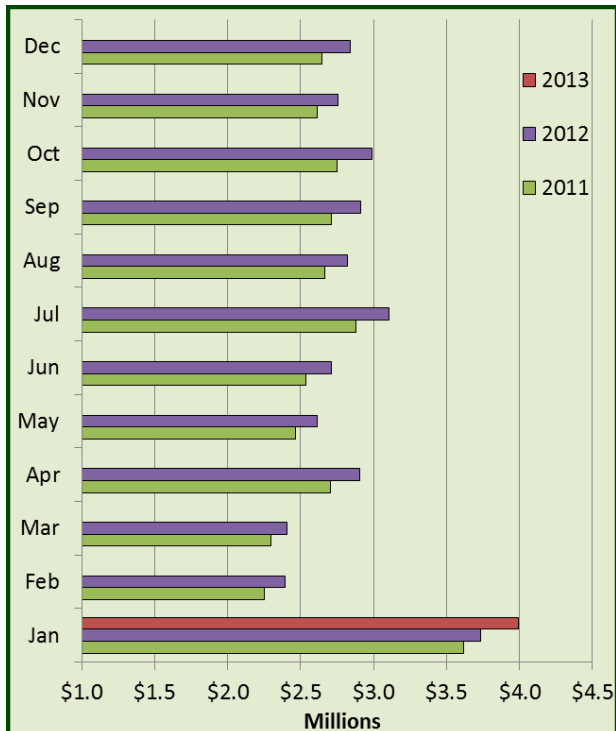
Project Title	2013 Budget	2013 Expenditures	Remaining 2012 Budget	% of 2013 Budget (Exp/Bud)
Water Capital				
Floc/Sed #1 and #2 Retrofit	\$ 600,000	\$ -	\$ 600,000	0.00%
Filter Plant No. 1 (Demolition & equip to 38 MGD)	598,400	-	\$ 598,400	0.00%
Filter Plant No. 1 Pipe Gallery Improvements	908,240	496,360	\$ 411,880	54.65%
W 1st St (Tyler to Lily)	725,910	-	\$ 725,910	0.00%
Lagoon 8 (ready for Deskins retrofit)	1,050,000	-	\$ 1,050,000	0.00%
Raw Water Capital				
Windy Gap Firming Project	618,000	-	\$ 618,000	0.00%
Purchase of Colorado-Big Thompson Project (CBT)	500,000	-	\$ 500,000	0.00%
Wastewater Utility Capital				
Digester Mixing System	1,200,000	-	\$ 1,200,000	0.00%
Digester Building Code Compliance	900,000	-	\$ 900,000	0.00%
Power Capital				
Airport Sub North to Crossroads and South to Kendall Pkwy	683,260	-	\$ 683,260	0.00%
Callisto (vault 2716) East along 5th, North on Boyd Lake to Railroad Xing	570,000	-	\$ 570,000	0.00%
SW219 on old railroad North on VanBuren, East on 22nd to SW126	670,250	-	\$ 670,250	0.00%
Crossroads Substation - purchase new transformer	600,000	-	\$ 600,000	0.00%
Crossroads Substation - new switgear & transformer install	512,900	-	\$ 512,900	0.00%
Stormwater Capital				
29th and Monrie Outfall (Dry Creek)	1,000,000	-	1,000,000	0.00%
Streets Transportation Program				
2013 Street Rehabilitation	4,194,250	3,655	4,190,595	0.09%
All Other				
Facilities Maintenance Capital Projects	500,000	-	500,000	0.00%
Open Lands Acquisition	1,290,000	8,842	1,281,158	0.69%
Fire Station 2 Relocation	\$ 2,899,980	\$ -	\$ 2,899,980	0.00%

Sales & Use Tax



	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,799,760	\$ 4,039,679	\$ 4,345,836	\$ 4,136,490	5.1%
Feb	2,465,447	2,649,229		\$ 2,528,010	
Mar	2,517,162	2,618,052		\$ 3,028,120	
Apr	3,022,770	3,215,437		\$ 3,286,040	
May	2,769,526	2,966,032		\$ 2,991,970	
Jun	2,800,184	3,136,014		\$ 3,127,370	
Jul	3,129,254	3,480,123		\$ 3,495,310	
Aug	2,961,686	3,171,055		\$ 3,154,400	
Sep	3,008,637	3,225,155		\$ 3,211,640	
Oct	2,944,433	3,421,098		\$ 3,327,150	
Nov	2,853,360	3,092,095		\$ 3,091,770	
Dec	2,933,671	3,142,793		\$ 3,141,380	
	\$35,205,889	\$ 38,156,762	\$ 4,345,836	\$38,519,650	5.1%
YTD	\$ 3,799,760	\$ 4,039,679	\$ 4,345,836	\$ 4,136,490	5.1%

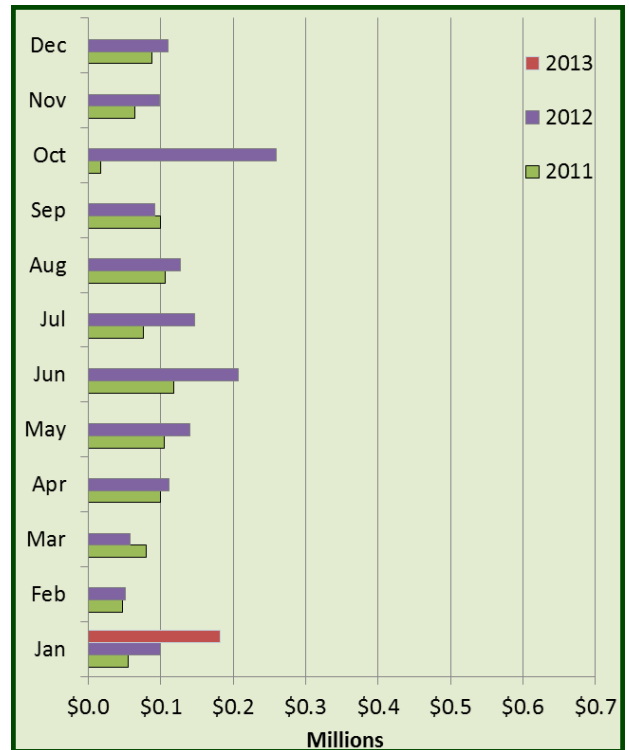
Retail Sales Tax



	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 3,613,881	\$ 3,733,310	3,995,194	\$ 3,909,960	2.2%
Feb	2,249,749	2,390,409		2,285,380	
Mar	2,299,237	2,403,380		2,715,660	
Apr	2,702,024	2,905,558		3,008,620	
May	2,462,213	2,614,500		2,710,640	
Jun	2,536,541	2,711,906		2,878,350	
Jul	2,882,075	3,105,564		3,210,310	
Aug	2,667,674	2,823,319		2,866,890	
Sep	2,710,738	2,909,008		2,909,990	
Oct	2,746,866	2,991,033		3,035,070	
Nov	2,610,980	2,757,932		2,824,870	
Dec	2,647,162	2,841,959		2,863,910	
	\$32,129,139	\$34,187,877	\$3,995,194	\$35,219,650	2.2%
YTD	\$ 3,613,881	\$ 3,733,310	\$3,995,194	\$ 3,909,960	2.2%

