

**AGENDA**  
**LOVELAND CITY COUNCIL MEETING**  
**LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS**  
**THE LOVELAND GID BOARD OF DIRECTORS**  
**THE LOVELAND SID BOARD OF DIRECTORS**  
**TUESDAY, OCTOBER 15, 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, age, 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](mailto: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**

**PROCLAMATION – PANCREATIC CANCER AWARENESS MONTH (Kara Friedrich)**

*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.     **DEVELOPMENT SERVICES** (presenter: Troy Bliss)  
       **ASPEN KNOLLS VACATION FOR ALL PUBLIC RIGHTS-OF-WAY AND**  
       **AMENDMENT RELATING TO ZONING**  
       1.    A motion to approve and order published on second reading an Ordinance Vacating All Public Rights-Of-Way Located in the Aspen Knolls First and Second Subdivisions, City of Loveland, Larimer County, Colorado  
       A legislative action for adoption of an ordinance on second reading to vacate all public

rights-of-way within the Aspen Knolls First and Second Subdivisions.

**2. A motion to approve and order published on second reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "P-50 - Aspen Knolls " to the City of Loveland**

A quasi-judicial action for adoption of an ordinance on second reading to rezone the property from P-50 – Aspen Knolls Planned Unit Development (PUD) to DR – Developing Resource. These ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**2. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)  
ARTSPACE SUPPLEMENTAL APPROPRIATION FOR ACQUISITION OF THE FEED & GRAIN PROPERTY**

**A motion to approve and order published on second reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for a Loan to Artspace Inc. for Acquisition of the Feed and Grain Property**

This is an administrative action to approve the ordinance on second reading. The ordinance appropriates, from the City Council Reserve Fund, \$300,000 to be repaid over 30 years at 1.75% interest. Annual payments will be made to the City according to the repayment schedule in the agreement which City Council approved unanimously at the October 1, 2013 regular meeting. The loan would fill the gap in funding and complete the financing package to allow Artspace to close on the acquisition of the property and to close on the tax credits.

**3. DEVELOPMENT SERVICES (presenter: Troy Bliss)  
ARTSPACE VACATION OF A PORTION OF A PUBLIC RIGHT-OF-WAY**

**A motion to approve and order published on second reading an Ordinance Vacating a Portion of a Public Right-of-Way Located in the Loveland Addition to the City of Loveland, City of Loveland, Larimer County, Colorado**

Consideration of a legislative action for adoption of an ordinance on second reading to vacate a portion of existing public alley located within Block 21 of the Loveland Addition. The public right-of-way to be vacated is associated with the Artspace project. Upon vacation, the former right-of-way will be retained as a public access and utility easement. The ordinance was adopted unanimously on first reading by Council at the October 1, 2013 regular meeting.

**4. HUMAN RESOURCES (presenter: Julia Holland)  
AMENDING THE CODE TO ALLOW ADOPTION OF THE PAY PLAN BY RESOLUTION**

**A motion to approve and order published on second reading an Ordinance Amending Section 2.68.020 of the Loveland Municipal Code Regarding the Manner of Adopting the Employee Pay Plan**

This is a legislative action to consider an ordinance, on second reading, amending the Section 2.68.020 Loveland Municipal Code to permit adoption of the employee pay plan from time to time by resolution, as opposed to an ordinance. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**5. FINANCE (presenter: John Hartman)  
2014 CITY OF LOVELAND BUDGET**

**1. A motion to approve on second reading Resolution #R-79-2013 Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the Storm**

**Water Enterprise of the City of Loveland, Colorado and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees**

2. **A motion to approve on second reading Resolution #R-80-2013 Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the Water and Power Department of the City of Loveland and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees**
3. **A motion to approve and order published on second reading an Ordinance Adopting the 2013 Mill Levy for the General Fund of the City of Loveland, Colorado**
4. **A motion to approve and order published on second reading an Ordinance Adopting the 2014 Budget for the City of Loveland, Colorado**
5. **A motion to approve and order published on second reading an Ordinance Making an Appropriation for the Fiscal Year Beginning January 1, 2014 and Ending December 31, 2014 for the City of Loveland, Colorado**

This is an administrative action to adopt the fee resolutions and ordinances, except for the mill levy ordinance, and to approve the 2014 Budget on second reading. The adoption of the 2013 mill levy is a legislative action. Included are all the Fee Resolutions and Ordinances necessary to adopt and implement the 2014 Budget. City ordinance requires that the fee resolutions for the utilities be approved on two readings. These items establish the budget for the City of Loveland, Colorado in 2014 and implement fees and rates to meet the revenue projections in the budget. The Fee Resolutions and the ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**ADJOURN AS CITY COUNCIL AND CONVENE AS THE BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID)**

6. **FINANCE** (presenter: John Hartman)  
**2014 BUDGET FOR THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID)**

**A motion to approve and order published on second reading an Ordinance Adopting the 2014 Budget for the Loveland Special Improvement District #1**

This is an administrative action. The City serves as the sponsoring agency for the Special Improvement District (SID) and the ex officio Board of Directors. The SID #1 was established to allow for the collection of assessments from property owners in the District to back bonded debt used to construct infrastructure improvements in the district. The City does not have any legal obligation towards this debt. By State law, all special districts with a connection to the City must adopt a budget. The City of Loveland serves as staff for the District. This action adopts the budget and appropriates funds for the 2014 expenditures of the District. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**ADJOURN THE BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 AND CONVENE AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)**

7. **FINANCE** (presenter: John Hartman)  
**2014 BUDGET FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)**

**A motion to approve and order published on second reading an Ordinance of the Board of Commissioners of the Loveland Urban Renewal Authority Adopting the 2014 Budget for the Loveland Urban Renewal Authority**

This is an administrative action. City Council serves as the Board of Commissioners for

the Loveland Urban Renewal Authority. By State budget law, the Board must approve an annual budget for the Authority. The City of Loveland serves as staff for the District. The Authority is funded by tax increment revenues from property and sales taxes. This action adopts the budget and appropriates funds for the 2014 expenditures of the Authority. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**ADJOURN AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY AND CONVENE AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 (GID)**

8. **FINANCE** (presenter: John Hartman)  
**2014 BUDGET FOR THE GENERAL IMPROVEMENT DISTRICT #1 (GID)**  
 1. **A motion to approve and order published on second reading an Ordinance Adopting the 2014 Budget for the Loveland General Improvement District #1**  
 The ordinance adopting the budget is an administrative action.  
 2. **A motion to approve and order published on second reading an Ordinance Setting the 2013 Mill Levy for the Loveland General Improvement District #1**  
 The ordinance setting the mill levy is a legislative action. City Council serves as the ex-officio Board of Directors for the District. The Board must approve a budget and set the mill levy for the District. The City of Loveland serves as staff for the District. These items establish a budget and appropriate funds for District expenses in 2014, and set the mill levy rate for the property tax collections. The ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**ADJOURN AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 AND RECONVENE AS CITY COUNCIL**

9. **FINANCE** (presenter: John Hartman)  
**2014 SCHEDULE OF RATES, CHARGES & FEES AND 2014 AIRPORT BUDGET**  
**A motion to approve and order published on second reading an Ordinance Adopting the 2014 Budget for the Fort Collins-Loveland Municipal Airport**  
 This is an administrative action. The City of Loveland provides staff support to the Airport through the Intergovernmental agreement with the City of Ft. Collins. As a part of this function the City Council approves the Airport budget, which includes the City's share of the Airport Budget. The ordinance establishes a budget and appropriates funds for Airport expenses in 2014. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.
10. **FINANCE** (presenter: John Hartman)  
**2014 BUDGET FOR THE LOVELAND FIRE AND RESCUE AUTHORITY**  
**A motion to adopt Resolution #R-85-2013 Approving the Loveland Fire Rescue Authority 2014 Schedule of Rates, Charges, and Fees for Services and 2014 Budget**  
 This is an administrative action. The resolution provides for Council approval of the Loveland Fire Rescue Authority Budget and fees schedule for 2014. Council approval of the budget is required for the Authority's budget to be in effect.
11. **CITY MANAGER** (presenter: Bill Cahill)  
**AMENDMENT TO DATE AND LOCATION OF SCHEDULED MEETING FOR HUMAN SERVICES COMMISSION AND APPOINTMENT FOR LIAISON**



**1. A motion to approve Resolution #R-86-2013 Amending the Regularly Scheduled Meeting Date and Location for the Loveland Human Services Commission**

This is an administrative action to change the meeting date and location for the Human Services Commission from the fourth Thursday of each month at 6:00 p.m. in the City Manager's Conference Room, to the first Thursday of each month at 6:00 p.m. in the City Council Chambers.

**2. A motion to Accept the Resignation of Councilor Trenary and Appoint Councilor Farley as the Council Liaison to the Loveland Human Services Commission**

This item also includes a motion to appoint Councilor Farley as Council Liaison to the Human Services Commission in lieu of Councilor Trenary, who has resigned due to a conflict with the new meeting date.

**12. CITY CLERK (presenter: Terry Andrews)  
SPECIAL MEETING FOR NOVEMBER 12, 2013 TO SWEAR IN COUNCILORS**

**A motion Calling for a Special Meeting on November 12, 2013 at 6:30 Prior to the Regularly Scheduled Study Session of City Council**

This is an administrative action setting a Special Meeting to consider the November 5, 2013 Regular Meeting minutes and to swear in newly appointed councilors. This meeting would be immediately followed by the Study Session.

**13. ECONOMIC DEVELOPMENT (presenter: Betsey Hale)  
PUBLIC HEARING**

**EMERGENCY ORDINANCE TEMPORARILY WAIVING BUILDING PERMIT FEES RELATED TO THE FLOOD**

**A motion to approve and order published on first and only reading an Emergency Ordinance of the City Council of the City of Loveland Temporarily Waiving Building Permit Fees Owed to the City Under Loveland Municipal Code Title 15 and Use Tax Owed to the City Under Loveland Municipal Code Chapter 3.16 With Respect to Building Permits Issued for the Renovation or Repair of Residential and Nonresidential Structures Located Within Loveland City Limits That Were Damaged by the 2013 Big Thompson Flood**

This is a legislative action considering an emergency ordinance waiving the building permit fees and construction materials use taxes for residential and nonresidential structures which are located within Loveland city limits and were damaged by the flood. Building permit applications must be made and accepted as complete by the City's building division sixty days from the adoption of this ordinance.

**14. DEVELOPMENT SERVICES (presenter: Troy Bliss)  
PUBLIC HEARING**

**KING OF GLORY ANNEXATION AND REZONING**

**1. A motion to approve Resolution #R-87-2013 Concerning the Annexation to the City of Loveland, Colorado, of a Certain Area Designated as "King of Glory Addition" More Particularly Described Herein, and Setting Forth Findings of Fact and Conclusions Based Thereon as Required by the Colorado Constitution and by State Statute**

A public hearing to consider the following actions concerning the annexation of the King of Glory Lutheran Church:

A resolution that finds the property to be in compliance with the Colorado Revised Statutes for annexation;

**2. A motion to approve and order published on first reading an Ordinance Approving the Annexation of Certain Territory to the City of Loveland, Colorado, to be Known and Designated as "King of Glory Addition" to the City of Loveland**

A legislative action to adopt an ordinance on first reading annexing approximately 4.28 acres to be known as the King of Glory Addition;

**3. A motion to move to make the findings in Section VII of the Planning Commission staff report dated July 22, 2013, and based on those findings, approve and order published on first reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "King of Glory Addition" to the City of Loveland**

A quasi-judicial action to adopt an ordinance on first reading zoning the King of Glory Addition R1 – Developing Low Density Residential

**15. DEVELOPMENT SERVICES (presenter: Troy Bliss)**  
**PUBLIC HEARING**

**ST. JOHN ADDITION VACATION OF PUBLIC RIGHT-OF-WAY**

**A motion to approve and order published on first reading an Ordinance Vacating a Portion of a Public Right-Of-Way Located in the St. John Addition to the City of Loveland, City of Loveland, Larimer County, Colorado**

This is a legislative action to adopt of an ordinance on first reading to vacate the public right-of-way for a portion of Truman Avenue located within the St. John Addition and Hill Top Addition. The applicants for the request are the St. John Church and the Thompson School District.

**16. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)**  
**PUBLIC HEARING**

**HOUSE OF NEIGHBORLY SERVICE GRANT & FEE WAIVER AGREEMENT AND SUPPLEMENTAL APPROPRIATION FOR THE COMMUNITY LIFE CENTER**

**1. A motion to adopt Resolution #R-88-2013 Approving a Grant and Fee Waiver Agreement with the House of Neighborly Service for the Community Life Center**

The resolution is an administrative action and would authorize the City Manager to sign a Grant and Fee Waiver agreement with the House of Neighborly Services (HNS) for the construction of the "Community Life Center" at 1511 E. 11th Street. The agreement would provide a total package valued at \$756,709.40 that includes reimbursements for public improvements, a matching grant, and fee waivers. The item was considered by Council at the August 13, 2013, Council Study Session.

**2. A motion to approve and order published on first reading An Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget to Provide Incentives to House of Neighborly Service for the Community Life Center**

The Ordinance is on first reading. It would budget and appropriate \$500,000 from Council reserve for the Incentive agreement. (The City would fund \$500,000 from Council reserves and forego \$280,516.14 in waived fees.)

**17. DEVELOPMENT SERVICES (presenter: Bob Paulsen)**  
**PUBLIC HEARING**

**CODE MODIFICATION FOR WEED CONTROL**

**A motion to approve and order published on first reading an Ordinance Repealing and Re-Enacting Chapter 7.18 of the Loveland Municipal Code Regarding Weed Control**

This is a legislative action to adopt an ordinance on first reading that modifies the weed

control provisions of the Loveland Municipal Code, aligning the provisions with State and County regulations; clarifying requirements and allowances for native and ornamental grasses.

**18. DEVELOPMENT SERVICES (presenter: Bethany Clark)**  
**PUBLIC HEARING**

**HISTORIC LANDMARK AMENDMENT FOR LOVELAND FEED & GRAIN BUILDING**

**A motion to approve and order published on first reading an Ordinance Amending Ordinance #4971 Designating as a Historic Landmark the Loveland Feed & Grain Building Located at 130 West 3rd Street in Loveland, Colorado**

This is a legislative action to adopt an ordinance on first reading amending Ordinance #4971, which in 2005, designated as a Historic Landmark the Loveland Feed & Grain building located at 130 West 3<sup>rd</sup> Street. The proposed ordinance modifies the legal description of the historic designation to eliminate from that legal description, property west of the Loveland Feed and Grain building, on which Artspace LP proposes to construct a new multifamily affordable housing project.

**ADJOURN AS CITY COUNCIL AND CONVENE AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1**

**19. PUBLIC WORKS (presenter: Keith Reester)**  
**PUBLIC HEARING**

**SUPPLEMENTAL APPROPRIATION TO THE GID #1 FOR DOWNTOWN PARKING IMPROVEMENTS**

**A motion to approve and order published on first reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 Loveland General Improvement District #1 for Downtown Parking Improvements**

This is an administrative action. The ordinance on first reading appropriates an additional \$20,000 from reserves for the construction of the new parking lot on Railroad Avenue. This action brings the total project budget to \$90,000. The appropriation is from reserves reducing the flexibility to fund other projects.

**ADJOURN AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 AND RECONVENE AS CITY COUNCIL**

**20. WATER & POWER (presenter: Michael McCrary)**  
**NUTRIENT REMOVAL GRANT FROM THE COLORADO DEPARTMENT OF HEALTH AND ENVIRONMENT**

**A motion to adopt Resolution #R-89-2013 Approving a Contract for a Grant of \$1,080,000 from the Colorado Department of Health and Environment (CDPHE) to the City of Loveland Water and Power Department to Model, Design and Begin Construction of Biological Nutrient Removal Processes at the Wastewater Treatment Facility**

This contract is a combination of two grants awarded to the City of Loveland Water and Power Department by the Colorado Department of Health and Welfare from an appropriation proposed by Colorado Governor John Hickenlooper and enacted by the Colorado General Assembly to ease the financial impact of the new nutrient removal regulations on rate payers in affected jurisdictions. One grant is for \$80,000 for modeling and selection of appropriate nutrient removal technology for the Wastewater Treatment Facility. This part of the grant includes matching funds of \$20,000 from the City. These

funds are currently available in our operating budget and will not require a supplemental budget request. The second grant is for \$1,000,000 and does not include any matching funds requirement. These funds must be used for design and construction of the selected nutrient removal technology. All funds must be used by May 31, 2016. Current planning shows the entire Nutrient Removal Project totaling over approximately \$6,000,000 and lasting into 2017.

## **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**

#### **21. CITY CLERK (presenter: Terry Andrews)**

##### **APPROVAL OF MINUTES**

##### **1. A motion to approve the September 24, 2013 Study Session minutes.**

This is an administrative action to approve the September 24, 2013 Study Session minutes. Councilor Klassen was absent.

##### **2. A motion to approve the October 1, 2013 Regular minutes.**

This is an administrative action to approve the October 1, 2013 Regular minutes. Councilor Taylor was absent.