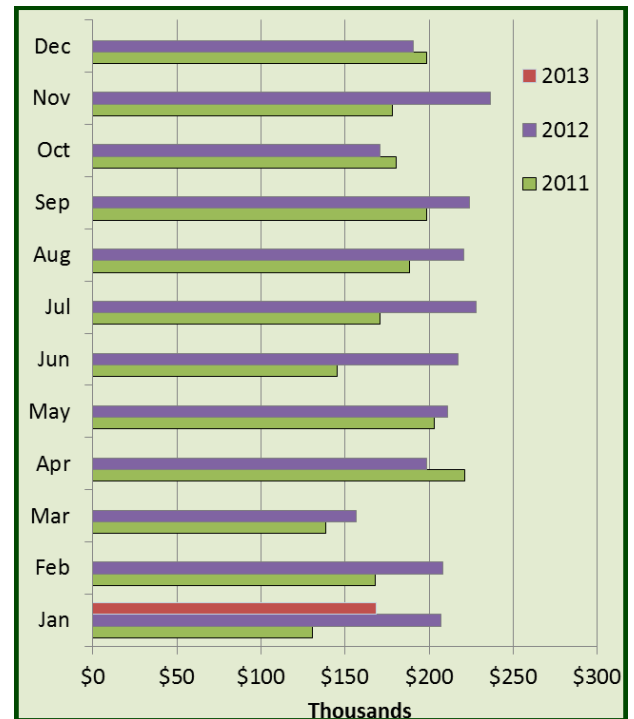
Building Materials Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 55,542	\$ 99,108	\$181,907	\$ 85,270	113.3%
Feb	47,621	50,703		83,620	
Mar	79,590	57,845		164,570	
Apr	99,569	111,197		110,120	
May	104,373	140,470		104,700	
Jun	118,318	207,024		100,770	
Jul	76,488	146,570		108,080	
Aug	105,871	127,261		104,580	
Sep	99,544	92,415		117,480	
Oct	17,021	259,279		96,490	
Nov	64,211	97,778		100,250	
Dec	88,033	110,414		124,070	
	\$956,181	\$1,500,063	\$181,907	\$1,300,000	113.3%
YTD	\$ 55,542	\$ 99,108	\$181,907	\$ 85,270	113.3%



Motor Vehicle Use Tax

	2011	2012	2013	2013 Budget	+ / - Budget
Jan	\$ 130,337	\$ 207,261	\$168,734	\$ 141,260	19.4%
Feb	168,077	208,117		159,010	
Mar	138,335	156,828		147,890	
Apr	221,177	198,682		167,300	
May	202,940	211,062		176,630	
Jun	145,325	217,084		148,250	
Jul	170,691	227,989		176,920	
Aug	188,141	220,475		182,930	
Sep	198,355	223,732		184,170	
Oct	180,546	170,786		195,590	
Nov	178,169	236,385		166,650	
Dec	198,476	190,420		153,400	
	\$2,120,569	\$2,468,822	\$168,734	\$2,000,000	19.4%
YTD	\$ 130,337	\$ 207,261	\$168,734	\$ 141,260	19.4%



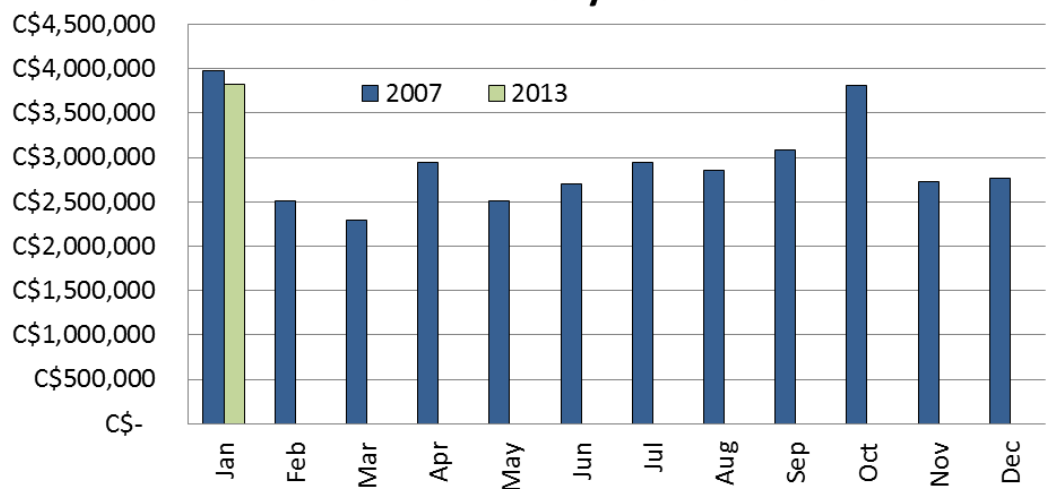
	2007	2013
Jan	\$ 3,972,513	\$ 4,345,836
Feb	2,520,486	
Mar	2,319,579	
Apr	3,003,780	
May	2,581,830	
Jun	2,781,786	
Jul	3,022,815	
Aug	2,931,667	
Sep	3,176,883	
Oct	3,936,330	
Nov	2,835,420	
Dec	2,869,916	
	\$35,953,006	\$ 4,345,836

Sales & Use Tax 2007 v. 2013



	2007	2013
Jan	\$ 3,972,513	\$ 3,819,987
Feb	2,507,072	
Mar	2,286,415	
Apr	2,941,724	
May	2,513,134	
Jun	2,702,532	
Jul	2,937,441	
Aug	2,854,102	
Sep	3,084,330	
Oct	3,813,494	
Nov	2,730,719	
Dec	2,765,797	
	\$ 3,972,513	\$ 3,819,987

Sales & Use Tax 2007 v. 2013 in Constant January 2007 Dollars



Monthly Financial Report

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Retail Sales Tax 2007 v. 2013