#### **22. DEVELOPMENT SERVICES (presenter: Brian Burson)**

##### **PUBLIC HEARING**

##### **AMENDMENTS TO THE COMPREHENSIVE PLAN AND ZONING REGULATIONS FOR BIG THOMPSON FARMS ADDITION**

##### **1. A motion to adopt Resolution #R-90-2013 Approving Amendments to the City of Loveland "2005 Comprehensive Plan" by the Amendment of Section 4.7 Land Use Plan Map**

This is a legislative action to consider a parcel-specific amendment to the Land Use Map in the Section 4.7 of the City of Loveland 2005 Comprehensive Plan for Tracts A and B of the Big Thompson Farms Addition. The proposed amendment would change the recommended land use for these two tracts, consisting of 32.78 acres, from Low-Density Residential (LDR) to Development Reserve (DR). The property is located between North Wilson Avenue and North Namaqua Avenue, and between West First Street and

the Big Thompson River corridor.

**2. A motion to make the findings in Section VII of the Planning Commission Staff Report dated September 9, 2013, and based on these findings, approve and order published on first reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for Certain Property Located in the Big Thompson Farms Addition, City of Loveland, Larimer County, Colorado**

This is a quasi-judicial action to consider rezoning the easterly portion of Tract A of the Big Thompson Farms Addition, consisting of 15.26 acres, from R1, Developing Low-Density Residential District to DR, Developing Resources District. The property is located between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River corridor.

**23. FINANCE (presenter: John Hartman)**  
**PUBLIC HEARING**  
**EMERGENCY ORDINANCE FOR SUPPLEMENTAL APPROPRIATION FOR FLOOD RELATED COSTS**

**A motion to approve and order published on first and only reading an Emergency Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Costs Related to the Response and Initial Recovery from the 2013 Flood**

This is an administrative action. The Emergency Ordinance appropriates funding of \$4,872,010 for the costs of responding to and recovery from the 2013 Flood. The appropriation is funded by unassigned fund balance which reduces the flexibility to fund other projects or programs.

**24. HUMAN RESOURCES (presenter: Julia Holland)**  
**Executive Session Regarding Performance Evaluations for Appointed Employees**

**ADJOURN**



## CITY COUNCIL

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## PROCLAMATION

- WHEREAS** in 2013, an estimated 45,220 people will be diagnosed with pancreatic cancer in the United States and 38,460 will die from the disease;
- WHEREAS** pancreatic cancer is one of the deadliest cancers, is the fourth leading cause of cancer death in the United States, and is the only major cancer with a five-year relative survival rate in the single digits at just six percent;
- WHEREAS** when symptoms of pancreatic cancer present themselves, it is late stage, and 73 percent of pancreatic cancer patients die within the first year of their diagnosis while 94 percent of pancreatic cancer patients die within the first five years;
- WHEREAS** approximately 500 deaths will occur in Colorado in 2013;
- WHEREAS** the incidence and death rate for pancreatic cancer are increasing and pancreatic cancer is anticipated to move from the fourth to the second leading cause of cancer death in the U.S. by 2020;
- WHEREAS** the U.S. Congress passed the *Recalcitrant Cancer Research Act* last year, which calls on the National Cancer Institute to develop a scientific frameworks, or strategic plans, for pancreatic cancer and other deadly cancers, which will help provide the strategic direction and guidance needed to make true progress against these diseases; and
- WHEREAS** the Pancreatic Cancer Action Network is the national organization serving the pancreatic cancer community in Loveland and nationwide through a comprehensive approach that includes public policy, research funding, patient services, and public awareness and education related to developing effective treatments and a cure for pancreatic cancer;
- WHEREAS** the Pancreatic Cancer Action Network and its affiliates in Loveland support those patients currently battling pancreatic cancer, as well as to those who have lost their lives to the disease, and are committed to nothing less than a cure;
- WHEREAS** the good health and well-being of the residents of Loveland are enhanced as a direct result of increased awareness about pancreatic cancer and research into early detection, causes, and effective treatments; therefore be it

**NOW, THEREFORE**, we, the City Council of Loveland, do hereby proclaim the month of November as

**PANCREATIC CANCER AWARENESS MONTH**

in Loveland.

Signed this 15th day of October, 2013

Cecil A. Gutierrez, Mayor



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

**AGENDA ITEM:** 1  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Troy Bliss

**TITLE:**

1. An Ordinance on Second Reading Vacating All Public Rights-Of-Way Located in the Aspen Knolls First and Second Subdivisions, City of Loveland, Larimer County, Colorado
2. An Ordinance on Second Reading Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "P-50 - Aspen Knolls " to the City of Loveland

**RECOMMENDED CITY COUNCIL ACTION:**

Move to adopt the ordinances 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

**SUMMARY:**

Consideration of the following:

1. A legislative action for adoption of an ordinance on second reading to vacate all public rights-of-way within the Aspen Knolls First and Second Subdivisions.
2. A quasi-judicial action for adoption of an ordinance on second reading to rezone the property from P-50 – Aspen Knolls Planned Unit Development (PUD) to DR – Developing Resource.

These ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.


**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible

**BACKGROUND:**

This matter pertains to two applications regarding the 120-acre Aspen Knolls property filed by the owner, McWhinney. The property owner has no intent to develop the property at this time and has filed applications requesting that it be rezoned (from PUD to DR) and that all public rights of way be vacated. The removal of rights-of-way and zoning entitlements from this property enables the applicant to pursue the transfer of raw water rights from this property. On Tuesday, October 1, 2013, City Council adopted both ordinances unanimously on first reading.

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**REVIEWED BY CITY MANAGER:** 

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**LIST OF ATTACHMENTS:**

1. Ordinance Vacating Public Rights-of-Way
2. Ordinance Amending the Municipal Code Relating to Zoning Regulations
3. Staff Memorandum (October 1, 2013)



**FIRST READING:** October 1, 2013

**SECOND READING:** October 15, 2013

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE VACATING ALL PUBLIC RIGHTS OF WAY LOCATED IN ASPEN  
KNOLLS FIRST AND SECOND SUBDIVISIONS, CITY OF LOVELAND, LARIMER  
COUNTY, COLORADO**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of the public rights of way described below (the “Vacation”), and a concurrent request to rezone Aspen Knolls First and Second Subdivisions located in the City of Loveland, Larimer County, Colorado (the “Property”) from Planned Unit Development (Aspen Knolls PUD P-50) to Developing Resource (“DR”) (the “Rezoning Ordinance”); and

**WHEREAS**, in addition to the Vacation and Rezoning Ordinance, an application to re-plat the Property as Aspen Knolls Third Subdivision Minor Subdivision (the “Amended Plat”) has been filed, which Amended Plat is subject to an administrative approval process and will only be approved if Council approves the Vacation by adoption of this Ordinance (the “Vacation Ordinance”) and adopts the Rezoning Ordinance; and

**WHEREAS**, the City Council finds and determines that, from and after the date on which the Amended Plat is approved and recorded, no land adjoining any portion of the rights 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; and

**WHEREAS**, the City Council finds and determines that, from and after the date on which the Amended Plat is approved and recorded, the rights of way 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 Center was signed by the owners of more than 50% of property abutting the rights of way to be vacated.

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

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

**Section 2.** Subject to the conditions set forth in Section 3, all public rights of way located within the following described Property shall be and the same are hereby vacated:

**ASPEN KNOLLS FIRST AND SECOND SUBDIVISION, CITY OF LOVELAND,  
STATE OF COLORADO**

which property contains 129.033 acres, more or less (+/-), and may be subject to any other easements of record or as now existing on said described parcel of land.

**Section 3.** As provided in Section 16.36.060 of the Loveland Municipal Code and in order to preserve and promote the public health, safety, and welfare of the inhabitants of the City and the public generally, the Vacation of the public rights of way within the Property as set forth in Section 2 above shall become effective only upon the satisfaction of the following conditions precedent:

- a. The Rezoning Ordinance is adopted by the Loveland City Council and becomes effective as provided in City Charter Section 4-8(b); and
- b. The Amended Plat is approved and recorded by the City; and
- c. The Property owner has, in accordance with Loveland Municipal Code Section 18.72.080, signed and delivered to the City a written agreement in a form acceptable to the City, waving all vested rights associated with the Preliminary/Final Development Plans for Aspen Knolls First and Second Subdivisions and acknowledging the termination of the affordable housing designation for the Aspen Knolls development and associated fee reduction granted and extended by the City (the "Waiver of Entitlements").

The foregoing conditions precedent shall be deemed satisfied only upon recording of this Vacation Ordinance, the Rezoning Ordinance, the Amended Plat, and the Waiver of Entitlements.

**Section 4.** 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 5.** 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 6.** The City Clerk is hereby directed to record this Vacation Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes and after receipt of the fully approved and executed Amended Plat and full approved and executed Waiver of Entitlements; provided that this Vacation Ordinance shall be recorded prior to recording the Waiver of Entitlements, the Rezoning Ordinance, and the Amended Plat, which shall be recorded thereafter in the order listed.

Signed this \_\_\_\_ day of October, 2013.

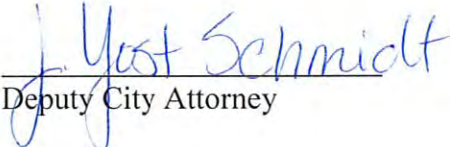
ATTEST:

CITY OF LOVELAND, COLORADO:

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

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

  
Deputy City Attorney

**FIRST READING:**     October 1, 2013

**SECOND READING:** October 15, 2013

**ORDINANCE NO.**\_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR A PORTION OF THE ASPEN KNOLLS ADDITION TO THE CITY OF LOVELAND, CITY OF LOVELAND, LARIMER COUNTY, COLORADO CURRENTLY ZONED THE ASPEN KNOLLS PLANNED UNIT DEVELOPMENT, P-50**

**WHEREAS**, the “Property” (as defined below) is a portion of the Aspen Knolls Addition to the City of Loveland, Larimer County, Colorado and is currently zoned Planned Unit Development, Aspen Knolls PUD P-50 (“PUD”); and

**WHEREAS**, the Property owner has filed applications for the vacation of all public rights of way within the Property as shown on the plats of the Aspen Knolls First and Second Subdivisions, City of Loveland, Larimer County, Colorado (the “Vacation Ordinance”), the rezoning of the Property from PUD to Developing Resource (“DR”) as set forth in this Ordinance (the “Rezoning Ordinance”) and to re-plat the Property as Aspen Knolls Third Subdivision Minor Subdivision (the “Amended Plat”), which Amended Plat is subject to an administrative approval process and will only be approved if Council adopts the Vacation Ordinance Rezoning Ordinance; and

**WHEREAS**, City Council has approved the Vacation Ordinance and desires to approve the rezoning of the Property as set forth in this Ordinance.

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

**Section 1.**     That, subject to the conditions set forth in Section 2, Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the following portion of Aspen Knolls Addition, located in the southwest quarter of Section 26, Township 5 North, Range 69 West of the 6<sup>TH</sup> P.M., City of Loveland, Larimer County, Colorado (the “Property”), more particularly described as:

### Legal Description Rezone

Legal Description of a tract of land being a portion of Section 26, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Beginning at the Southwest Corner of said Section 26 and considering the South line of the Southwest Quarter of said Section 26 as bearing North 89°16'40" East and with all bearings contained herein relative thereto; thence along the West line of the Southwest Quarter of said Section 26 North 00°33'47" West 2255.97 feet to a point on the Westerly prolongation of the South line of Stamp Addition to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County; thence along said South line and the South line of Sun Point Addition to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County the following five courses and distances; North 89°22'59" East 902.78 feet; thence North 89°24'16" East 209.33 feet; thence North 89°27'17" East 997.04 feet; thence North 89°24'46" East 155.26 feet; thence North 89°27'49" East 44.73 feet to a point on the Southwesterly line of Sun Point Second Addition and Subdivision to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County; thence along said Sun Point Second Addition and Subdivision the following five courses and distances; South 27°12'30" East 125.52 feet; thence South 40°27'28" East 77.69 feet; thence South 53°20'27" East 89.62 feet; thence South 68°14'58" East 89.62 feet; thence South 83°18'04" East 89.41 feet to a point on the Westerly line of Rolling Knolls Estates Second Addition to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County; thence along the Westerly line of said Rolling Knolls Estates Second Addition and the West lines of Golden South Estates First Addition and Subdivision to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County and the Gurule - Minor Residential Development according to the plat on file in the office of the Clerk and Recorder said County the following two courses and distances; South 00°39'49" East 837.77 feet; thence South 00°38'17" East 1140.17 feet to the South Quarter Corner of said Section 26; thence continuing South 00°38'17" East 30.00 feet to a point on the South right-of-way line of 28th Street Southwest, thence along said South line South 89°16'40" West 2661.32 feet; North 00°33'47" West 30.00 feet to the Point of Beginning.

Excepting therefrom the following parcels of land:

Beginning at the South Quarter Corner of said Section 26, thence North 00°38'17" West 40.00 feet to a point on the North right-of-way line of 28th Street Southwest; thence along said North right-of-way line South 89°16'40" West 1326.26 feet to the True Point of Beginning; said point being a point on the East line of that certain parcel of land described in deed, recorded in Book 1295, Page 531, records of said County; thence along said East line and the East line of that certain parcel of land described in deed, recorded in Book 1406, Page 459 North 00°43'20" West 90.00 feet; thence along the North lines of those certain parcels of land recorded in deed, under Reception No. 88053400 and Book 1406, Page 459, South 89°14'45" West 200.56 feet; thence along the West line of said Reception No. 88053400 South 03°03'26" East 19.94 feet to a point on the North line of said Book 1295, Page 531; thence along said North line and its Westerly prolongation, South 89°21'02" West 126.62 feet to a point on the East line of that certain parcel of land described in deed, recorded in Book 1657, Page 100; thence along said East line North 00°39'20" West 19.88 feet to the Northeast Corner of said parcel of land; thence along the North line of said parcel of land and the North line of that certain parcel of land described in deed, recorded in Book 1222, Page 543, records of said County; South 89°16'40" West 150.00 feet; thence along the West line of said Book 1222, Page 543 South 00°39'20" East 100.00 feet to a point on the North right-of-way line of said 28th Street Southwest; thence along said North right-of-way line North 89°16'40" East 476.46 feet; thence North 00°43'20" West 10.00 feet to THE TRUE POINT OF BEGINNING.

containing 136.789 acres more or less.

which is now included within the boundaries designated “**ASPEN KNOLLS PLANNED UNIT DEVELOPMENT (# P – 50)**” shall be removed therefrom and included within the boundaries of the district designated as follows:

**“DR – DEVELOPING RESOURCE”**

The Property contains 136.789 acres, more or less, and is subject to all easements and rights-of-way now on record or existing.

**Section 2.** In order to preserve and promote the public health, safety, and welfare of the inhabitants of the City and the public generally, the rezoning of the Property as set forth in Section 1 above shall become effective only upon the satisfaction of the following conditions precedent:

- a. The Vacation Ordinance is adopted by the Loveland City Council and becomes effective as provided in City Charter Section 4-8(b); and
- b. The Amended Plat is approved and recorded by the City; and
- c. The Property owner has, in accordance with Loveland Municipal Code Section 18.72.080, signed and delivered to the City a written agreement in a form acceptable to the City, waving all vested rights associated with the Preliminary/Final Development Plans for Aspen Knolls First and Second Subdivisions and acknowledging the termination of the affordable housing designation for the Aspen Knolls development and associated fee reduction granted and extended by the City (the “Waiver of Entitlements”).

The foregoing conditions precedent shall be deemed satisfied only upon recording of the Vacation Ordinance, this Rezoning Ordinance, the Amended Plat, and the Waiver of Entitlements.

**Section 3.** That the Property shall be subject to all applicable zoning regulations for the City of Loveland.

**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.

**Section 5.** 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 6.** That the City Clerk is hereby directed to record this Rezoning Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes and after receipt of the fully approved and executed Amended Plat and full approved and executed Waiver of Entitlements; provided that the Vacation Ordinance shall be recorded prior to recording the Waiver of Entitlements, this Rezoning Ordinance, and the Amended Plat, which shall be recorded thereafter in the order listed

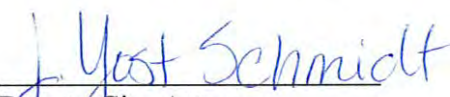
Signed this \_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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



## Development Services Current Planning

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(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620  
www.cityofloveland.org

### MEMORANDUM

**TO:** City Council

**FROM:** Troy Bliss, City Planner II, Current Planning Division

**DATE:** October 1, 2013

**SUBJECT:** Aspen Knolls First and Second Subdivisions, Vacation of Public Rights-of-Way and Rezoning

#### **I. EXHIBITS**

- A. Planning Commission packet
- B. Planning Commission minutes
- C. Excerpts from the Aspen Knolls Final Development Plan (FDP)
- D. Slide presentation

#### **II. KEY ISSUES**

No key issues were identified during City review and the neighborhood meeting. However, it was identified during the Planning Commission hearing on August 26, 2013, that development of the Aspen Knolls First and Second Subdivisions would provide a lot of necessary off-site infrastructure improvements to the area. These issues were not vetted during review because their relevance is development driven. Even though the Aspen Knolls development is fully approved and vested, if development never occurred, such improvements would not be made in conjunction with the project. Consequently, this was seen as a non-issue since the requests to vacate all public rights-of-way and rezone the property were maintaining status quo. However, staff has gone back through the development plans and has provided an overview of these improvements in Section V of this memorandum.

#### **III. BACKGROUND**

Aspen Knolls was previously the focus of much neighborhood involvement when KB Homes had acquired the property and was proposing development on the approximate 120 acre parcel. From December 2004 to July 2005, final plat and final development plans were approved



through the City for Aspen Knolls (see Attachment 1). This included two components based on a phasing schedule, the Aspen Knolls First Subdivision and the Aspen Knolls Second Subdivision. The Aspen Knolls First Subdivision was structured to develop 56 single family detached residential units on roughly 30 acres. The Aspen Knolls Second Subdivision included 451 units on the remaining 90 acres (352 single family detached units and 99 multi-family units).

Up until the first quarter of 2008, KB Home was the owner of the property but had not obtained any permits to begin construction. At this time, McWhinney purchased the property and subsequently submitted applications for vacation of public rights-of-way and rezoning. McWhinney has indicated that it has no intent to develop the property at this time. Instead, McWhinney has confirmed, after negotiations with the City of Loveland Water/Wastewater Department, that if the rights-of-way are vacated, the property rezoned to DR, and the property is re-platted, the raw water requirements that were previously satisfied would be credited back to the current property current owner in the form of water bank credits. Essentially what this means is that there is no monetary amount paid to the owner by the City. Rather, the number of water rights applicable to this property (i.e. water per acre foot) is kept by the City in its "water bank" for the benefit of the owner of the property, which is currently McWhinney. The property owner would have the ability to use such water bank credits and would not necessarily only have to apply them to this property. For example, the water bank credits resulting from the relinquishment of development rights for this property could be used to satisfy any off-site water requirements on other properties within the City. Through the planning process, a substantial amount of positive feedback has been provided for this approach from nearby neighborhood residents. On Wednesday, September 18, 2013, the Loveland Utilities Commission (LUC) unanimously recommended approval to the City Council for allowing the transfer of raw water rights, associated with the Aspen Knolls property, to the City water bank.

#### **IV. VACATION OF PUBLIC RIGHTS-OF-WAY AND REZONING**

The attached ordinances concern requests that further intentions to remove all entitlements and development rights from the Aspen Knolls First and Second Subdivisions. A companion application for re-platting the property is also being processed that will remove all lots, outlots, tracts, and easements from the property. The re-platting action is approved administratively, subject to approval of the vacation and rezoning requests.

These applications are being requested because the developer has no intention of developing the property under the approved development plans. Rather, the applicant is interested in possibly utilizing existing raw water credits associated with the Aspen Knolls property for a different development project. The transfer of raw water credits can only be allowed if the property is stripped of its entitlements. The process for transferring raw water credits is separate from these applications. Regardless of being able to transfer raw water credits, the owner still intends to follow through with the vacation and rezoning requests.

#### **V. PLANNING COMMISSION REVIEW**

Planning Commission held a public hearing on the Aspen Knolls First and Second Subdivisions, Vacation of Public Rights-of-Way and Rezoning on August 26, 2013. The associated minutes from this hearing are attached (see **Exhibit B**). Planning Commission recommended approval of the applications subject to the conditions in Section IX of the Planning Commission Staff Report (see **Exhibit A**) by a vote of 5 to 1. Concerns were raised at the hearing regarding off-

site improvements that the Aspen Knolls project would have been required of in conjunction with development. The following provides an outline of these requirements as captured in the attached **Exhibit C**:

- South Taft Avenue was to be expanded from 23<sup>rd</sup> Street SW to 28<sup>th</sup> Street SW. This section of roadway would have included two travel lanes in each direction, a center lane, bike lanes on each side, and detached sidewalks on each side.
- 28<sup>th</sup> Street SW was to be expanded east of South Taft Avenue approximately 3000 feet. The roadway was to include one travel lane in each direction, a center lane, and bike lanes on each side. The north side of this roadway was to include a detached sidewalk with tree lawn.
- Water service was to be provided by a 24-inch steel extension along 28<sup>th</sup> Street SW from the east property boundary. It would then connect to a 12-inch waterline where 26<sup>th</sup> Street SW is stubbed. Water lines would then be looped through the site.
- Sewer service was anticipated from South Douglas Avenue where it is currently stubbed, into the site. Sewer service is however available by several existing locations to the north and east.
- Installation of storm sewer lines crossing South Taft Avenue and running along 28<sup>th</sup> Street SW.

This captures a general list of all the off-site improvements that would have been done with the development of Aspen Knolls. While these improvements were fully designed and approved by the City, they are development driven. Any configuration of the Aspen Knolls property, if it remains as is today with no development occurring, these off-site improvements will not be associated with this project.

## **RECOMMENDATION**

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinances on first reading as recommended by the Planning Commission.



## Development Services Current Planning

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### Planning Commission Staff Report

August 26, 2013

**Agenda #:** Regular Agenda - 2  
**Title:** Aspen Knolls First and Second Subdivisions (PZ #13-00094 and #13-00095)  
**Applicant:** Cole Evans/McWhinney  
**Request:** Vacation and Rezoning  
**Location:** East side of Taft Avenue between 23<sup>rd</sup> Street SW and County Road 16  
**Existing Zoning:** P-50 – Aspen Knolls  
**Proposed Zoning:** DR – Developing Resource  
**Staff Planner:** Troy Bliss

### Staff Recommendation

**APPROVAL** of the vacation and rezoning.

#### Recommended Motions:

1. Move to make the findings listed in Section VIII of the Planning Commission staff report dated August 26, 2013 and, based on those findings, recommend that City Council approve the Aspen Knolls Vacation and Rezoning, subject to the conditions listed in Section IX, as amended on the record.

### Summary of Analysis

This is a public hearing concerning the Aspen Knolls First and Second Subdivisions. The property owner, McWhinney, is seeking to vacate all established public rights-of-way, re-plat the property to remove all lots, outlots, and easements, and rezone the property from P-50 – Aspen Knolls PUD to DR – Developing Resource. The Aspen Knolls property was originally approved as a two-phased residential development; the owner at the time of plan approval was KB Homes.

These applications are being requested because the developer has no intention of developing the property under the approved development plans. Rather, the applicant is interested in utilizing existing raw water credits associated with the Aspen Knolls property for a different development project. The transfer of raw water credits can only be allowed if the property is stripped of its entitlements.

Applications for vacation of public rights-of-way are legislative matters and rezoning is considered quasi-judicial; in both cases, the Planning Commission provides a recommendation to City Council. The application for re-platting the property is administrative and not being considered by the Planning Commission. The re-plat will however not receive approval unless the corresponding vacation and rezoning applications are approved.

## I. SUMMARY

Applications for vacation of rights-of-way and rezoning were submitted to the City for review in June 2013 by McWhinney (owners of the subject property referred to as Aspen Knolls). Aspen Knolls is generally located on the east side of Taft Avenue between 23<sup>rd</sup> Street SW and County Road 16 containing approximately 120.8 acres. The property is within the City's municipal area, zoned P-50 Aspen Knolls PUD. McWhinney has no plans to pursue development of the property at the present time. Rather, their intent is to eliminate existing development entitlements through the applications being considered.

The vacation request is legislative matter, while the re-zoning is quasi-judicial. The role of the Planning Commission is to determine conformance with the adopted City of Loveland criteria as outlined in Section VIII of this report. Through findings of such criteria, the Planning Commission shall provide a recommendation which will be presented to the City Council at a future public hearing. Because the Planning Commission only provides a recommendation with respect to these applications, there is no appeal provisions associated with their decision. City Council's decision will become final on the vacation of an obsolete subdivision and rezoning and may only be appealed to a Colorado Court of Law.

The application for vacation would eliminate all public-rights-of way in the Aspen Knolls First and Second Subdivision (see **Attachment 2**). In conjunction with the application to vacate public rights-of-way, a re-plat of the property will be completed to remove all lots, outlots (except Outlot A), and easements. The re-plat will dedicate any necessary rights-of-way on the roadways along the perimeter of the Subdivisions and any necessary utility or similar easements. The associated re-plat is an administrative action not being considered by Planning Commission.

The companion application to rezone the property would change the zoning designation of P-50 Aspen Knolls PUD to DR – Developing Resource (see **Attachment 3**). This is a highly atypical approach to rezoning a property. Essentially it would be viewed as “down” zoning because no development rights are given to properties zoned DR. The rezoning request would also make null and void existing approved development plans. Because Aspen Knolls was initially zoned as a PUD, development plans were prepared with specific requirements for future development, including density, building design, building setbacks, and landscaping. DR zoning has two primary functions. It provides zoning for open lands where no development is planned. Or, it can serve as a holding zone until future development plans are pursued. Section VI of this report helps clarify the reasoning behind these application requests and the perceived benefits to the current property owner for pursuing them.

Because the current owner has no intention of developing the property as currently entitled, they seek to remove the entitlements and use the water bank credits associated with this property to serve other properties they are developing in east Loveland.

## II. ATTACHMENTS

1. Aspen Knolls First and Second Subdivision color illustration
2. Vacation exhibit map
3. Rezoning map



### III. VICINITY MAP



### IV. SITE DATA

ACREAGE OF SITE - GROSS .....	+/- 120.8 ACRES
ACREAGE OF SITE-NET .....	+/- 120.8 ACRES
ACREAGE OF RIGHT-OF-WAY .....	+/-23.9 ACRES (TO BE VACATED)
EXISTING ZONING .....	P-50 ASPEN KNOLLS PUD
PROPOSED ZONING .....	DR – DEVELOPING RESOURCE
MASTER PLAN DESIGNATION .....	LDR-LOW DENSITY RESIDENTIAL
EXISTING USE .....	AGRICULTURAL/DETENTION
PROPOSED USE.....	AGRICULTURAL/DETENTION
ACREAGE OF OPEN SPACE PROPOSED .....	+/-120.8 ACRES
EXISTING ADJACENT ZONING AND USE - NORTH.....	R1 – DEVELOPING LOW DENSITY RESIDENTIAL (STAMP ADDITION AND SUN POINT ADDITION – SINGLE FAMILY DETACHED DWELLINGS)
EXISTING ADJACENT ZONING AND USE - EAST .....	R1 – DEVELOPING LOW DENSITY RESIDENTIAL (ROLLING KNOLLS ESTATES SUBDIVISION – SINGLE FAMILY DETACHED DWELLINGS)

EXISTING ADJACENT ZONING AND USE - SOUTH .....	UNINCORPORATED LARIMER COUNTY (AGRICULTURAL/FARMING)
EXISTING ADJACENT ZONING AND USE - WEST .....	R1 – DEVELOPING LOW DENSITY RESIDENTIAL, R1-UD – DEVELOPING LOW DENSITY RESIDENTIAL UNIT DEVELOPMENT, AND P-6 – LAKESIDE TERRACE PUD (LAKESIDE TERRACE SUBDIVISION – SINGLE FAMILY DETACHED DWELLINGS)
UTILITY SERVICE PROVIDER - SEWER .....	PROPOSED: CITY OF LOVELAND (NO EXISTING SERVICES)
UTILITY SERVICE PROVIDER - ELECTRIC.....	PROPOSED: CITY OF LOVELAND (NO EXISTING SERVICES)
UTILITY SERVICE PROVIDER - WATER .....	PROPOSED: CITY OF LOVELAND (NO EXISTING SERVICES)
WATER RIGHTS PAID .....	PAID IN CONJUNCTION WITH FINAL PLAT APPROVALS OF BOTH ASPEN KNOLLS FIRST AND SECOND SUBDIVISIONS

## V. KEY ISSUES

No key issues have been identified with the vacation and rezoning requests. It is however important to point out that Outlot A of the Aspen Knolls First Subdivision is owned by the City of Loveland and is not a part of the vacation since no public right-of-way is contained within it. Outlot A is anticipated to become a regional detention pond which is designed to serve Aspen Knolls if and when it develops and is also designed to detain run-off from abutting subdivisions. Rezoning Outlot A from P-50 Aspen Knolls PUD to DR is appropriate given the characteristics and function of this outlot.

## VI. BACKGROUND

Aspen Knolls was previously the focus of much neighborhood involvement when KB Homes had acquired the property and was proposing development on the approximate 120 acre parcel. From December 2004 to July 2005, final plat and final development plans were approved through the City for Aspen Knolls (see **Attachment 1**). This included two components based on a phasing schedule, the Aspen Knolls First Subdivision and the Aspen Knolls Second Subdivision. The Aspen Knolls First Subdivision was structured to develop 56 single family detached residential units on roughly 30 acres. The Aspen Knolls Second Subdivision included 451 units on the remaining 90 acres (352 single family detached units and 99 multi-family units).

Up until the first quarter of 2008, KB Home was the owner of the property but had not obtained any permits to begin construction. At this time, McWhinney purchased the property and subsequently submitted applications for vacation of public rights-of-way and rezoning. McWhinney has indicated that it has no intent to develop the property at this time. Instead, McWhinney has confirmed, after negotiations with the City of Loveland Water/Wastewater Department, that if the rights-of-way are vacated, the is property rezoned DR, and the property is re-platted, the raw water requirements that were previously satisfied would be credited back to the current property current owner in the form of water bank credits. Essentially what this means is that there is no monetary amount paid to the owner by the City. Rather, the number of water rights applicable to this property (i.e. water per acre foot) is kept by the City in its “water bank” for the benefit of the owner of the property, which is currently McWhinney. The property owner would have the ability to use such water bank credits and would not necessarily only have to apply them to this property. For example, the water bank credits resulting from the relinquishment of development rights for this property could be used to satisfy any off-site water requirements on other

properties within the City. Through the planning process, a substantial amount of positive feedback has been provided for this approach from nearby neighborhood residents.

## **VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION**

### **A. Notification**

An affidavit was received from Cole Evans, McWhinney which certifies that the surrounding property owners within 1,000 feet of the property were mailed notice and signs posted in prominent locations on the perimeter of the project site on August 2, 2013 in reference to the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on August 10, 2013. All notices stated that the Planning Commission will hold a public hearing on August 26, 2013.

### **B. Neighborhood Interaction/Response**

*Neighborhood Meeting 2008* - A neighborhood meeting was held on September 3, 2008.

At the onset of the neighborhood meeting, primary concerns focused on anticipations for future development since attendees did not understand the intent of the proposal. Upon clarification that no development is being proposed, the following questions and general statements made by meeting attendees:

- Would rezoning to DR allow for commercial development?
- Would infrastructure improvements occur with the applications?
- Water rights (i.e. how much and can they be used elsewhere).
- Assurance for continued maintenance of the open field (i.e. keeping grass and weeds cut).
- Considerations of the applicant for creating a community park.
- Storm drainage and run-off patterns.
- Types of uses that could occur on the property with DR zoning other than agricultural.
- Euthanizing of prairie dogs.

*Neighborhood Meeting 2013* – A neighborhood meeting was held on August 19, 2013 as required for processing the current vacation and rezoning applications. Property owners within a 1,000 feet were mailed notice and signs were posted in prominent locations on the perimeter of the project site. Approximately 30 neighbors attended the meeting. A lot of the same questions came upon during this neighborhood meeting as did in 2008. However, there were some additional questions from the neighbors:

- What are the long term plans for the property?
- Will the lots/buildings on 16<sup>th</sup> Street be removed?
- Is there a tax benefit for the property owner in taking this approach with the land?

## **VIII. FINDINGS AND ANALYSIS**

The chapters and sections cited below are from the Loveland Municipal Code.

### **A. VACATION RIGHTS-OF-WAY**

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

Current Planning

By vacating all of the public rights-of-way that were dedicated in conjunction with the Aspen Knolls First and Second Subdivisions, there will not be any land left without public or private connections. This is because the rights-of-way were never built to establish connections with adjoining land. No physical change would occur from the vacation.

**Finding 2.** *That the right-of-way to be vacated is no longer necessary for the public use and convenience.*

Transportation

If the rights-of-way in the subdivision are vacated, no land adjoining the right-of-way to be vacated will be left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way. Also, the right-of-way to be vacated is no longer necessary for the public use and convenience.

Fire

The proposed vacation request can be supported by the fire department based upon the fact that at this time no infrastructure has been constructed and no development is reliant upon the easements or right-of-ways.

Power

There is one span of three-phase 200-amp overhead power line located on the East side of South Taft Avenue which then becomes an underground line along a portion of the obsolete subdivision. The underground line crosses Taft Avenue and continues south along the West side of South Taft Avenue. This power line would have been the source of power for the obsolete subdivision. It is located within the City's right-of-way and therefore no concern with vacating the obsolete subdivision.

Stormwater

The Aspen Knolls Subdivision is located in the South Loveland Basin as defined by the City of Loveland Master Drainage Plan. The existing plat, to be vacated, is not used to convey historic stormwater and thus is not necessary for the public use and conveyance of historic stormwater.

Water/Wastewater

This development is situated within the boundaries of and accommodated by the City's water and wastewater master plans. It is also within the City's current service area for both water and wastewater.