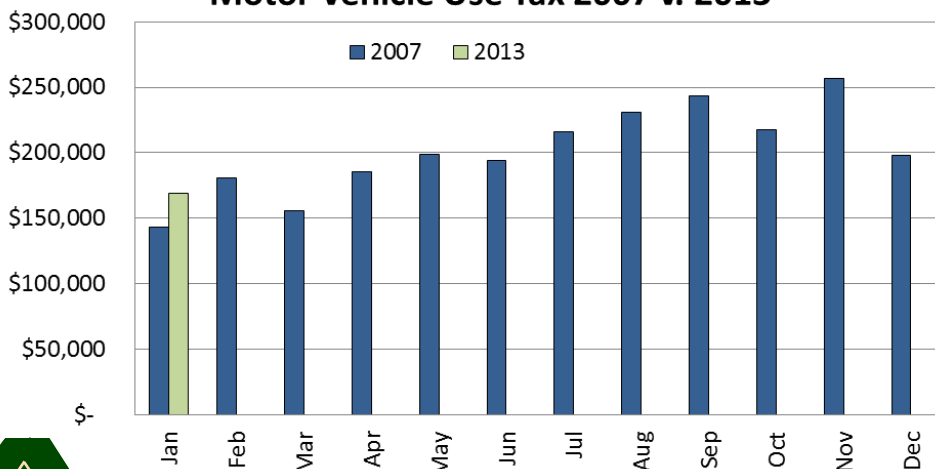
	2007	2013
Jan	\$ 3,324,067	\$ 3,995,194
Feb	2,167,873	
Mar	1,994,635	
Apr	2,437,958	
May	2,146,685	
Jun	2,300,533	
Jul	2,640,223	
Aug	2,376,534	
Sep	2,332,844	
Oct	2,632,667	
Nov	2,419,051	
Dec	2,464,559	
	\$29,237,629	\$ 3,995,194

Building Material Use Tax 2007 v. 2013



	2007	2013
Jan	\$ 505,441	\$ 181,907
Feb	171,835	
Mar	169,579	
Apr	380,285	
May	236,140	
Jun	287,300	
Jul	166,446	
Aug	324,125	
Sep	600,704	
Oct	1,086,325	
Nov	159,382	
Dec	207,723	
	\$ 4,295,285	\$ 181,907

Motor Vehicle Use Tax 2007 v. 2013



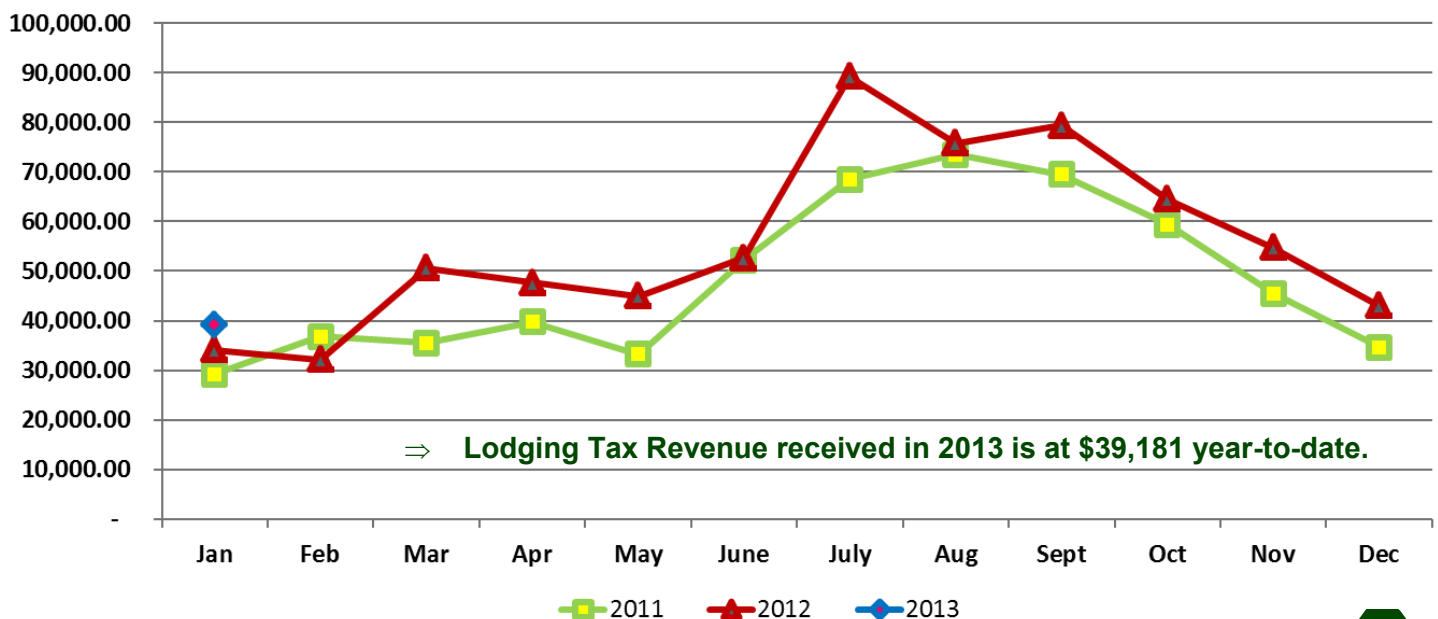
	2007	2013
Jan	\$ 143,005	\$ 168,734
Feb	180,778	
Mar	155,365	
Apr	185,537	
May	199,005	
Jun	193,953	
Jul	216,146	
Aug	231,008	
Sep	243,336	
Oct	217,338	
Nov	256,987	
Dec	197,634	
	\$ 2,420,092	\$ 168,734

Sales Tax Collections

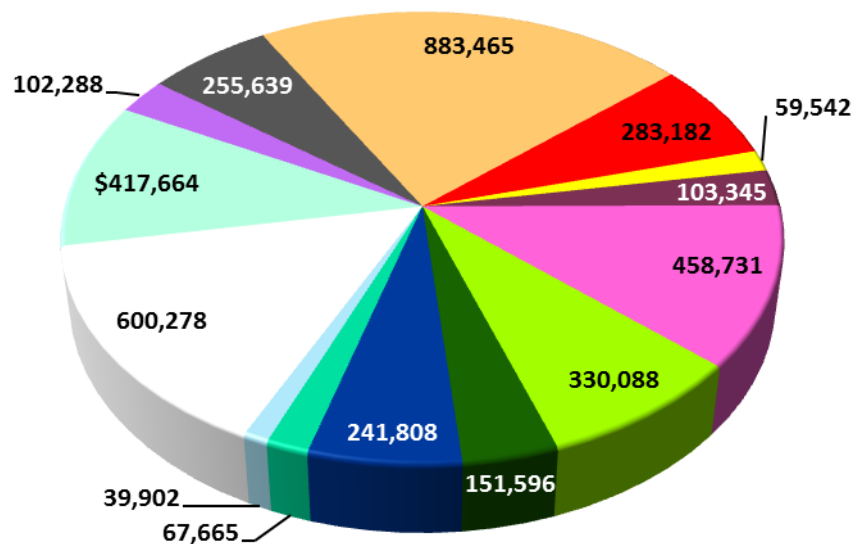
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Description	YTD 2013	YTD 2012	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 947,878	\$ 905,190	\$ 42,688	4.7%	23.7%	23.7%
Grocery Stores & Specialty Foods	473,402	455,958	17,444	3.8%	11.8%	35.6%
Restaurants & Bars	396,980	350,955	46,026	13.1%	9.9%	45.5%
Clothing & Clothing Accessories Stores	318,686	316,851	1,835	0.6%	8.0%	53.5%
Sporting Goods, Hobby, Book & Music Stores	277,064	234,005	43,058	18.4%	6.9%	60.4%
Motor Vehicle Dealers, Auto Parts & Leasing	230,014	178,430	51,584	28.9%	5.8%	66.2%
Building Material & Lawn & Garden Supplies	186,243	157,972	28,271	17.9%	4.7%	70.8%
Utilities	165,910	179,651	(13,741)	-7.6%	4.2%	75.0%
Used Merchandise Stores	152,628	156,450	(3,822)	-2.4%	3.8%	78.8%
Broadcasting & Telecommunications	123,760	122,104	1,656	1.4%	3.1%	81.9%
Beer, Wine & Liquor Stores	90,904	79,044	11,859	15.0%	2.3%	84.2%
Health & Personal Care Stores	76,127	71,643	4,484	6.3%	1.9%	86.1%
Consumer Goods & Commercial Equipment Rental	75,446	61,480	13,966	22.7%	1.9%	88.0%
Electronic Shopping & Mail-Order Houses	69,288	58,109	11,179	19.2%	1.7%	89.7%
Electronics & Appliance Stores	65,131	98,004	(32,873)	-33.5%	1.6%	91.3%
Hotels, Motels & Other Accommodations	62,157	48,865	13,293	27.2%	1.6%	92.9%
Furniture & Home Furnishing Stores	53,211	50,673	2,538	5.0%	1.3%	94.2%
Office Supplies, Stationery & Gift Stores	37,278	42,249	(4,971)	-11.8%	0.9%	95.2%
Gasoline Stations with Convenience Stores	20,836	19,475	1,360	7.0%	0.5%	95.7%
All Other Categories	172,251	146,201	26,051	17.8%	4.3%	100.0%
Total	\$ 3,995,194	\$ 3,733,309	\$ 261,885	7.0%	100.0%	

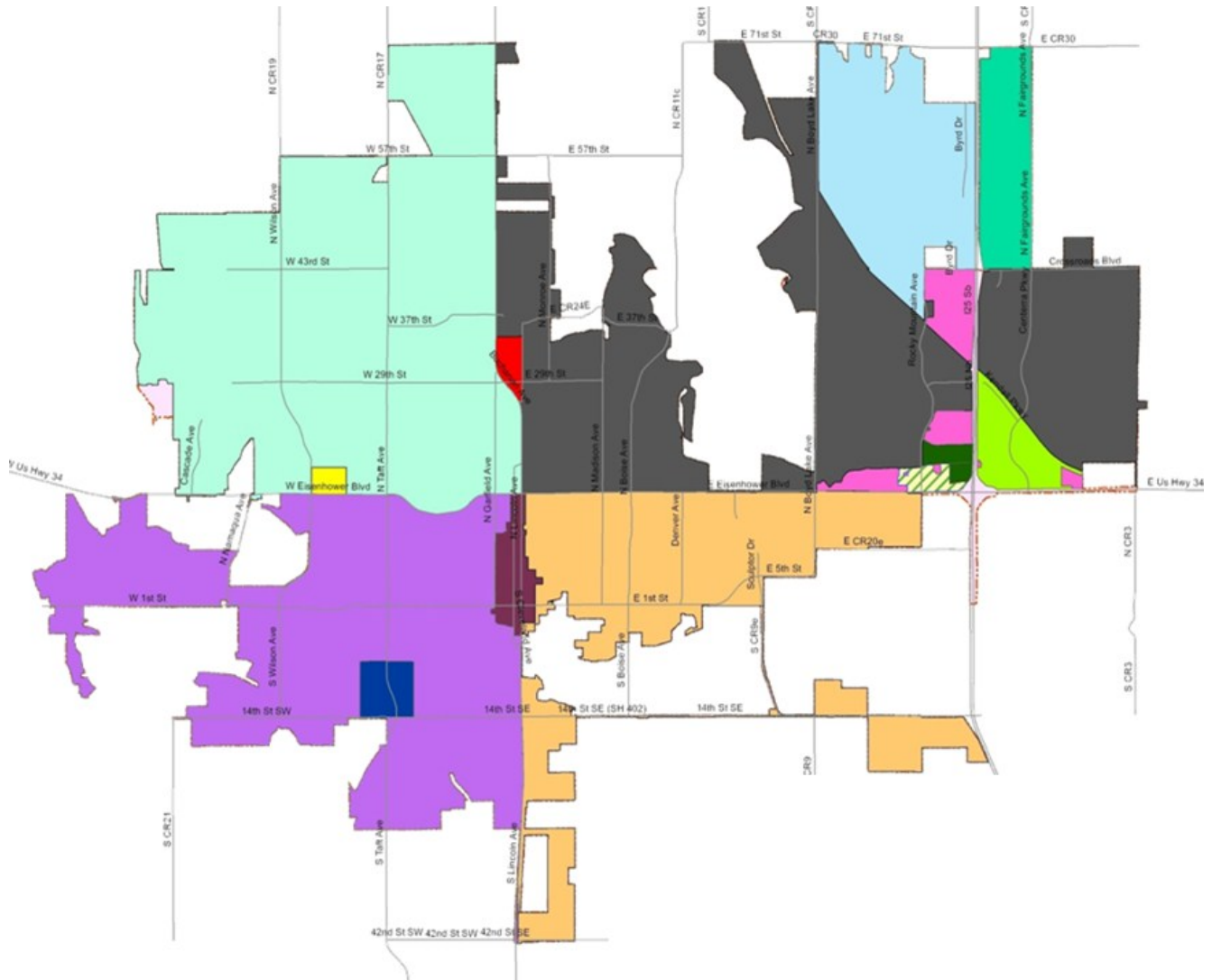
Lodging Tax



Geographical Area		YTD 2013	YTD 2012	Change
North West Loveland		\$ 417,664	\$ 403,493	3.5%
South West Loveland		102,288	90,998	12.4%
North East Loveland		255,639	214,670	19.1%
South East Loveland		883,465	819,596	7.8%
Orchards Shopping Center		283,182	263,956	7.3%
Columbine Shopping Center		59,542	57,831	3.0%
Downtown		103,345	99,473	3.9%
Centerra		458,731	394,491	16.3%
Promenade Shops		330,088	345,153	-4.4%
Outlet Mall		151,596	167,326	-9.4%
Thompson Valley Shopping Center		241,808	235,145	2.8%
The Ranch		67,665	51,626	31.1%
Airport		39,902	22,519	77.2%
All Other Areas		600,278	567,031	5.9%
Total		<u>\$3,995,194</u>	<u>\$3,733,309</u>	<u>7.0%</u>