The previous final plat being hereby vacated had water rights dedicated to the said platted area. The Department determines that the existing easements and rights-of-way to be vacated does not impact the existing water and wastewater utility configuration within and adjacent to this development. Thus the Department finds that the existing easements and rights-of-way to be vacated are no longer necessary for public use and convenience.

**Finding 4.** *The application filed at the Development Center was signed by the owners of at least 50% of property abutting the right-of-way or easement to be vacated.*



Current Planning

The application was signed by 100% of the owners (McWhinney) abutting all rights-of-way and/or easements to be vacated within the subdivision.

**B. ZONING**

**Finding 1.** *The purposes set forth in Section 18.04.010 of the Loveland Municipal Code would be met if any of the uses permitted by right in the zone district were developed on the subject property.*

Current Planning

In consideration of a rezoning from P-50 Aspen Knolls PUD to DR – Developing Resource, no uses would be permitted by right.

**Finding 2.** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in development that is compatible with existing land uses adjacent to and in close enough proximity to the subject property to be effected by development of it.*

Current Planning

No uses are permitted by right in the DR – Developing Resource zoning district and ultimately limit the use of the property to its current state. Given the historic nature and use of the property, it would be considered compatible because nothing is changing. No use is being evaluated in relation to existing land uses adjacent to and in close proximity to the subject property. It is to remain an open field until such time a request to develop comes forward.

**Finding 3.** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.*

Transportation

Re-zoning a parcel or property does not warrant compliance with the City's Adequate Community Facilities (ACF) ordinance. All future development or land applications within this proposed property shall be in compliance with the City of Loveland Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application. Moreover, as identified in the City Municipal Code Title 16, a Traffic Impact Study shall be required with all future development or other land use applications. Therefore, pending future proposed development within this property, of which review and approval by the City is required, the Engineering Staff does not object to the proposed re-zoning.

Fire

The proposed rezoning of the property to DR limits the developable uses for the property. As such, the zoning to DR is actually a reduction of intensity and hazard and can therefore be supported by the fire department.

The furthest point within this development is approximately 2 ¾ miles from the first due Engine Company (Station 3). In order to comply with the response distance requirements in the ACF

ordinance, the first due Engine Company should be within 1 ½ miles of the furthest point within the development. However, at this time no development is proposed with the subdivision.

#### Power

There is one span of three-phase 200-amp overhead power line located on the East side of South Taft Avenue which then becomes an underground line along a portion of the subdivision. The underground line crosses Taft Avenue and continues south along the West side of South Taft Avenue. This power line would have been the source of power for the subdivision. It is located within the City's right-of-way and therefore no concern with vacating the obsolete subdivision or rezoning the property.

#### Stormwater

The Aspen Knolls Third Subdivision is located within the South Loveland Outfall Basin as defined by the City of Loveland Master Drainage Plan. Development of the subject property pursuant to any of the uses permitted by right under the zoning district will not impact any existing City of Loveland infrastructure and services.

#### Water/Wastewater

This development is situated within the boundaries of and accommodated by the City's water and wastewater master plans. It is also within the City's current service area for both water and wastewater.

The development has water rights dedicated upon it by the previous final plats. The proposed zoning request to Developing Resource (DR) will negate the requirement for water rights necessary to be dedicated upon the platted area. With the approval of this zoning request the Water and Power Department will create a water bank account in the name of the land owner to be credited the amount of existing water rights on the land.

The proposed zoning request is consistent with the Department's Water and Wastewater master plan and is consistent with the 2005 Comprehensive Plan.

**Finding 4.** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in development that is consistent with relevant philosophies contained in the Loveland Comprehensive Master Plan, particularly those philosophies included in Section 4.0 Land Use.*

#### Current Planning

The request of DR - Developing Resource zoning is consistent with the LDR (Low Density Residential) land use designation of the Loveland Comprehensive Master Plan Land Use Plan. DR zoning can be applied to any type of land use designation on the City of Loveland Future Land Use Plan. This is because no uses are permitted by right in the DR zoning district which complies with any type of land use category particularly when being requested to preserve environmentally sensitive areas or use as a "place holder" when no development is being proposed. Moreover, since the city still believes that this property remains suitable for low density residential development, the LDR Comprehensive Plan designation continues to be the most appropriate land use designation.

**Finding 5.** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would not be detrimental to the health, safety, or welfare of the neighborhood or general public.*

Current Planning

No development would be permitted on the property by rezoning to DR therefore finding that the zoning district would not be detrimental to the health, safety, or welfare of the neighborhood or general public.

## **IX. RECOMMENDED CONDITIONS**

The following annexation conditions are recommended by city staff and would be incorporated into an annexation agreement if recommended by Planning Commission and adopted by City Council:

### **VACATION**

#### **CURRENT PLANNING**

1. An ordinance vacating all public rights of way within Aspen Knolls First and Second Subdivisions shall not become effective until the Aspen Knolls Third Subdivision (re-plat) and Aspen Knolls rezoning is approved and recorded with Larimer County.

### **REZONING**

#### **CURRENT PLANNING**

1. Rezoning of the property from Aspen Knolls Planned Unit Development (P-50) to DR - Developing Resource, shall be conditioned on approval of the ordinance vacating all public rights of way within Aspen Knolls First and Second Subdivisions and approval of the proposed re-platting processes. If these processes are not approved, the rezoning shall not be approved.

2. In accordance with LMC Section 18.72.080 Waiver of Vested Property Right, an ordinance vacating all public rights of way within Aspen Knolls First and second Subdivisions shall not become effective until the property owner has waived the vested rights associated with the Preliminary/Final Development Plans for Aspen Knolls First and second Subdivisions and the approved Public Improvements Construction Plans. Such rights shall be waived by separate agreement with the City, which agreement shall be recorded with the County Clerk and Recorder. The Agreement shall be recorded after the vacation and rezoning ordinances become effective and the re-platting of the property is approved and upon such recording, the vested rights associated with shall be deemed to have expired.

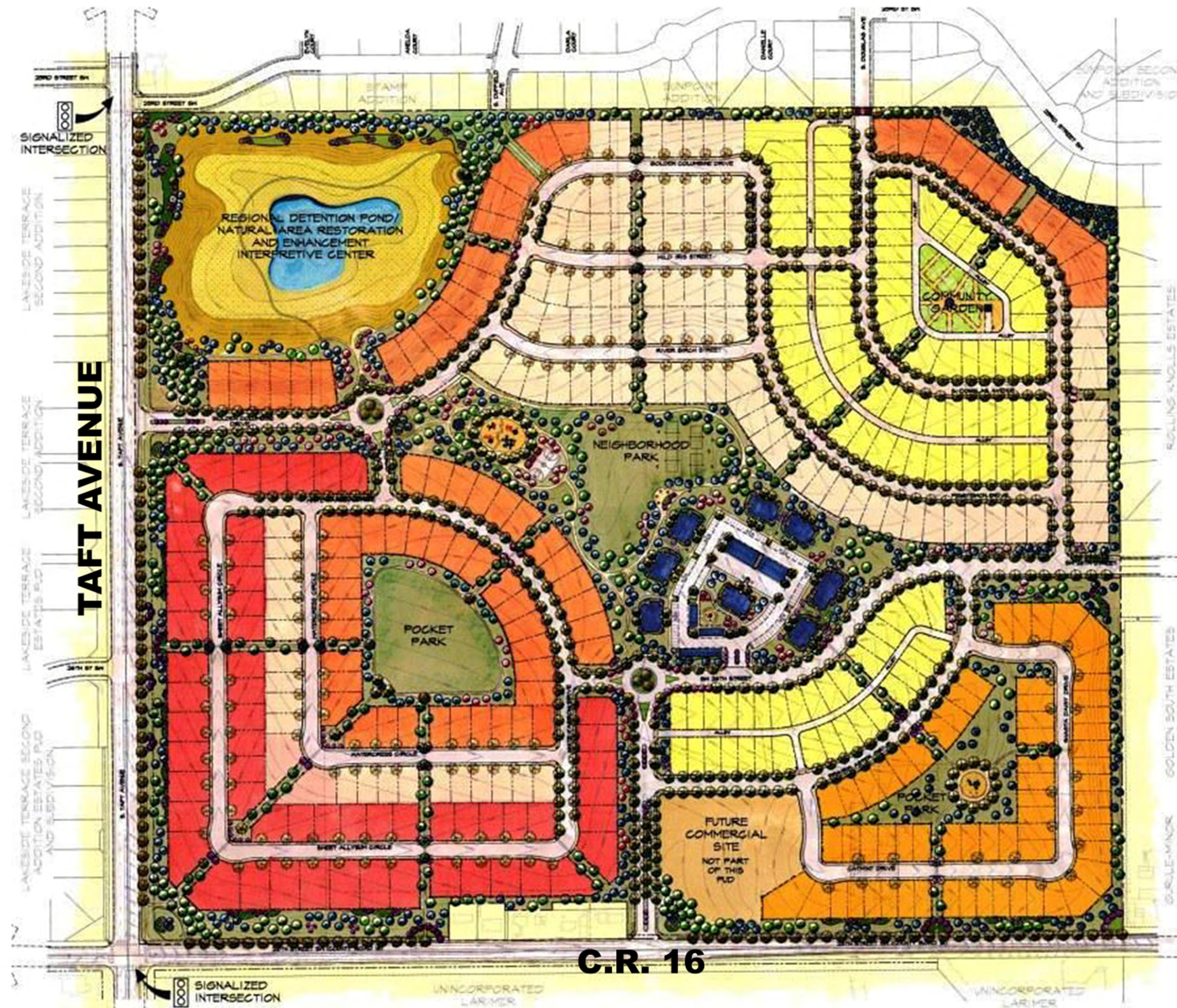
3. The affordable designation and associated fee reduction granted and extended by the City shall terminate.



# ASPEN KNOLLS

Loveland, Colorado

ILLUSTRATIVE PLAN



## LEGEND:

99	Multi-Family (Affordable)
108	35 - 45' x 100 - 110'
106	55' x 100-110'
136	55 - 65' x 100 - 110'
58	75 - 85' x 100 - 110'

507 TOTAL D.U.



McWHINNEY



LEGAL DESCRIPTION

[illegible]

containing 129.033 acres more or less,

SURVEYOR'S CERTIFICATE:

I, Paul A. Hernandez, being a registered Professional Land Surveyor in the State of Colorado, do hereby certify that this VACATION MAP OF ASPEN KNOLLS FIRST AND SECOND SUBDIVISIONS was made by me or under my direct supervision and that the survey is accurately represented on this map and that the statements contained hereon were read by me and the same are true to the best of my knowledge.

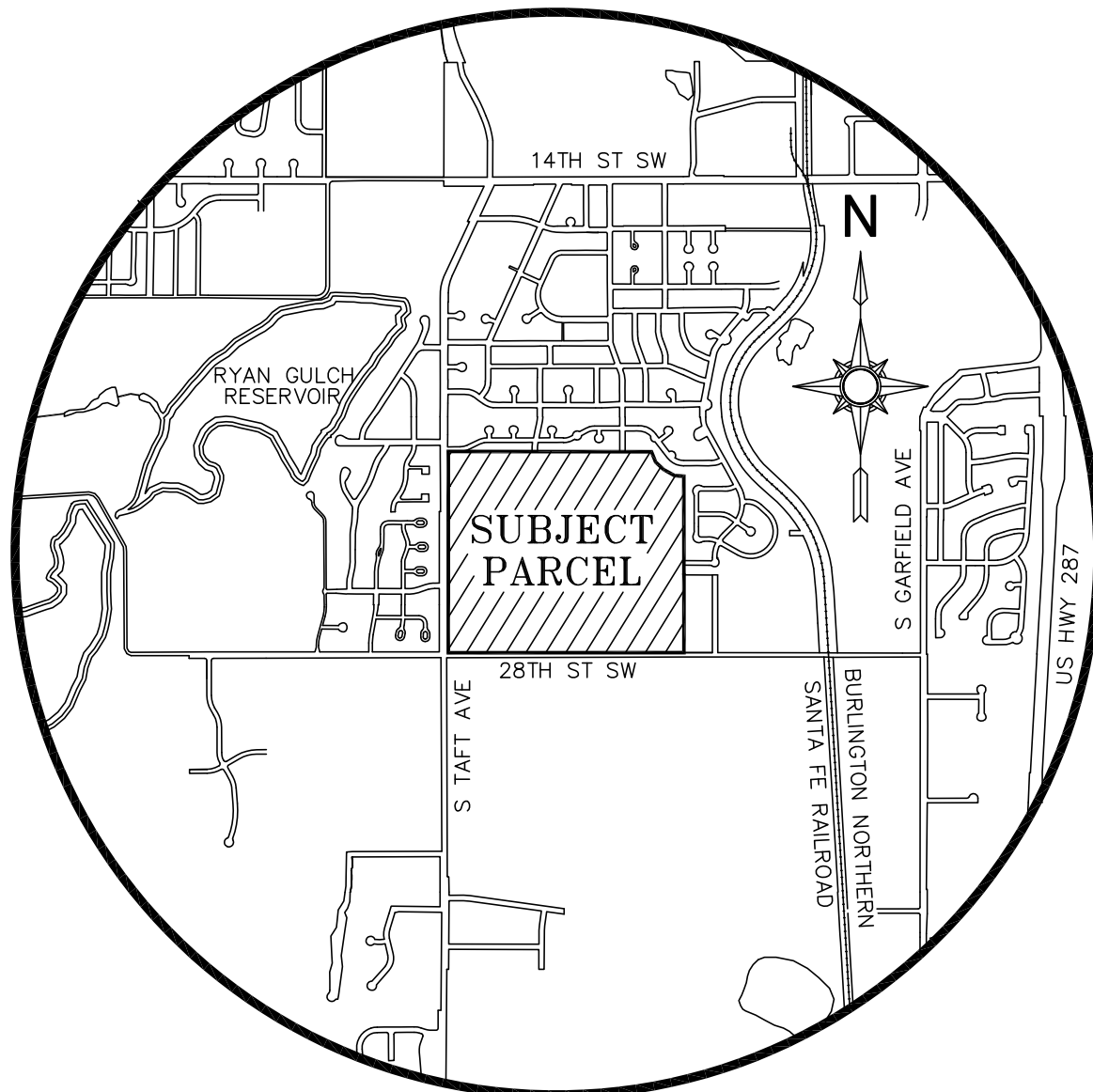
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Landmark Engineering Ltd

By: Paul A. Hernandez  
Colo. L.S. 32829



LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°27'49"E	44.73
L2	S27°12'30"E	125.52
L3	S40°27'28"E	77.69
L4	S53°20'27"E	89.62
L5	S68°14'58"E	89.62
L6	S83°18'04"E	89.41
L7	S03°03'26"E	19.94
L8	N00°39'20"W	19.88
L9	N45°38'34"W	70.61



VICINITY MAP  
SCALE 1" = 2000'

CLIENT: McWHINNEY

ASPEN KNOLLS SUBDIVISION VACATION  
LOVELAND, CO.

JOB NO. MCWHIN

8B8E12-A3

SHEET  
1 OF 1



# ASPEN KNOLLS ADDITION

## REZONING NO.

BEING A PORTION OF ASPEN KNOLLS ADDITION,  
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH,  
RANGE 69 WEST OF THE 6TH P.M., CITY OF LOVELAND, LARIMER COUNTY, COLORADO.