Map →



For a larger view of this map, please visit:

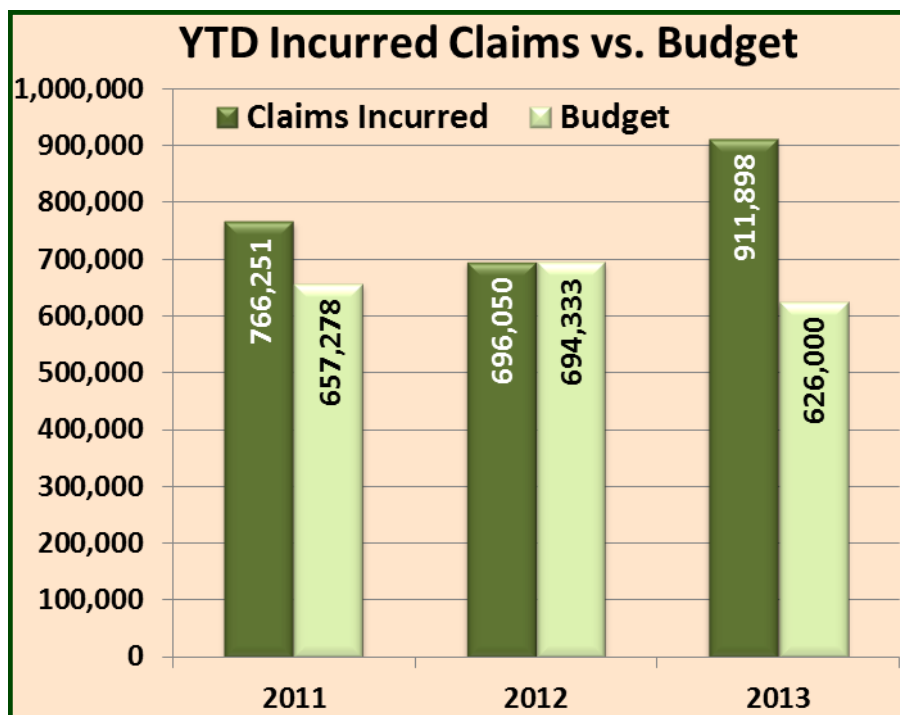
- ⇒ www.cityofloveland.org
- ⇒ Departments
- ⇒ Finance
- ⇒ Administration
- ⇒ Financial Reports
- ⇒ View Monthly Financial Reports
- ⇒ “Click here” below monthly SnapShot links

click + magnifier to zoom

Claims Incurred					\$ Over / (Under) Budget	% Over / (Under) Budget
		OAP	HRA	Total	Budget	
2013	January	714,218	197,680	911,898	626,000	285,898 45.7%
	YTD	714,218	197,680	911,898	626,000	285,898 45.7%
2012	January	608,693	87,357	696,050	694,333	1,717 0.2%
	YTD	608,693	87,357	696,050	694,333	1,717 0.2%
Change	January	105,525	110,323	215,848		
	% January	17.3%	126.3%	31.0%		
	YTD	105,525	110,323	215,848		
	% YTD	17.3%	126.3%	31.0%		

⇒ OAP—Open Access Plan

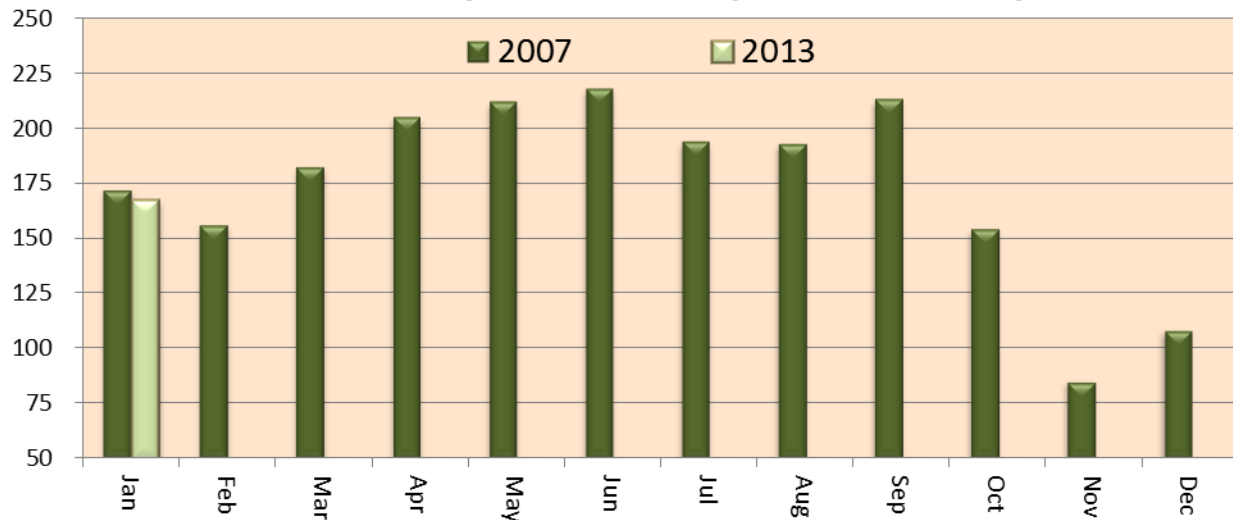
⇒ HRA—Health Reimbursement Arrangement



Comparison of YTD Claims Over \$25k				
January	2010	2011	2012	2013
# of claims	5	6	5	4
YTD Cost of high claims	\$780,057	\$230,053	\$233,341	\$158,231

⇒ 2013 # of StopLoss claims: 0
(claims over \$150k paid by StopLoss Carrier)

Building Permit Comparison History



Measures	Jan. 2011	Jan. 2012	Jan. 2013	2011 YTD	2012 YTD	2013 YTD
# of Building Permits	122	153	167	122	153	167
Building Permit Valuations	\$4,578,658	\$7,634,814	\$11,544,017	\$ 4,578,658	\$ 7,634,814	\$ 11,544,017
# of Certified Occupancies	23	16	16	23	16	16
Net # of Sales Tax Licenses	(45)	(72)	(164)	(45)	(72)	(164)
New Residential Electric Meter Sets	74	5	12	74	5	12
# of Utility Bills Sent	35,438	35,981	36,413	35,438	35,981	36,413
Rounds of Golf	1,087	1,749	1,511	1,087	1,749	1,511
Average Health Claim Costs/Emp.	\$1,218.20	\$1,104.84	\$1,425	\$1,218.20	\$1,104.84	\$1,425
KWH Demand (kH)	99,031	97,112	98,412	99,031	97,112	98,412
KWH Purchased (kwh)	61,434,059	61,259,661	62,563,704	61,434,059	61,259,661	62,563,704
Gallons of Water Sold	149,281,685	147,790,418	150,745,377	149,281,685	147,790,418	150,745,377
# of Workers' Comp Claims	13	11	5	13	11	5
\$ of Workers' Comp Claims Paid	\$ 774.00	\$ 87,948.00	\$ 35,290.45	\$ 774.00	\$ 87,948.00	\$ 35,290.45
# of Open Claims Current Year	10	3	5	10	3	5
# of Total Open Claims	18	13	12	18	13	12
\$ of Total Open Claims	\$ 118,450	\$ 168,332	\$ 201,377	\$ 118,450	\$ 168,332	\$ 201,377
\$ of Lodging Tax Collected	\$ 29,157.37	\$ 34,126.42	\$ 39,181.41	\$ 29,157.37	\$ 34,126.00	\$ 39,181.41

For more information regarding this report contact:

Brent Worthington, Finance Director

970.962.2300 or

brent.worthington@cityofloveland.org

**Financial Sustainability
Strategies Can Be
Found At:**

CityofLoveland.org

- ⇒ **Departments**
- ⇒ **Finance**
- ⇒ **Administration**
- ⇒ **Financial Reports**
- ⇒ **Financial
Sustainability
Strategies**

The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at bettie.greenberg@cityofloveland.org or 970-962-3319





CITY OF LOVELAND
CITY MANAGER'S OFFICE

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AGENDA ITEM: 16
MEETING DATE: 3/5/2013
TO: City Council
FROM: Alan Krcmarik, Executive Fiscal Advisor
PRESENTER: Alan Krcmarik

TITLE:

Investment Report for January 2013

RECOMMENDED CITY COUNCIL ACTION:

This is an information only item. No Council action is required.

DESCRIPTION: The budget estimate for investment earnings for 2013 is \$2,760,560. For January, the amount posted to the investment account is \$100,323 including realized gains. Actual year-to-date earnings are lower than the budget projection by \$129,527. Based on the monthly statement, the estimated annualized 1.18% yield on the securities held by USBank was down from last month and under the annual target rate of 1.20% for 2013. Reinvestment rates have been near record low levels, much lower than the budget projection.

SUMMARY: At the end of January the City's portfolio had an estimated market value of \$213.8 million, about \$1.8 million more than a month ago. Of this amount, USBank held (including accrued interest) \$185.5 million in trust accounts; other funds are held in local government investment pools, in operating accounts at WellsFargo Bank, and a few miscellaneous accounts. Interest rates trended significantly lower in 2012 and despite an upward move in December and January, are projected to remain low for years. Investments are in US Treasury Notes, high-rated US Agency Bonds, high-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to about \$2.1 million annually.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Investment Focus January 2013



Investment Focus

Monthly Investment Report

January 2013

What's in here?

Focal Points	1
Gain / Loss	
Rate Trends	2
Cash Statement	3
Portfolio size	4
Investment types	
Transactions /	5
Maturity	
Future Scan	6

Focal Points

- * **2013 targets for the City's portfolio: 1) the interest rate target is **1.2%**; 2) the earnings goal = **\$2,760,420**.**
- * **City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.**
- * **Revenue posted to accounts = **\$100,323** – **56% under target**.**
So far this year, there are no realized gains to report.
- * **Each 1% of the total portfolio amounts to about \$2.1 million.**
- * **The month end market value shows the unrealized loss increased, estimated to be **\$700,740** at the end of January.**

States Look to Pay Repair Tab for Creaky Infrastructure

"Across the country, governors are floating ideas to raise revenue for repairs on basic infrastructure." The "problems have been compounded by decades of underfunding and delaying construction and renovation of roads, bridges and other essential infrastructure, such as utilities. . . Governors and lawmakers, many of whom have pledged not to raise taxes, are left in an uncomfortable position of seeking revenue through fees and taxes."

(Source: Kris Maher, in *The Wall Street Journal* February 6, 2013.)

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 9,243,362	\$9,243,362	--
Investment Pools	18,574,724	18,574,724	--
Money Markets	<u>463,490</u>	<u>463,490</u>	--
Subtotal	\$ 28,281,575	\$ 28,281,575	--
Notes and Bonds	<u>186,208,834</u>	<u>185,508,093</u>	\$ (700,740)
Total Portfolio	\$ 214,490,409	\$ 213,789,668	\$ (700,740)
Data Sources	(Morgan Stanley)	(US Bank)	

Due to rounding, column and row totals may not add exactly.

Treasury rate trends / Infrastructure tab



Interest rates on US treasuries finished the month of January up when compared to the end of December.

The 2-year treasury rose two basis points in January. The 3-year was 6 points higher. The 5-year finished 16 basis points higher.

The rate shifts decreased the value of securities in the portfolio. Rates on purchases moved higher.

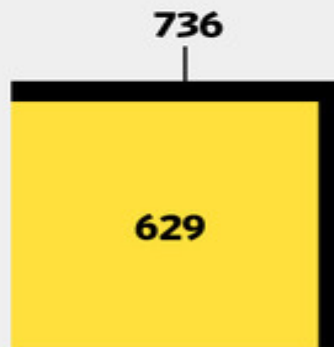
From the Ground Up

Projected needs and funding for infrastructure systems based on current trends, through 2020 (all figures in billions)