### LEGAL DESCRIPTION: D-R DISTRICT

Legal Description of a tract of land being a portion of Section 26, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Beginning at the Southwest Corner of said Section 26 and considering the South line of the Southwest Quarter of said Section 26 as bearing North 89°16'40" East and with all bearings contained herein relative thereto; thence along the West line of the Southwest Quarter of said Section 26 North 00°33'47" West 2255.97 feet to a point on the Westerly prolongation of the South line of Stamp Addition to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County; thence along said South line and the South line of Sun Point Addition to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County the following five courses and distances; North 89°22'59" East 902.78 feet; thence North 89°24'16" East 209.33 feet; thence North 89°27'17" East 997.04 feet; thence North 89°24'46" East 155.26 feet; thence North 89°27'49" East 44.73 feet to a point on the Southwesterly line of Sun Point Second Addition and Subdivision to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County; thence along said Sun Point Second Addition and Subdivision the following five courses and distances; South 27°12'30" East 125.52 feet; thence South 40°27'28" East 77.69 feet; thence South 53°20'27" East 89.62 feet; thence South 68°14'58" East 89.62 feet; thence South 83°18'04" East 89.41 feet to a point on the Westerly line of Rolling Knolls Estates Second Addition to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County; thence along said Sun Point Second Addition and the West lines of Golden South Estates First Addition and Subdivision to the City of Loveland according to the plat on file in the office of the Clerk and Recorder said County and the Gulch - Minor Residential Development according to the plat on file in the office of the Clerk and Recorder said County the following two courses and distances; South 00°39'49" East 837.77 feet; thence South 00°38'17" East 1140.17 feet to the South Quarter Corner of said Section 26; thence continuing South 00°38'17" East 30.00 feet to a point on the South right-of-way line of 28th Street Southwest, thence along said South line South 89°16'40" West 2661.32 feet; North 00°33'47" West 30.00 feet to the Point of Beginning;

Excepting therefrom the following parcels of land:

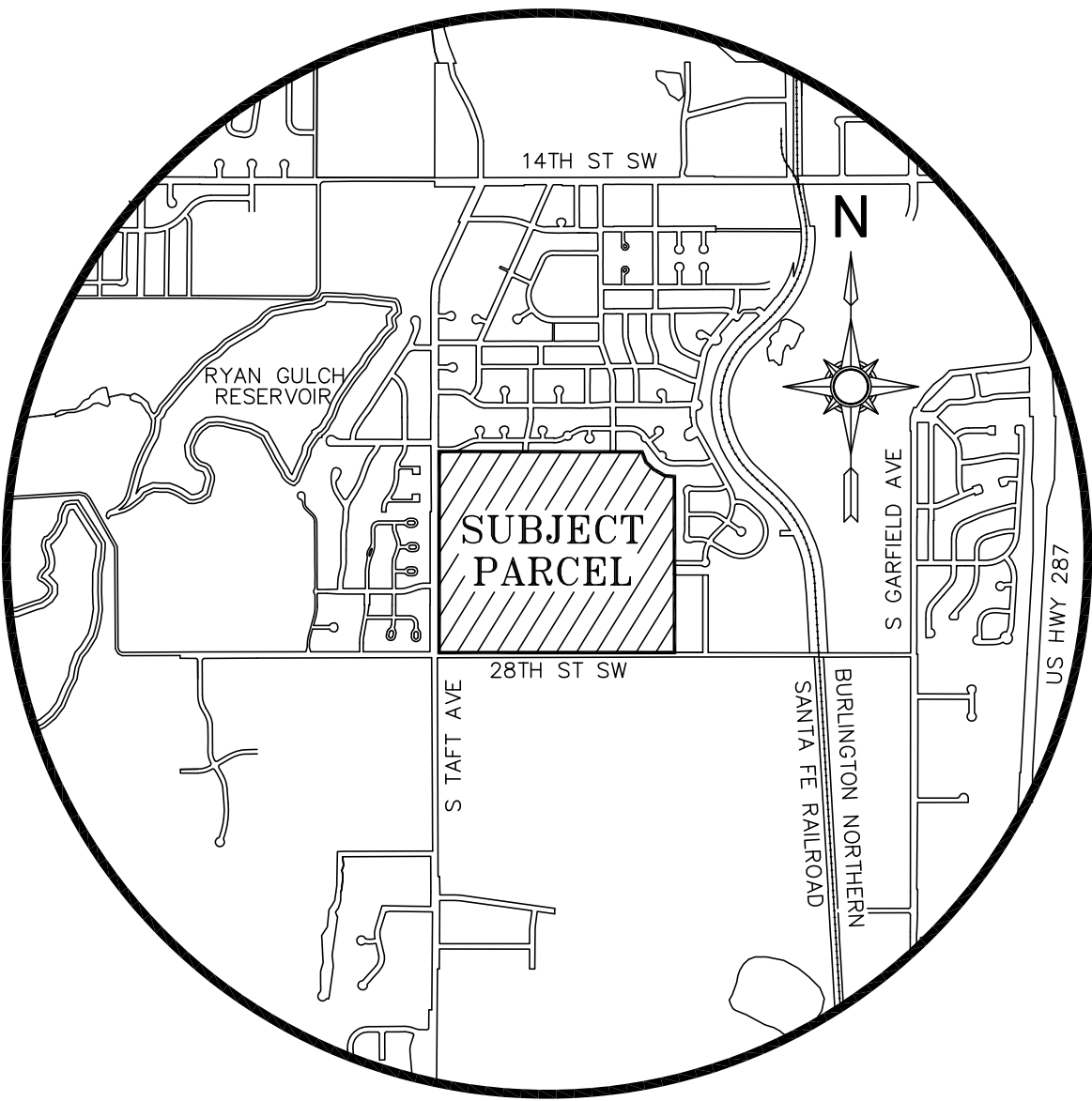
Beginning at the South Quarter Corner of said Section 26, thence North 00°38'17" West 40.00 feet to a point on the North right-of-way line of 28th Street Southwest; thence along said North right-of-way line South 89°16'40" West 1326.26 feet to the True Point of Beginning; said point being a point on the East line of that certain parcel of land described in deed, recorded in Book 1295, Page 531, records of said County; thence along said East line and the East line of that certain parcel of land described in deed, recorded in Book 1406, Page 459 North 00°43'20" West 90.00 feet; thence along the North lines of those certain parcels of land recorded in deed, under Reception No. 88053400 and Book 1406, Page 459, South 89°14'45" West 200.56 feet; thence along the West line of said Reception No. 88053400 South 03°03'26" East 19.94 feet to a point on the North line of said Book 1295, Page 531; thence along said North line and it's Westerly prolongation, South 89°21'02" West 126.62 feet to a point on the East line of that certain parcel of land described in deed, recorded in Book 1657, Page 100; thence along said East line North 00°39'20" West 19.88 feet to the Northeast Corner of said parcel of land; thence along the North line of said parcel of land and the North line of that certain parcel of land described in deed, recorded in Book 1222, Page 543, records of said County, South 89°16'40" West 150.00 feet; thence along the West line of said Book 1222, Page 543 South 00°39'20" East 100.00 feet to a point on the North right-of-way line of said 28th Street Southwest; thence along said North right-of-way line North 89°16'40" East 476.46 feet; thence North 00°43'20" West 10.00 feet to THE TRUE POINT OF BEGINNING.

containing 136.789 acres more or less.

ZONING DESIGNATION:

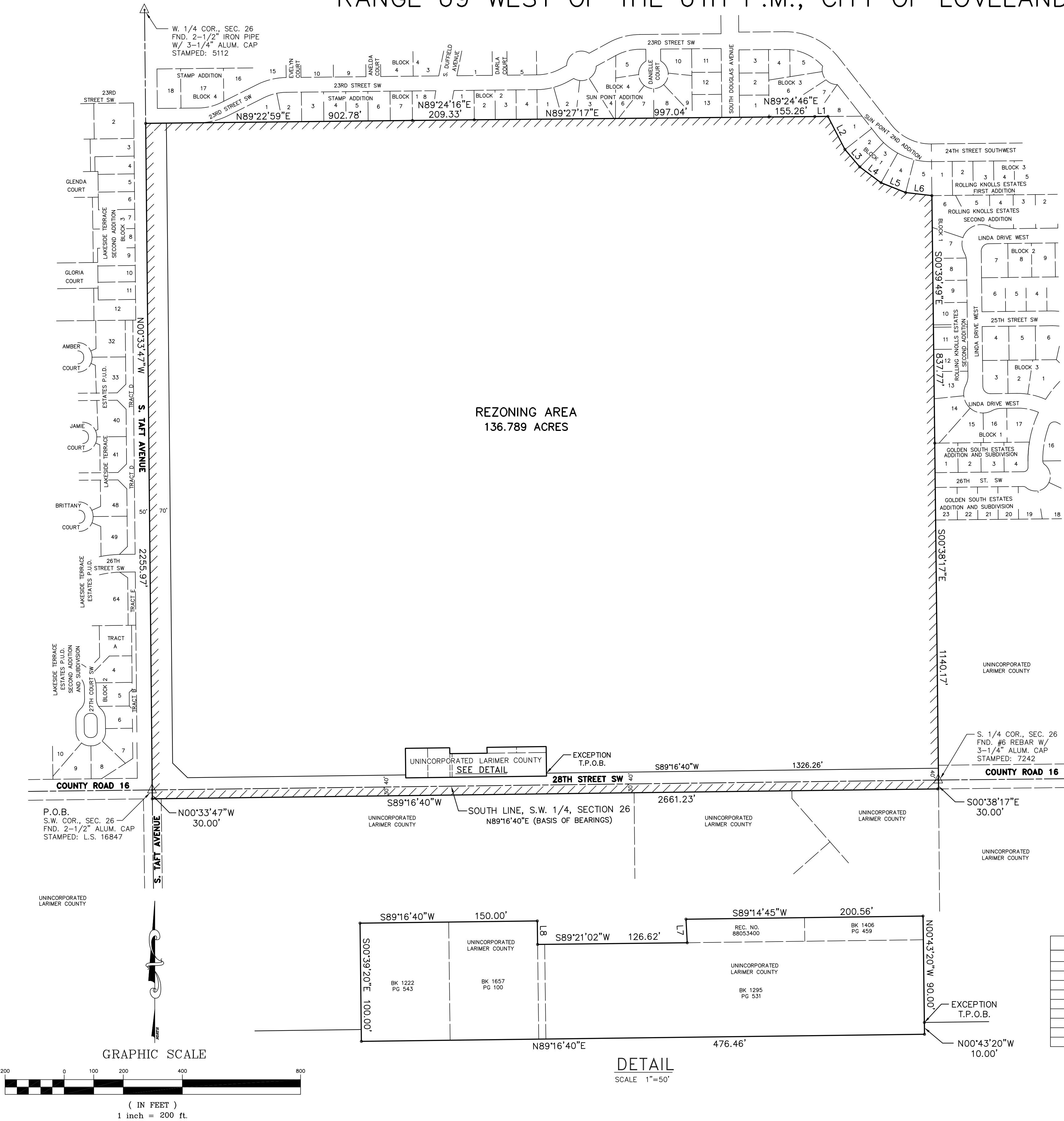
EXISTING ZONING: P.U.D. ASPEN KNOLLS

PROPOSED ZONING: DR (DEVELOPING RESOURCES)



VICINITY MAP  
SCALE 1" = 2000'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°27'49"E	44.73
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L3	S40°27'28"E	77.69
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L7	S03°03'26"E	19.94
L8	N00°39'20"W	19.88
L9	N45°38'34"W	70.61



REVISIONS	Description	By	Date
	CORRECTIONS PER 7-19-13 CITY COMMENTS	K.L.	8/19/13

**Landmark Engineering**  
Engineers Planners Surveyors Architects Geotechnical  
3521 West Eisenhower Blvd., Loveland, Colorado 80537  
(970) 667-6236 Fax: (970) 667-6236  
www.landmarkid.com

DATE: JUNE 2013
SCALE: 1"=200'
DRAWN: P.A.H.
CHECKED: E.J.S.
APPROVED: P.A.H.

CLIENT: **MCWHINNEY**

TITLE: **ASPEN KNOLLS REZONING MAP  
LOVELAND, CO.**

JOB NO.: **MCWHIN  
8B8E12-A3**

SHEET **1** OF **1**

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## CITY OF LOVELAND PLANNING COMMISSION MINUTES August 26, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on August 26, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, and Prior. Members absent: Commissioners Crescibene, Krenning, and Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

*These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.*

### **CITIZEN REPORTS**

There were no citizen reports.

### **STAFF MATTERS**

1. **Mr. Bob Paulsen, Current Planning Manager** conveyed to the Commission that there will be items on the agenda for the September 9, 2013 and September 23, 2013 Planning Commission meetings.

### **COMMITTEE REPORTS**

**Commissioner Molloy** stated that during the Title 18 Committee meeting, held on August 22, 2013 a good dialog was held regarding temporary uses. He said that discussions were ongoing. **Mr. Paulsen**, shared that the Title 18 Committee will be bringing the new Weed Control Ordinance to the September 23, 2013 Planning Commission meeting. He added that the proposed changes to the ordinance are posted on the City of Loveland website and will also be included in the City Update which is included in the utility billing mailings in an effort to notify the public more broadly of upcoming code amendments. In addition to that provision, during the second meeting in October, Title 18 will bring a sizeable amendment addressing the Site Development Plan Process along with the provisions relating to the subdivision code, specifically chapter 16.40 that deals with the posting of securities. Finally, the Committee hopes to bring another large amendment to the Planning Commission towards the end of the year addressing landscape and buffering provisions.

### **COMMISSIONER COMMENTS**

**Commissioner Dowding**, offered her condolences to the family of **Dave Clark, City Councilor for Ward IV**, for the passing of his father, former City Councilman **Willard Clark**. **Chair Meyers** shared his condolences to the family as well.

## **APPROVAL OF THE MINUTES**

**Chair Meyers** asked if the written documentation provided by Citizen **Kim Orr** at the previous Planning Commission meeting, containing information on oil and gas spills in Colorado, were included in the Planning Commission Meeting Minute Package. **Ms. Kimber Kreutzer, Planning Commission Secretary**, responded that they were not included; however she would obtain a copy and include them in the amended meeting minutes. **Chair Meyers** asked for a motion to approve the minutes. **Commissioner Dowding** moved to approve the minutes. Upon a second by **Commissioner Molloy**, the meeting minutes were approved 5-0 with **Commissioner Middleton** abstaining since he was absent from the August 12, 2013 Planning Commission Meeting.

## **REGULAR AGENDA**

### **1. CanDo Coalition Presentation**

The CanDo presentation provided an overview of the CanDo Coalition, the sectors they work in, and information on how they hope to partner with the City of Loveland on their Built Environment strategy. The purpose of the presentation is to educate the Commission on the coalition and explain more about the partnership with the city.

**Ms. Jessica Hinterberg, Loveland CanDo Coordinator**, the Coalition for Activity and Nutrition to Defeat Obesity, shared that CanDo has partnered with University of Colorado Health System. She explained that the CanDo vision is to create a model community that supports healthy eating and active living. The mission is to engage community members and organizations in obesity prevention through support, advocacy and education. The coalition was initiated in 2004, expanded into Loveland in 2009 and is 300 + partners strong.

The CanDo organization came to exist due to the realization that obesity was a growing problem in the community. While Colorado boasts the lowest rates of obesity in the nation, it also has one of the fastest growing obesity rates in the United States. If the trend continues, by 2020, 76% of Coloradoans will be overweight or obese. **Ms. Hinterberg** added that while Colorado ranks #1 for having the leanest adults, our children rank #23.

**Chair Meyers** asked where the data in the presentation was obtained from. **Ms. Hinterberg** responded that the information provided was taken from the *F as in Fat-Robert Wood Johnson Foundation* as well as *Live Well Colorado*. **Mr. Meyers** further questioned if the data was directly from the medical community or gathered based on statistical review. **Ms. Hinterberg** countered that the information is gathered through survey work at the community level, and then compared nationally.

She shared that a community that supports health has a combination of healthy environments including healthy schools, well workplaces, health care, safe active transportation, access to healthy food, and media and public awareness.

**Katie Guthrie, Certified Planner**, addressed the Commission to explain the Built Environment work that CanDo has been doing in Loveland. She explained that the definition



of Built Environment is the human-made surroundings that provide the setting for where we live, work and play. It ranges in scale from: home and apartments, neighborhoods and cities, sidewalks and interstate highways, and backyards and regional parks. It includes all of the places and spaces created or modified by people. **Ms. Guthrie** stated that the definition of a healthy community design is the planning and designing of communities to make it easier for people to live healthy lives.

The principals of CanDo include building complete neighborhoods, providing opportunities for people to be physically active and socially engaged and to ensure access to affordable, healthy food, especially fruits and vegetables. Benefits include improved air quality, promotion of physical activity, lower risk of injury, improved eating habits, and increased sense of community.

**Ms. Guthrie** shared that CanDo hosted two Lunch-N-Learn series in partnership with city staff, and shared *Weight of the Nation* documentaries, created by HBO. She explained that both sessions had a good turnout from city staff. Community outreach efforts in partnership with the City of Loveland and the Housing Authority included participants from Maple Terrace and Orchard Place. These endeavors gave Loveland youth a forum to participate in the CanDo initiative. Improvements from these initiatives resulted in repairs to a sidewalk children use to get to school, and the creation of a project to create a new sidewalk in their neighborhood.

In conclusion, **Ms. Guthrie** encouraged the Commissioners to visit the CanDo website at [www.candoonline.com](http://www.candoonline.com).

## 2. Aspen Knolls

This is a public hearing concerning the Aspen Knolls First and Second Subdivisions. The property owner, McWhinney, is seeking to vacate all established public rights-of-way, re-plat the property to remove all lots, outlots, and easements, and rezone the property from P-50-Aspen Knolls PUD to DR—Developing Resource. The Aspen Knolls property was originally approved as a two-phased residential development; the owner at the time of plan approval was KB Homes.

These applications are being requested because the developer has no intention of developing the property under the approved development plans. Rather, the applicant may be interested in utilizing existing raw water credits associated with the Aspen Knolls property for a different development project. The transfer of raw water credits can only be allowed if the property is stripped of its entitlements.

Applications for vacation of public right-of-way are legislative and rezoning is considered quasi-judicial; in both cases, the Planning commission provides a recommendation to City Council. The application for re-platting the property is administrative and not being considered by the Planning Commission. The re-plat will, however, not receive approval unless the corresponding vacation and rezoning applications are approved.

**Mr. Troy Bliss, Planner II**, addressed the Commission and explained that the Aspen Knolls application consists of three parts. Two of the three items will require Planning Commission action. First is a vacation of the rights-of-way, second, a rezoning of the property. Aspen Knolls is generally located in south central Loveland, south of 14<sup>th</sup> St. SW and east of Taft Ave. The property is 120 acres in size. The far northwest corner of the site is earmarked for a detention pond for the city. Aspen Knolls was first envisioned as a development back in 2005/2006 and was initially going to be developed by KB Homes of Colorado to create a large residential project.