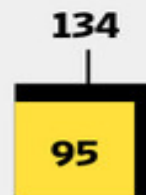
SURFACE TRANSPORTATION



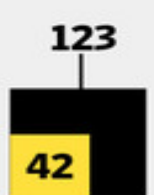
ELECTRICITY



AIRPORTS



WATER/WASTE-WATER



Note: Figures in 2012 dollars

Source: American Society of Civil Engineers

The Wall Street Journal

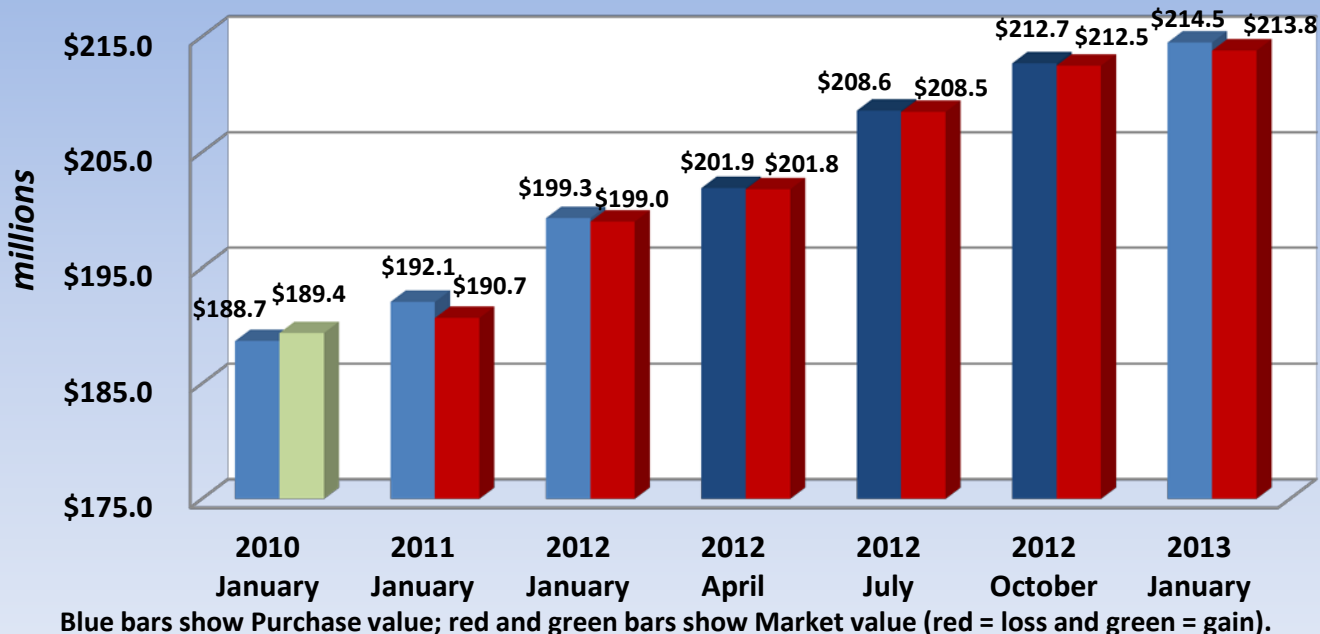
Cash Position Summary

Cash & Reserves (unaudited)

		2013 Beginning	YTD Activity	Month End Total
	Restricted Reserves	Due to rounding, column and row totals may not add exactly.		
1	Capital Expansion Fees	\$ 34,970,340	\$ 674,980	\$ 35,645,320
2	Water System Impact Fees	8,946,414	(177,933)	8,768,480
3	Raw Water Revenue – Windy Gap	20,894,965	81,919	20,976,884
4	Wastewater System Imp. Fees	5,132,121	145,345	5,277,466
5	Storm Drain System Imp. Fees	1,535,634	15,290	1,550,924
6	Power Plant Investment Fees	8,238,949	223,021	8,461,970
7	Cemetery Perpetual Care	2,629,268	10,279	2,639,547
8	Other Restricted	29,211,947	1,249,007	31,161,378
9	Total Restricted	\$ 112,260,062	\$ 2,221,907	\$ 114,481,967
	Committed/ Assigned			
10	General Fund	\$ 11,224,908	\$ 86	\$ 11,224,994
11	Enterprise Funds	5,000,009	(59,896)	4,940,113
12	Internal Service Funds	19,540,634	608,522	20,149,156
13	Total Reserves	\$ 35,765,551	\$ 548,712	\$ 36,314,263
14	Total Restricted and Reserved	\$ 148,025,613	\$ 2,770,619	\$ 150,796,231
	Unassigned Balance			
15	General Fund	\$ 24,642,889	\$ 931,256	\$ 25,574,145
16	Airport	1,208,129	(106,781)	1,101,348
17	Internal Service – Vehicle Maint	245,629	27,346	272,975
18	Enterprise Funds	37,118,282	(246,221)	36,872,060
19	Total Unrestricted	\$ 63,214,928	\$ 605,600	\$ 63,820,528
20	TOTAL CASH	\$ 211,240,541	\$ 3,376,219	\$ 214,616,760

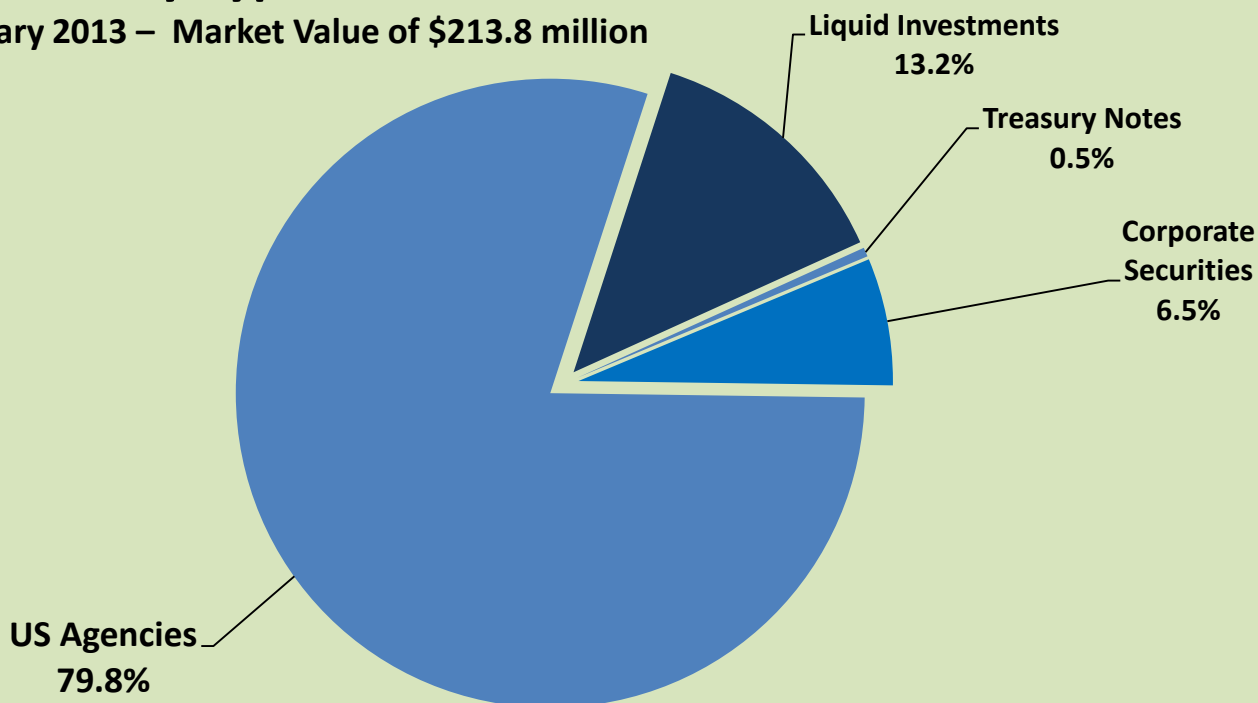
Portfolio Size / Types of Investments

Portfolio Size since January 2010



Portfolio by Type of Investment

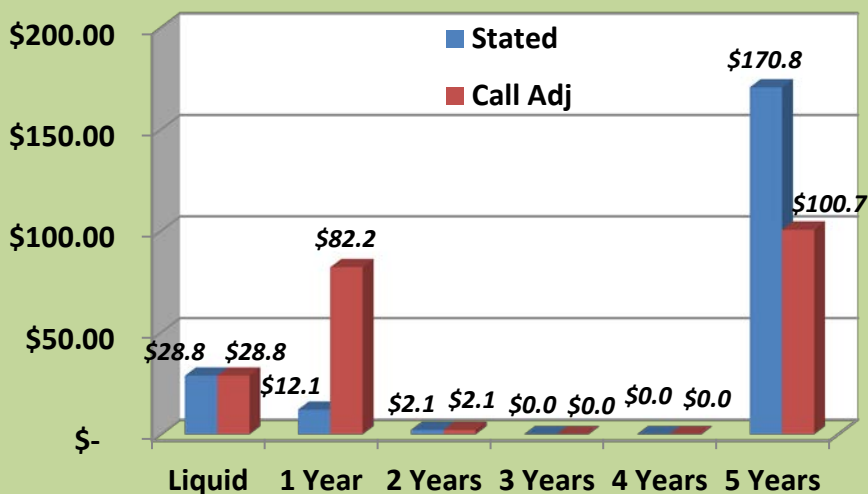
January 2013 – Market Value of \$213.8 million



Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
<u>Purchases</u>				
Federal Home Loan Bank	01/30/2018	\$ 5,000,000	\$ 5,000,000.00	1.000%
Fed Home Loan Mort. Corp.	01/22/2018	5,000,000	5,000,000.00	0.950%
Fed Home Loan Mort. Corp.	01/11/2018	5,000,000	5,000,000.00	1.000%
US Treasury Note	10/31/2017	<u>1,000,000</u>	<u>994,250.00</u>	0.750%
		\$ 16,000,000	\$ 15,994,250.00	
<u>Matured</u>				
General Electric Corp Note	01/15/2013	\$ 1,500,000	\$ 1,080,600.00	5.450%
Wells Fargo Corp Note	01/31/2013	1,000,000	1,593,750.00	4.375%
US Treasury Note	01/31/2013	<u>1,008,000</u>	<u>1,020,065.76</u>	2.875%
		\$ 3,508,000	\$ 3,694,415.76	
<u>Called</u>			<u>Call Value \$</u>	
Fed Home Loan Mort. Corp.	01/18/2017	\$ 5,000,000	\$ 5,000,000.00	1.500%
<u>Sales</u>			<u>Gain \$</u>	
None this month				

Portfolio by Estimated Maturity Term
(in millions - Total = \$213.8 at the end of January 2013)



The target rate for 2013 is 1.2%. Rates are now up slightly ahead of near record lows. For January, the portfolio proceeds were below the earnings target level for 2013.

To support earnings or to reposition the portfolio, bonds may be sold. To date, no gains on sales have been taken.

The blue bars show the stated term. Red bars show the calls. Most of the five year bonds will be called early.



Future Scan: Fed Chairman Bernanke urges gradual cuts

- ❖ The **Federal Open Market Committee** (“FOMC” or “Fed” or “Committee”) met on January 29-30.
 - “Minutes from the Fed's January meeting spooked markets because they showed officials expressing concern that the Fed's unconventional policies could spark financial instability.”
 - “Federal Reserve Board Chairman Ben Bernanke said Tuesday (2/26) the benefits of the Fed's bond-buying program still outweigh the potential risks. Mr. Bernanke made a strong case for the benefits the Fed's policies continue to produce, although he stressed that the central bank is closely monitoring potential risks.”
 - He said “the Fed's low-interest rate policies have helped spark a housing market recovery, spurred sales of automobiles and other durable goods and encouraged consumer spending.”
 - “The Fed can't shoulder the entire burden for inducing a more robust economic recovery,” Mr. Bernanke said.
 - “Just days before across-the-board cuts to the federal budget are set to take effect Friday, the Fed chief urged Congress and the Obama administration to replace the automatic cuts known as the sequester with more gradual budgetary belt tightening.”
 - “He said the \$85 billion in cuts should be replaced with “policies that reduce the federal deficit more gradually in the near-term but more substantially in the longer run.”
 - “The Congressional Budget Office estimates that the sequester would reduce economic growth by 0.6%.”
 - “Given the still-moderate underlying pace of economic growth, this additional near-term burden on the recovery is significant,” he said. Not only would the budget cuts hurt hiring and incomes, the slower recovery the cuts would produce would keep deficits higher than they otherwise would be.”

(Source: **The Wall Street Journal** on-line, February 26, 2013.)

❖ **Morgan Stanley Smith Barney (“MS”):**

- “The ‘resolution’ of the fiscal cliff created three additional cliffs. . . sequestration, the continuing resolution, and the debt ceiling, all of which need to be resolved in the next couple of months.”
- Morgan Stanley economists estimate the total fiscal drag on the U.S. economy would be 1.7%.
- “After starting the year with upside surprises to economic data, more recent reports have revealed a softer performance.” “Strategic target maturities include US Treasuries: 3-yr to 5-yr and Investment Grade Corps: 3-yr to 7-yr.” (Source: **Basis Points Fixed Income Strategy**, Kevin Flanagan and John Mackay, February 5, 2013.)
- ❖ The December 2012 Colorado Employment Situation was released on January 18, 2013. Using non-seasonally adjusted employment data, **Colorado's unemployment rate** for December was estimated to be 7.5% compared to the national unemployment rate of 7.6%. Larimer County was at 5.9%. Boulder County moved down to 5.5% and Weld County rose to 8.4%. Data for cities were nearly the same as a month ago. Loveland's unemployment rate is estimated to be 6.6%, lower than November; and down from 7.4% one year ago. Fort Collins was 5.7%, Boulder 4.9%, and Greeley 8.6%. [*January data to be released March 18.*]
- ❖ **Recession Outlook:** “. . .the US economy is not out of the woods.” ECRI's way-too-early recession call is wrong, but significant risks remain. The U.S. economic recovery is threatened by the expired 2% FICA tax holiday together with the decline in early 2013 personal income. If consumers cut back on spending, the recovery is at risk. (Source: **Advisor Perspectives**, Doug Short, February 22, 2013.)

[For more information regarding this report, please contact:](#)

Alan Krcmarik, Executive Fiscal Advisor 970.962.2625 or Alan.Krcmarik@cityofloveland.org

Updated Colorado Labor Data

- ❑ Loveland's workforce **expanded** in **December**, up 344 jobs from November 2012.
- ❑ Compared to one year ago in December, there are 931 **more** jobs.

Unemployment Rates

Data not adjusted for seasonality