**Mr. Bliss** went on to explain that after KB homes got full entitlements to move forward with the project, including approval of a Final Development Plan and a Final Plat, they ultimately decided not to move forward with the project and sold the property to the current owner, McWhinney. McWhinney is seeking approval for the vacation, rezoning and an associated re-plating.

Details of the request include vacating all dedicated public rights-of-way within the Aspen Knolls First and Second Subdivisions; Rezoning the property from P-50-Aspen Knolls Planned Unit Development (PUD) to DR—Developing Resource to remove all development entitlements; and Re-plating the property to remove all lots and easements within the Aspen Knolls First and Second Subdivisions (Administrative action- not part of Planning Commission hearing). **Mr. Bliss** stated that the applicant is also interested in pursuing water credits from the property that would be placed in the city's water bank.

**Ms. Judy Schmidt, Deputy City Attorney**, explained that although the question of water credits is not before the Commission, she felt it was important for the Commissioners to understand the process that might be used in connection with the water entitlements associated with the Aspen Knolls property.

In consulting with **Ms. Sharon Citino, Assistant City Attorney**, **Ms. Schmidt** distributed an email explaining any such request would therefore have to go to City Council, and the parties agreed that if McWhinney was willing to down-zone the property to DR—Developing Resource that the Water Division would support McWhinney's request to remove the water rights in exchange for issuance of credit in the city's water bank. **Ms. Schmidt** made it clear that this would be a separate step from what is before the Commission this evening.

**Mr. Bliss** stated that a neighborhood meeting was held on Monday August 19, 2013 and explained approximately 30 people were in attendance. The majority of concern from citizens was that Aspen Knolls was about to go forward with development. During the course of the meeting it was explained that the applications in question were not to proceed with development but to vacate and rezone the property. Questions also arose asking what types of uses are permitted by right in the DR zone, specifically if oil drilling and fracking could ever be allowed. It was clarified that all uses in the DR zone would require a Special Review application, except for oil and gas development which requires a different process **Mr. Bliss** reiterated that the applicant has no plans to develop the property at this point in time. **Mr. Bliss** shared that Planning is recommending approval of the vacation and rezoning, with conditions. He shared that both requests would require approval for either to pass. If the

vacation of the right-of-way is not approved, then the rezoning would not be approved, and vice versa. In addition, all entitlements associated with Aspen Knolls, captured in the FDP, would become null and void and relinquished by the applicant.

**Mr. Middleton** questioned who owned the mineral rights for the Aspen Knolls property.

**Mr. Cole Evans, Project Analyst for McWhinney** thanked the Commission for the time and responded to **Mr. Middleton's** question and explained that mineral rights are owned by the landowner.

**Mr. Evans** shared that after McWhinney acquired the property from KB Homes, it was decided to put the project on hold due to the downturn in the economy. He went on to say that because demand for single-family home development has increased over the past year and a half, McWhinney examined whether or not to pursue development plans at Aspen Knolls. It was concluded that development of this project was no longer desirable because alley homes were no longer in demand and with the downturn in the economy, the desire for smaller lots and smaller houses was more advantageous. Bigger lots and alley homes were an important part of the approved FDP.

**Mr. Evans** stressed that the right-of-way dedication required on Taft and County Road 16, would remain with the city, just in case this property is developed in the future. He explained that McWhinney wishes to continue the farming practice on the property, as it exists today.

**Mr. Middleton** explained that water rights are a valuable, tradable commodity and asked if McWhinney would consider vacating the mineral rights to the city. He asked that the request be placed on the record for the consideration of City Council. **Mr. Evans** explained he wasn't able to provide an answer to the question, but would be happy to take it back to McWhinney for discussion.

**Ms. Dowding** asked about the detention pond. She stated that there was nothing on the agenda in the meeting tonight to address the questions or issues about the detention pond.

**Mr. Evans** responded that the size of the detention pond has been increased so that a drainage swale can be used in place of a pipe. He continued that the plans for the detention pond, as designed and approved with the Aspen Knolls project, would not be changed.

**Mr. Paulsen** clarified that the planning action that would re-plat Aspen Knolls into two outlots was not before the Commissioners, but stated that outlot A would be reserved for the regional detention facility.

**Ms. Schmidt** added that the new plat, to be administratively approved, would include a dedication of the detention pond in outlot A.

**Chair Meyers** asked if the recommendations were approved by the Planning Commission and went to City Council, if the water rights are therefore transferred, and a decision is made in the future to develop the property, would water rights need to be obtained from somewhere else in order for development to move forward. **Mr. Evans** responded that anytime a new

subdivision is proposed, regardless of the applicant, they would be required to purchase water rights at the current market price. **Chair Meyers** questioned city staff to determine if there were enough water credits spread through the city for doing these types of actions.

**Mr. Greg Dewey, Civil Engineer for Water and Power**, replied that Water and Power supported this request because it will not affect the city in a negative way for current or future customers. He explained that there are a number of credits in the city's water bank and that people paid for credits at the current cash and lieu rate, and in turn the city was able to use those funds and purchase CBT water for Green Glade Reservoir. He stated that if the water credits are moved off Aspen Knolls and used anywhere else the city serves customers, it's no different if they had stayed on the current property. He stated that the credits being reviewed at Aspen Knolls totaled 316.94 acre feet.

**Chair Meyers** opened the meeting for Public Hearing.

**Mr. Walter Skowron, 2006 Frances Dr., Loveland, CO** stated that some time ago he and his neighbors worked to get concessions for the Aspen Knolls subdivision. He is concerned because now that plans are under way to re-plat and rezone Aspen Knolls there has been no resolution about the county bridge on Taft Ave. He stated the bridge is inadequate for a major arterial like Taft Ave. He stated that Loveland has only two major north/south arterials and he believes there will come a time that Taft will need to be widened due to population increase. He asked the Planning Commission to look deeper into what the plans are for Taft Ave. and for Larimer County in regards to the two lane bridge in the next ten years and beyond. He also expressed concern about what might happen if the property is sold and questioned what future development plans might come into play.

**Mr. Skowron** shared that he understood that the McWhinney organization offered the Aspen Knolls property to the City of Loveland as a gift, which was eventually declined. He also thought the location would be a good location for a new fire station, putting his neighborhood in the 5 minute response time area.

Given there were no other citizen comments, **Chair Meyers** closed the Public Hearing.

**Mr. Molloy** stated that although the Commission was not making a decision on the re-plat, he questioned if there was a 70 foot buffer presented on Taft and a 40 foot buffer on 28<sup>th</sup> Street. **Mr. Evans** responded that they had to rezone the original Aspen Knolls Addition, which went out to the center line on Taft Ave, which is why the setback is needed. The bold line in the drawing represents the new property line, which will be a dedicated new right-of-way on Taft Ave and Hwy 16.

**Mr. Prior** asked **Mr. Bliss** to address the concessions that were originally planned for the Aspen Knolls Subdivision. **Mr. Bliss** stated that because this project was completed prior to him working at the city, he was unable to provide the information on issues or conditions to the Commission during the meeting. He stated the list of conditions could be found on the original, approved Final Development Plan.

**Mr. Molloy** questioned if the DR-Developing Resource zoning would require oil and drilling to go through Special Review prior to getting permitted to do so. He stated he understood that only administrative review would be required to allow drilling in the DR zone. **Mr. Bliss** responded that he was correct in his assumption.

**Mr. Middleton** shared with the Commission that he would not vote to support the applications for a vacation and rezoning. He explained that the original conditions were not brought to the Commission for review. He wants to understand what conditions the city is forfeiting with these application requests.

**Chair Meyers** asked **Mr. Evans** to clarify the offer of donating Aspen Knolls to the City of Loveland. **Mr. Evans** explained there was a dedication that was brought forth to the city. **Ms. Kim Perry, McWhinney**, added that there were previous offers of donation to both the City of Loveland and the Thompson Valley School District but both were declined.

**Mr. Molloy** stated that the PUD process frequently contains many conditions to coincide with the development around it. He explained if those development plans go away, then the conditions go away with it. He agreed with Mr. Skowron that the widening of Taft Ave. will need to be addressed in the future.

**Mr. Paulsen** explained that it was staff responsibility to provide the information to the Commission on the Final Development Plan and any requirements or conditions related to infrastructure for Aspen Knolls. He stated that conditions would have been designed for the purpose of development, and since the proposal before the Commission is to eliminate the development as a consideration, along with the vested rights in the zoning, staff did not anticipate that the Commissioners would have concerns about the previously established conditions.

**Chair Meyers** questioned **Commissioner Massaro** and asked if the Traffic Advisory Board, of which **Mr. Massaro** is a member of, had any plans on their agenda for Taft Ave. **Mr. Massaro** apologized for not having an answer in front of him in response to that question.

**Mr. Middleton** thanked **Mr. Paulsen** for his comments but reiterated his need to see the conditions in the original FDP and asked if **Mr. Paulsen** understood the conditions in the FDP. **Mr. Paulsen** explained that he was not the Current Planning Manager when the FDP was approved, but went on to say he didn't think McWhinney was attempting to hide or absolve themselves from conditions, and again shared that staff did not anticipate the request of Commissioners to review the conditions with the application under consideration. He stated he would be happy to provide the conditions to the Commission, and apologized that he would not be able to do so this evening.

**Mr. Paulsen** clarified that absent a development proposal, the city would have no ability to impose conditions on a property. The conditions were designed to address impacts of development.

**Ms. Dowding** commented that she had researched the history of Aspen Knolls, and found that when McWhinney took over the property there was concern over the handling of the water rights and stated there were some feelings in the community of special dispensations for the McWhinney's. She stated that she didn't see any special favors being asked for in the request up for consideration this evening, and stated that as the property owners, McWhinney were simply making decisions based on their business needs. She stated that the concern about the water rights were a moot point. She shared that she would be in favor of the vacation and rezoning requests.

**Mr. Middleton** explained that since the Commission was being asked to vote to vacate entitlements, he was concerned about what exactly was being vacated. He asked **Ms. Schmidt** if she was aware that McWhinney attempted to donate the Aspen Knolls property to the City of Loveland. **Ms. Schmidt** responded that she wasn't aware of the offer other than what **Ms. Perry** offered. **Mr. Middleton** asked if they were still willing to donate it to the city.

**Mr. Molloy** replied that the city made the decision not to acquire the property, most likely because it was determined there was no need for it.

**Mr. Prior** questioned **Mr. Paulsen** if he knew if the easements for the right-of-way are adequate for the long term plans for 28<sup>th</sup> St. and Taft Ave. **Mr. Paulsen** replied that he was confident that the transportation office reviewed the plans carefully and was satisfied. **Mr. Bliss** stated that the analysis done by the transportation department was specific to just the vacation of right-of-way, and based upon the right-of-way that would continue to be along Taft Ave. and County Road 16, it was considered to be adequate.

**Mr. Molloy** queried **Mr. Bliss** if the city could foresee what this property could be used for in the future. **Mr. Bliss** responded that the property would continue to be designated on the Comprehensive Master Plan with a designation of LDR-low density residential and the city would continue to envision the same in the future.


**Chair Meyers** stated he supports the changes and would be voting in favor of staff recommendation to approve the application requests. He agreed with Mr. Skowron that the issues surrounding Taft Ave. need to be addressed in the near future.

**Ms. Dowding** made a motion to make the findings listed in Section VIII of the Planning Commission staff report dated August 26, 2013 and, based on those findings, recommend that City Council approve the Aspen Knolls Vacation and Rezoning, subject to the conditions listed in Section IX, as amended on the record. **Mr. Prior** seconded the motion. After **Mr. Evans** verbally agreed to accept the conditions, the motion was approved 5-1 with **Mr. Middleton** voting no.

**ADJOURNMENT**

**Commissioner Middleton** made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by: \_\_\_\_\_

  
Buddy Meyers, Planning Commission Chairman



\_\_\_\_\_  
Kimber Kreutzer, Planning Commission Secretary



The intent of the following phasing information is to outline the sequencing of construction and of improvements and installation of site amenities within Aspen Knolls First Subdivision. The issuance of Building Permits and Certificates of Occupancy SHALL be granted as allowed by the Conditions of Approval, Municipal Code and the Sequencing Plan.

### CONDITIONS OF APPROVAL

#### Revised Conditions:

##### A. Preliminary Development Plan:

##### Power

1. Unless Meter and Power requirements for location of meters and other electrical equipment can be met on the multifamily structures, all multifamily structures consisting of three or more units shall have the electric meters located centrally on or near the building. The developer or his representative shall be responsible for installing and maintaining the underground electric service to the meter per the National Electric Code.

##### Stormwater

2. Prior to approval of a Final Development Plan and Final Plat for Phase 1A, the Developer shall change the Outlet "A" Plat note from "Upon the transfer of ownership to the City of Loveland, drainage infrastructure shall be maintained by the City" to "Upon the transfer of ownership to the City of Loveland, Colorado, the City shall maintain the drainage infrastructure shall be maintained by the City."

3. Prior to approval of a Final Development Plan and Final Plat for Phase 1A, the Developer shall add the following note to the Landscape Plan: "All trees shall be located a minimum of 10-feet from storm sewers and shrubs shall be located a minimum of 4-feet from storm sewers."

4. Prior to approval of a Final Development Plan and Final Plat for Phase 1B, the Developer shall provide the Loveland Stormwater Utility with a recorded copy of the off-site Public Utility Drainage Easements for the regional storm drainage improvements.

5. Prior to approval of a Final Development Plan and Final Plat for Phase 1B, the Developer shall provide the Loveland Stormwater Utility with a recorded copy of the off-site Temporary Construction Easements for the regional storm drainage improvements.

6. Prior to approval of a Final Development Plan and Final Plat for Phase 1B, the Developer shall provide a final design, acceptable to the Loveland Stormwater Utility, for all Regional Storm Drainage Improvements identified in the "Preliminary Drainage Study for Aspen Knolls First Subdivision".

7. Prior to approval of a Final Development Plan and Final Plat for Phase 1A, the Developer shall work with the Loveland Stormwater Utility and a "Drain Stormwater Reimbursement Agreement" shall be developed for all Regional Storm Drainage Improvements identified in the "Preliminary Drainage Study for Aspen Knolls First Subdivision". Stormwater "System Investment Fees" shall provide dollars for an equitable reimbursement of Regional Storm Drainage Improvements as defined in the Stormwater Reimbursement Agreement.

8. Prior to release of a building permit for Phase 1B, the Developer shall complete all downstream off-site Regional Storm Drainage Improvements lying east of the Aspen Knolls First Subdivision. In addition, the Loveland Stormwater Utility shall complete construction of the Hermon Regional Detention Pond. As an alternative to the above requirements and prior to release of a building permit for Phase 1B, the Developer shall complete a temporary on-site Retention Pond and the Retention Pond shall remain in place until such time that all off-site Regional Storm Drainage Improvements are constructed including Hermon Pond.

##### Fire Prevention

9. All garage and attic areas shall have "Rate of Rise" heat detectors installed in these areas. Only garages protected by an automatic fire sprinkler system shall not be required to install heat detectors.

##### Engineering

10. Notwithstanding any information presented in this FDP document, all public improvements shall be constructed to City standards as adopted on January 2001, unless specifically listed in the Regulatory Procedures portion of the document.

11. Prior to the City approval of any street construction plans or the issuance of any building permits within this development, the developer shall obtain approval of a final plat, which clearly delineates the following minimum rights-of-way:

a. A minimum width of 10' for the east one-half of Taft Avenue adjacent to this project.

b. A triangular area at the northeast quadrant of the intersection of Taft Avenue and 28th Street SH. The triangular area shall be defined by the straight-line connection of a point located 160' north and a point located 160' east of the street centerline intersection.

12. Prior to the release of any building permits pursuant to Section 16-40.010 of the Loveland Municipal Code within Phases 1A or 1B, the following improvements shall be designed and constructed by the developer:

a. A southbound left turn lane on Taft Avenue at Golden Columbine Drive

b. A westbound right turn lane on 28th Street SH at Taft Avenue

c. A continuous northbound acceleration/deceleration lane on Taft Avenue from 28th Street SH to Golden Columbine Drive

13. With the exception of model homes approved by the Community Services Director, prior to the issuance of any certificate of occupancy within Phase 1A, the developer shall design and construct the following street improvements unless designed and constructed by others:

a. Taft Avenue shall be widened to 74' from 28th Street SH to 350' north of 23rd Street SH

b. Taft Avenue shall be widened to 74' from 28th Street SH to 350' north of 23rd Street SH

c. Taft Avenue shall be widened to 74' from 28th Street SH to 350' north of 23rd Street SH

b. Stop signs shall be installed on the north and south approaches of the intersection of Dufield Avenue and 23rd St SH.

c. Major collector street improvements to 28th St SH and auxiliary turn lanes at intersections adjacent to this FDP including the north and south curb and gutter, and excluding the south sidewalk from Taft Avenue to Wild Lupine Avenue including any off-site topers.

d. Approximately 16' of street widening and restriping of the pavement on 14th St SE at Hwy 287 shall be performed to provide three 12' wide travel lanes and two 5' wide paved shoulders/bike lanes.

e. Install a traffic signal at the intersection of Taft Avenue and 28th Street SH.

f. Install a traffic signal at the intersection of Taft Avenue and 14th Street SH.

g. A northbound right turn lane at the intersection of Taft Avenue and 14th Street SH.

h. An eastbound right turn lane at the intersection of Taft Avenue and 28th Street SH.

14. Prior to the issuance of any certificate of occupancy within Phase 1B, the developer shall design and construct the following street improvements unless designed and constructed by others unless otherwise approved:

a. A minor collector street connection between Colorado Avenue and 28th St SH shall be extended through this project. The accesses to the major collector portion of this link shall be configured for forward directional access only as specified in the City's street standards.

b. Major collector street improvements to 28th St SH and auxiliary turn lanes at intersections adjacent to this FDP including the north and south curb and gutter, and excluding the south sidewalk from Wild Lupine Avenue to the east boundary of the development including any off-site topers.

c. Construction of all improvements shown in the letter from Larimer County dated August 14, 2002.

15. Prior to the issuance of any partial or full building permits pursuant to Section 16-40.010 of the Loveland Municipal Code within Phase 1A, 2, 3, 4A or 4B, all improvements identified in Conditions 12, 13, and 14 shall be completed.

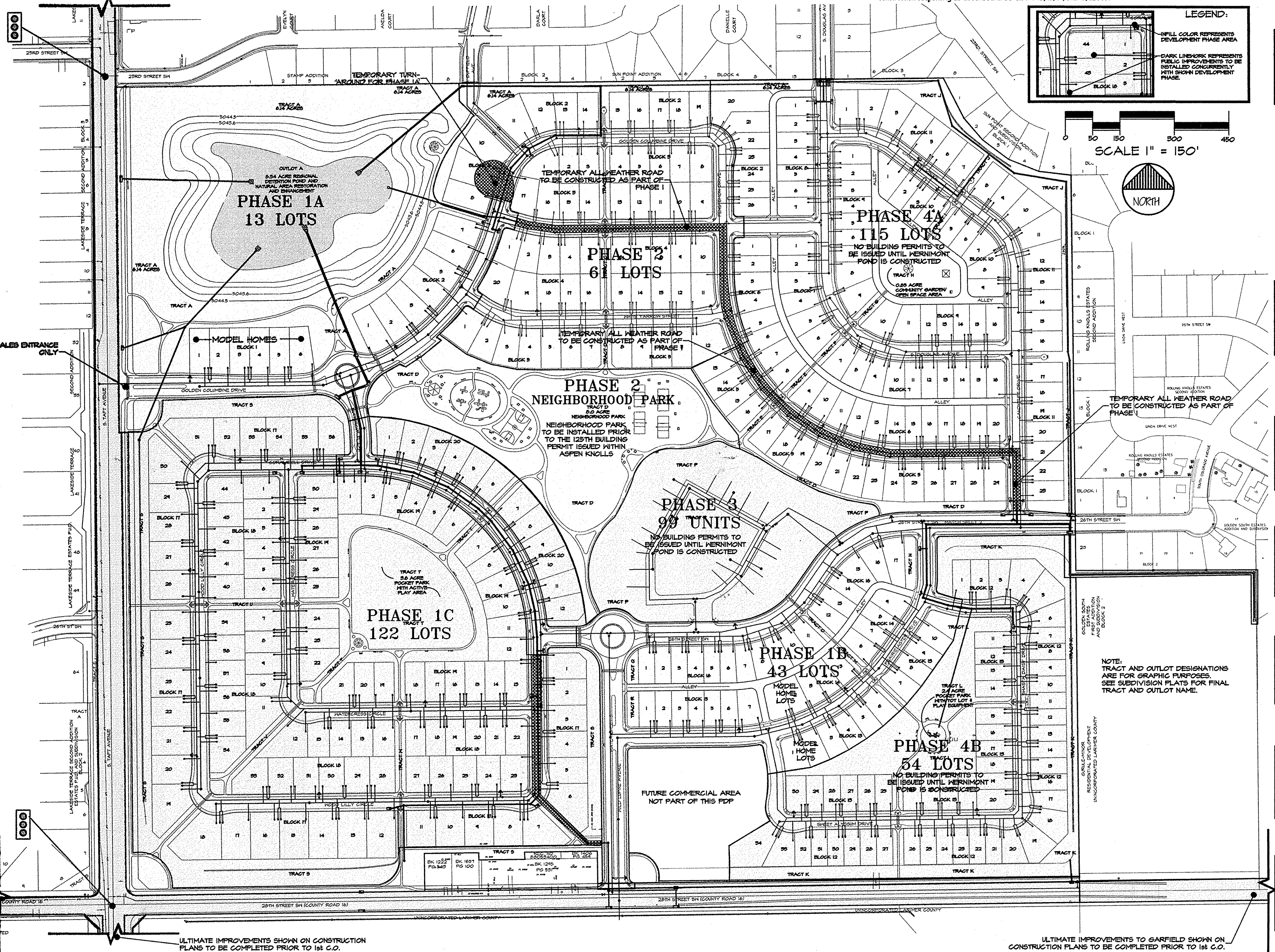
16. Prior to the issuance of more than 12 building permits within this development, the developer shall design and install a traffic signal at the intersection of US 287 and 14th Street SE, unless constructed by others.

17. Notwithstanding the provision of Section 16-40.010 of the Loveland Municipal Code, prior to issuance of any partial or full building permits within this project, the developer shall reimburse Bell Homes in the amount set forth in the reimbursement agreement dated July 9, 2000 for work previously completed by Bell Homes on Taft Avenue adjacent to this property. The payment shall be made to either Bell Homes or to the City of Loveland by the developer after the City has provided a copy of the executed Reimbursement Agreement to the developer and prior to the issuance of any partial or full building permit within this property. However, upon the City's approval of the Reimbursement Agreement, the City shall be deemed to have accepted the reimbursement agreement that specifically prohibits or supersedes this requirement.

18. Prior to approval of the Final Development Plan or Final Plat, the developer shall submit the recorded deeds of dedication for all off-site rights-of-way required for transportation facilities needed to meet City ordinances.

19. The developer shall participate in the off-site widening of County Road 11 south of the 28th Street SH intersection improvements in accordance with the terms of the memo from Larimer County dated 11-2002. An agreement between Larimer County and the Developer setting forth the terms described in said memo shall be in place prior to approval of the FDP.

20. Prior to approval of the FDP, the "Phasing construction plan" shown in the FDP shall be revised to reflect the changes in construction sequencing as described in Conditions 12, 13, 14, and 15, above.



21. The minimum corner clearance between driveways and local street intersections shall be 80 feet measured as the separation between the centerlines.

22. Prior to approval of the FDP the technical corrections dated 11-14-2002 shall be completed and approved by the City. Environmental Planning

23. If any structures containing asbestos and/or lead paint contaminants are demolished, any portions of the structure containing such contaminants shall be treated as hazardous waste and shall be disposed of in accordance with Federal, State and Local Environmental laws.

##### Current Planning

24. The wetland enhancement area incorporated into construction Phase 1A shall be completed prior to the issuance of the 19th building permit for Phase 1A.

25. The off-site housing phase, identified as Phase 3 on the Phasing Construction Plan, shall be staged in a sequence that requires the 240th building permit application to be within Phase 3 with subsequent permit applications for single-family dwellings in the remaining phases to be accepted by the City at a ratio of 1:7 single-family building permits per each certificate of occupancy issued for the off-site housing phase.

26. Any changes/modifications to the Phasing Construction Plan shall be termed a major modification to the FDP.

27. All "ability to obtain" documentation for off-site easements and rights-of-way shall be submitted to the Current Planning Division with the first FDP submittal, unless waived by the Current Planning Manager.

##### B. Preliminary Plat:

##### Current Planning

28. Prior to approval of the Final Plat the technical corrections listed in the memorandum dated December 4, 2002 shall be completed and approved by the City.

##### Planning Commission

29. A minimum of two off-street parking spaces shall be provided for each multi-family unit.

### Amenities and Public Improvements.

The following phasing notes list the components and installation timing for Aspen Knolls First Subdivision:

#### PHASE 1A - 13 Lots

BUILDING PERMITS WITHIN PHASE 1A SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• Approval of a final plat which clearly delineates the following minimum rights-of-way:

• A minimum width of 10' for the east one-half of Taft Avenue, adjacent to the project.

• A triangular area at the northeast quadrant of the intersection of Taft Ave. and 28th Street SH. The triangular area shall be defined by the straight-line connection of a point located 160' north and a point located 160' east of the street centerline intersection.

• A southbound left turn lane on Taft Avenue at Golden Columbine Drive

• A westbound right turn lane on 28th Street SH at Taft Avenue

• A continuous northbound acceleration/deceleration lane on Taft Avenue from 28th Street SH to Golden Columbine Drive

• Taft Avenue shall be widened to 74' from 28th Street SH to 350' north of 23rd Street SH including all necessary off-site topers to match existing roadway conditions north and south of the site. In addition, a northbound right turn lane shall be installed south of 28th Street SH.

• Stop signs shall be installed on the north and south approaches of the intersection of Dufield Avenue and 23rd St. SH.

• Major collector street improvements to 28th St. SH and auxiliary turn lanes at intersections adjacent to the FDP including the north and south curb and gutter, and excluding the south sidewalk from Taft Ave. to Wild Lupine Ave. including any off-site topers.

• Approximately 16' of street widening and restriping of the pavement on 14th St. SE at Hwy 287 shall be performed to provide three 12' wide travel lanes and two 5' wide paved shoulders/bike lanes.

• Install a traffic signal at the intersection of Taft Avenue and 28th Street SH.

• Install a traffic signal at the intersection of Taft Avenue and 14th Street SH.

• A northbound right turn lane at the intersection of Taft Avenue and 14th Street SH.

• An eastbound right turn lane at the intersection of Taft Avenue and 28th Street SH.

• 12" water line in Golden Columbine Dr. and Tract A connecting to the existing line in Dufield Ave.

• 6" Sanitary Sewer in Golden Columbine Dr. and Tract A connecting to line in Dufield Ave.

• Final Storm Drainage Improvements shall be in place with storm flows and nuisance drainage flows routed through existing (temporary) outfall facility in 23 St. SH. Flows shall be within allowable levels.

• Wetland Mitigation Area and all other Open Space and ROW landscaping shall either be installed or financially secured prior to the issuance of any building permits within Aspen Knolls First Subdivision. All open space and ROW landscaping within this sequence shall be installed prior to the issuance of the 19th building permit for this phase.

• CERTIFICATE OF OCCUPANCY SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• Temporary landscaping around any sales buildings shall be fully installed or financially secured prior to certificate of occupancy of sales trailers.

#### PHASE 1B - 43 Lots

BUILDING PERMITS WITHIN PHASE 1B SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• A minor collector street between Colorado Avenue and 28th St. SH shall be extended through this project. The accesses to the major collector portion of this link shall be configured for forward directional access only as specified in the City's street standards.

• Major collector street improvements to 28th St. SH and auxiliary turn lanes at intersections adjacent to this FDP including the north and south curb and gutter, and excluding the south sidewalk from Wild Lupine Ave. to the east boundary of the development including any off-site topers.

• Construction of all improvements shown in the letter from Larimer County dated August 14, 2002.

• All open space and ROW landscaping (developer landscaping) within this sequence shall be installed or financially secured within area 1B.

• Solid landscaping shall be installed prior to the issuance of the 43rd building permit.

• CERTIFICATE OF OCCUPANCY WITHIN PHASE 1B SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• 24" water main installation in 28th Street SH to Wild Lupine Ave.

• Disconnect the existing temporary outfall in 23rd St. SH (Phase 1A) and connect to completed storm drain outfall from Phase 1A through Wild Iris Street, Penstemon Dr., Candytuft Dr., and 26th St. SH and east of the site as shown.

#### PHASE 1C - 122 Lots

BUILDING PERMITS WITHIN PHASE 1C SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.

• All open space and ROW landscaping (developer landscaping) within this sequence shall be installed or financially secured Plan within area 1C.

• Solid landscaping shall be installed prior to the issuance of the 72nd building permit.

• PRIOR TO THE ISSUANCE OF MORE THAN 12 BUILDING PERMITS THE DEVELOPER SHALL:

• Design and install a traffic signal at the intersection of US 287 and 14th Street SH, unless constructed by others.

#### PHASE 2 - 61 Lots and Neighborhood Park

BUILDING PERMITS WITHIN PHASE 2 SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.

• All improvements previously listed for building permits for Phase 1A, 1B and/or 1C.

• All open space and ROW landscaping (developer landscaping) including the park area within this sequence shall be installed or financially secured within Phase 2.

• Landscaping shall be installed prior to the issuance of the 61st building permit for this phase. All park components shall be installed prior to the issuance of the 125th building permit for the overall subdivision.

#### PHASE 3 - 99 Residential Units

BUILDING PERMITS WITHIN PHASE 3 SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• The financial security has been posted for the developer landscape (open space & ROW) shown on the FDP within Phase 3.

• All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.

• Hermon Pond is complete.

• Landscaping shall be installed prior to the issuance of the first Certificate of Occupancy for Phase 3.

• NOTE - Phases 3, 4A and 4B may be under construction concurrently.

#### PHASE 4A - 115 Lots

BUILDING PERMITS WITHIN PHASE 4A SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• The financial security has been posted for the developer landscape (open space & ROW) shown on the FDP within Phase 4A.

• All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.

• Hermon Pond is complete.

• A minimum of one building permit has been issued for Phase 3.

• Landscaping shall be installed prior to the issuance of the 60th building permit for Phase 4A.

• NOTE - Phases 3, 4A and 4B may be under construction concurrently.

#### PHASE 4B - 54 Lots

BUILDING PERMITS WITHIN PHASE 4B SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

• All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.

• Financial Security has been posted for the developer landscape (open space & ROW) shown on the FDP within Phase 4B.

• Hermon Pond is complete.

• A minimum of one building permit has been issued for Phase 3. Phases 3, 4A and 4B may be under construction concurrently.

• Landscaping shall be installed prior to the issuance of the 25th building permit for Phase 4B.

REVISIONS	BY	DATE
REVISED PER CITY COMMENTS	LD	10/10/02
REVISED PER CITY COMMENTS	LD	10/10/02
REVISED PER CITY COMMENTS	LD	10/10/02
REVISED PER CITY COMMENTS	LD	10/10/02
REVISED PER CITY COMMENTS	LD	10/10/02
REVISED PER CITY COMMENTS	LD	10/10/02

**Landmark ENGINEERING Ltd.**  
ENGINEERS/ARCHITECTS/PLANNERS/SURVEYORS  
3521 West Eisenhower Blvd., Loveland, Colorado 80537  
(970) 667-6266 Danner (970) 629-7121 Fax (970) 667-6268

DATE: JAN 24, 2002  
SCALE: NOT TO SCALE  
DRAWN: JAB  
CHECKED: JAB  
APPROVED: RM

CLIENT: KB HOME  
TITLE: ASPEN KNOLLS FIRST SUBDIVISION  
FINAL DEVELOPMENT PLAN - PHASES 1A & 1B  
PHASING CONSTRUCTION PLAN  
JOB NO.: 1548  
256402-217  
FDP SHEET  
5 OF 20



The intent of the following phasing information is to outline the sequencing of construction and of improvements and installation of site amenities within Aspen Knolls First Subdivision. The issuance of Building Permits and Certificates of Occupancy shall be granted as allowed by the Conditions of Approval, Municipal Code and the Sequencing Plan.

**CONDITIONS OF APPROVAL**

Revised Conditions:

A. Preliminary Development Plan:

Power

1. Unless Water and Power requirements for location of meters and other electrical equipment can be met on the multifamily structures, all multifamily structures consisting of three or more dwelling units shall have the electric meters located centrally on or near the building. The developer or his representative shall be responsible for installing and maintaining the underground electric service to the meter per the National Electric Code.

Stormwater

2. Prior to approval of a Final Development Plan and Final Plat for Phase IA, the Developer shall change the Outlet "A" Plat note from "Upon the transfer of ownership to the City of Loveland, drainage infrastructure shall be maintained by the City to Outlet A contains a Regional Detention Pond dedicated to the City of Loveland, Colorado by this Plat and drainage infrastructure shall be maintained by the City."

3. Prior to approval of a Final Development Plan and Final Plat for Phase IA, the Developer shall add the following note to the Landscape Plan: "All trees shall be located a minimum of 10-feet from storm sewers and shrubs shall be located a minimum of 4-feet from storm sewers."

4. Prior to approval of a Final Development Plan and Final Plat for Phase IB, the Developer shall provide the Loveland Stormwater Utility with a recorded copy of the off-site Public Utility Drainage Easements for the regional storm drainage improvements.

5. Prior to approval of a Final Development Plan and Final Plat for Phase IB, the Developer shall provide the Loveland Stormwater Utility with a recorded copy of the off-site Temporary Construction Easements for the regional storm drainage improvements.

6. Prior to approval of a Final Development Plan and Final Plat for Phase IB, the Developer shall provide a final design, acceptable to the Loveland Stormwater Utility for all Regional Storm Drainage Improvements identified in the "Preliminary Drainage Study for Aspen Knolls First Subdivision".

7. Prior to approval of a Final Development Plan and Final Plat for Phase IA, the Developer shall work with the Loveland Stormwater Utility and a "Draft Stormwater Reimbursement Agreement" shall be developed for all Regional Storm Drainage Improvements identified in the "Preliminary Drainage Study for Aspen Knolls First Subdivision". Stormwater "System Investment Fees" shall provide dollars for an equitable reimbursement of Regional Storm Drainage Improvements as defined in the Stormwater Reimbursement Agreement.

8. Prior to release of a building permit for Phase IB, the Developer shall complete all downstream off-site Regional Storm Drainage Improvements lying east of the Aspen Knolls First Subdivision. In addition, the Loveland Stormwater Utility shall complete construction of the Hermiton Regional Detention Pond. An alternative to the above requirements and prior to release of a building permit for Phase IB, the Developer shall complete a temporary on-site Retention Pond and the Retention Pond shall remain in place until such time that all off-site Regional Storm Drainage Improvements are constructed including Hermiton Pond.

Fire Prevention

9. All garage and attic areas shall have "Rate of Rise" heat detectors installed in these areas. Only garages protected by an automatic fire sprinkler system shall not be required to install heat detectors.

Engineering

10. Notwithstanding any information presented in this PDP document, all public improvements shall be constructed to City standards as adopted on January 2001, unless specifically listed in the Regulatory Procedures portion of this document.

11. Prior to the City approval of any street construction plans or the issuance of any building permits within this development, the developer shall obtain approval of a final plat, which clearly delineates the following minimum rights-of-way:

a. A minimum width of 10' for the east one-half of Taft Avenue adjacent to this project.

b. A triangular area at the northeast quadrant of the intersection of Taft Avenue and 28th Street SW. The triangular area shall be defined by the straight-line connection of a point located 160' north and a point located 160' east of the street centerline intersection.

12. Prior to the release of any building permits pursuant to Section 16.40.010 of the Loveland Municipal Code within Phases IA or IB, the following improvements shall be designed and constructed by the developer:

a. A southbound left turn lane on Taft Avenue at Golden Columbine Drive.

a. A westbound right turn lane on 28th Street SW at Taft Avenue.

a. A continuous northbound acceleration/deceleration lane on Taft Avenue from 28th Street SW to Golden Columbine Drive.

13. With the exception of model homes approved by the Community Services Director, prior to the issuance of any certificate of occupancy within Phase IA, the developer shall design and construct the following street improvements unless designed and controlled by others:

a. Taft Avenue shall be widened to 74' from 28th Street SW to 350' north of 23rd Street SW.

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a. Taft Avenue shall be widened to 74' from 28th Street SW to 350' north of 23rd Street SW.

b. Stop signs shall be installed on the north and south approaches of the intersection of Duffield Avenue and 28th St SW.

c. Major collector street improvements to 28th St SW and auxiliary turn lanes at intersections adjacent to this PDP including the north and south curb and gutter, and excluding the south sidewalk from Taft Avenue to Wild Lupine Avenue including any off-site tapers.

d. Approximately 16' of street widening and restriping of the pavement on 14th St SE at Hwy 287 shall be performed to provide three 12' wide travel lanes and two 5' wide paved shoulders/bike lanes.

e. Install a traffic signal at the intersection of Taft Avenue and 28th Street SW.

f. Install a traffic signal at the intersection of Taft Avenue and 28th Street SW.

g. A northbound right turn lane at the intersection of Taft Avenue and 14th Street SW.

h. An eastbound right turn lane at the intersection of Taft Avenue and 28th Street SW.

14. Prior to the issuance of any certificate of occupancy within Phase IB, the developer shall design and construct the following street improvements unless designed and constructed by others otherwise approved:

a. A minor collector street connection between Colorado Ave. and 28th St SW shall be extended through this project. The accesses to the major collector portion of this link shall be configured for forward directional access only as specified in the City street standards.

b. Major collector street improvements to 28th St SW and auxiliary turn lanes at intersections adjacent to this PDP including the north and south curb and gutter, and excluding the south sidewalk from Wild Lupine Avenue to the east boundary of the development including any off-site tapers.

c. Construction of all improvements stated in the letter from Larimer County dated August 14, 2002.

15. Prior to the issuance of any partial or full building permits pursuant to Section 16.40.010 of the Loveland Municipal Code within Phase IG, 2, 3, 4A or 4B, all improvements identified in Conditions 12, 13, and 14 shall be completed.

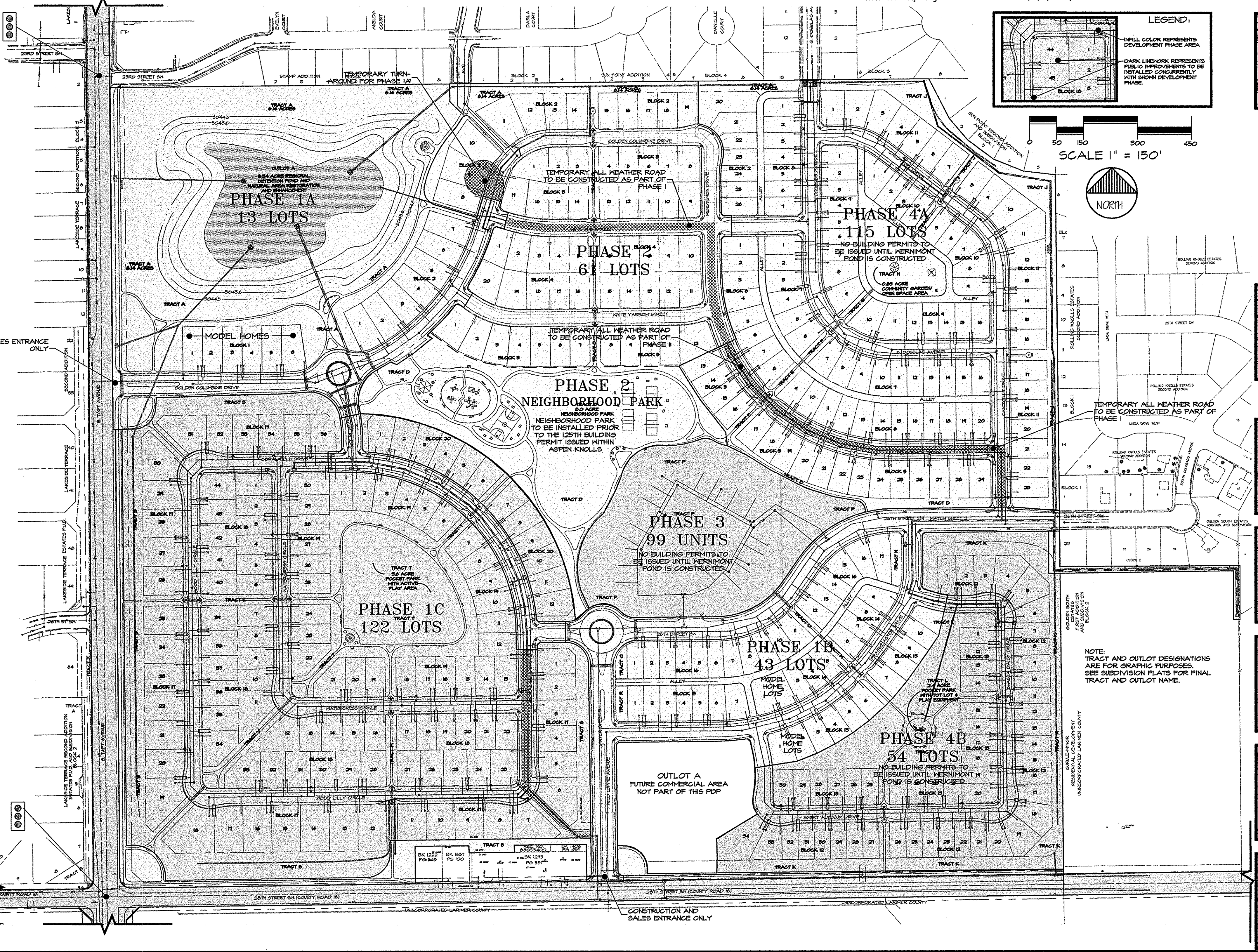
16. Prior to the issuance of more than 72 building permits within this development, the developer shall design and install a traffic signal at the intersection of US 287 and 14th Street SE, unless constructed by others.

17. Notwithstanding the provision of Section 16.40.010 of the Loveland Municipal Code, prior to issuance of any partial or full building permit within this project, the developer shall reimburse Bell Homes in the amount set forth in the reimbursement agreement dated July 5, 2000 for work previously completed by Bell Homes on Taft Avenue adjacent to this property. The payment shall be made to either Bell Homes or to the City of Loveland by the developer after the City has provided a copy of the executed Reimbursement Agreement to the developer and prior to the issuance of any partial or full building permit within this property, whichever occurs later. This requirement shall be void if the developer provides to the City any other signed and duly recorded agreement that specifically prohibits or supersedes this requirement.

18. Prior to approval of the Final Development Plan or Final Plat, the developer shall submit the recorded deed(s) of dedication for all off-site rights-of-way required for transportation facilities needed to meet City ordinances.

19. The developer shall participate in the off-site widening of County Road 11 south of the 28th Street SW intersection improvements in accordance with the terms of the memo from Larimer County dated 11-1-2002. An agreement between Larimer County and the Developer setting forth the terms described in said memo shall be in place prior to approval of the PDP.

20. Prior to approval of the PDP, the "Phasing Construction Plan" shown in the PDP shall be revised to reflect the changes in construction sequencing as described in Conditions 12, 13, 14, and 15, above.



21. The minimum corner clearance between driveway and local street intersections shall be 20 feet measured as the separation between the centerlines.

22. Prior to approval of the PDP the technical corrections dated 11-14-2002 shall be completed and approved by the City.

Environmental Planning

23. If any structures containing asbestos and/or lead paint contaminants are demolished, any portions of the structure containing contaminants shall be treated as hazardous waste and shall be disposed of in accordance with Federal, State and Local Environmental laws.

Current Planning

24. The wetland enhancement area incorporated into construction Phase IA shall be completed prior to the issuance of the 15th building permit for Phase IA.

25. The affordable housing phase, identified as Phase 3 on the Phasing Construction Plan, shall be staged in a sequence that requires the 24th building permit application to be within Phase 3 with subsequent permit applications for single-family dwellings in the remaining phases to be accepted by the City at a ratio of 17 single-family building permits per each certificate of occupancy issued for each affordable housing unit.

26. Any changes/modifications to the Phasing Construction Plan shall be termed a major modification to the PDP.

27. All "changes to obtain" documentation for off-site easements and rights-of-way shall be submitted to the Current Planning Division with the first PDP submittal, unless waived by the Current Planning Manager.

B. Preliminary Plat:

Current Planning

28. Prior to approval of the Final Plat the technical corrections listed in the memorandum dated December 4, 2002 shall be completed and approved by the City.

Planning Commission

29. A minimum of two off-street parking spaces shall be provided for each multi-family unit.

**Amenities and Public Improvements.**

The following phasing plan lists the components and installation timing for Aspen Knolls First Subdivision:

**PHASE IA - 13 Lots**

BUILDING PERMITS WITHIN PHASE IA SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

- Approval of a final plat which clearly delineates the following minimum rights-of-way:
  - A minimum width of 10' for the east one-half of Taft Ave. adjacent to the project.
  - A triangular area of the northeast quadrant of the intersection of Taft Ave. and 28th Street SW. The triangular area shall be defined by the straight-line connection of a point located 160' north and a point located 160' east of the street centerline intersection.
- A southbound left turn lane on Taft Avenue at Golden Columbine Drive.
- A westbound right turn lane on 28th Street SW at Taft Avenue.
- A continuous northbound acceleration/deceleration lane on Taft Avenue from 28th Street SW to Golden Columbine Drive.
- Taft Avenue shall be widened to 74' from 28th Street SW to 350' north of 23rd Street SW including all necessary off-site tapers to match existing roadway conditions north and south of the site. In addition, a northbound right turn lane shall be installed south of 28th Street SW.
- Stop signs shall be installed on the north and south approaches of the intersection of Duffield Avenue and 28th St SW.
- Major collector street improvements to 28th St SW and auxiliary turn lanes at intersections adjacent to the PDP including the north and south curb and gutter, and excluding the south sidewalk from Taft Ave. to Wild Lupine Ave. including any off-site tapers.
- Approximately 16' of street widening and restriping of the pavement on 14th St SE at Hwy 287 shall be performed to provide three 12' wide travel lanes and two 5' wide paved shoulders/bike lanes.
- Install a traffic signal at the intersection of Taft Avenue and 28th Street SW.
- Install a traffic signal at the intersection of Taft Avenue and 14th Street SW.
- A northbound right turn lane at the intersection of Taft Avenue and 14th Street SW.
- An eastbound right turn lane at the intersection of Taft Avenue and 28th Street SW.
- 12" water line in Golden Columbine Dr. and Tract A connecting to the existing line in Duffield Ave.
- Sanitary Sewer in Golden Columbine Dr. and Tract A connecting to line in Duffield Ave.
- Final Storm Drainage Improvements shall be in place with storm flows and nuisance drainage flows routed through existing (temporary) outfall facility in 28th St SW. Flows shall be within allowable levels.
- Wetland Mitigation Area and all other Open Space and ROW landscaping (developer landscaping) shall be installed or financially secured prior to the issuance of any building permits within Aspen Knolls First Subdivision. All open space and ROW landscaping within this sequence shall be installed prior to the issuance of the 15th building permit for this phase.

**CERTIFICATES OF OCCUPANCY SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:**

- Temporary landscaping around any sales buildings shall be fully installed or financially secured prior to certificate of occupancy of sales trailers.

**PHASE IB - 43 Lots**

BUILDING PERMITS WITHIN PHASE IB SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

- A minor collector street connection between Colorado Ave. and 28th St SW shall be extended through this project. The accesses to the major collector portion of this link shall be configured for forward directional access only as specified in the City street standards.
- Major collector street improvements to 28th St SW and auxiliary turn lanes at intersections adjacent to this PDP including the north and south curb and gutter, and excluding the south sidewalk from Wild Lupine Ave. to the east boundary of the development including any off-site tapers.
- Construction of all improvements stated in the letter from Larimer County dated August 14, 2002.
- All open space and ROW landscaping (developer landscaping) within this sequence shall be installed or financially secured within area IB.
- Solid Landscaping shall be installed prior to the issuance of the 43rd building permit.
- CERTIFICATES OF OCCUPANCY WITHIN PHASE IB SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:
  - 24" water main installation in 28th Street SW to Wild Lupine Ave.
  - Disconnect the existing storm outfall in 23rd St SW (Phase IA) and connect to completed storm drain outfall from Phase IA through Wild Iris Street, Penstemon Dr., Candybult Dr., and 26th St SW and east of the site as shown.

**PHASE IC - 122 Lots**

BUILDING PERMITS WITHIN PHASE IC SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

- All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.
- All open space and ROW landscaping (developer landscaping) within this sequence shall be installed or financially secured within area IC.
- Solid landscaping shall be installed prior to the issuance of the 122nd building permit.
- PRIOR TO THE ISSUANCE OF MORE THAN 72 BUILDING PERMITS THE DEVELOPER SHALL:
  - Design and install a traffic signal at the intersection of US 287 and 14th Street SW unless constructed by others.

**PHASE 2 - 61 Lots and Neighborhood Park**

BUILDING PERMITS WITHIN PHASE 2 SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

- All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.
- All improvements previously listed for building permits for Phase IA, IB and/or IC.
- All open space and ROW landscaping (developer landscaping) including the park area within this sequence shall be installed or financially secured within Phase 2.
- Landscaping shall be installed prior to the issuance of the 61st building permit for this phase. All park components shall be installed prior to the issuance of the 125th building permit for the overall subdivision.

**PHASE 3 - 99 Residential Units**

BUILDING PERMITS WITHIN PHASE 3 SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

- The Financial security has been posted for the developer landscape (open space & ROW) shown on the PDP within Phase 3.
- All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.
- Hermiton Pond is complete.
- Landscape shall be installed prior to the issuance of the first Certificate of Occupancy for Phase 3.
- NOTE - Phases 3, 4A and 4B may be under construction concurrently.

**PHASE 4A - 115 Lots**

BUILDING PERMITS WITHIN PHASE 4A SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

- The Financial security has been posted for the developer landscape (open space & ROW) shown on the PDP within Phase 4A.
- All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.
- FDP within Phase 4A.
- Hermiton Pond is complete.
- A minimum of one building permit has been issued for Phase 3.
- Landscaping shall be installed prior to the issuance of the 60th building permit for Phase 4A.
- NOTE - Phases 3, 4A and 4B may be under construction concurrently.

**PHASE 4B - 54 Lots**

BUILDING PERMITS WITHIN PHASE 4B SHALL NOT BE ISSUED PRIOR TO THE COMPLETION OF THE FOLLOWING:

- All improvements identified in Conditions of Approval (listed above) 12, 13, and 14 shall be completed.
- Financial Security has been posted for the developer landscape (open space & ROW) shown on the PDP within Phase 4B.
- Hermiton Pond is complete.
- A minimum of one building permit has been issued for Phase 3. Phases 3, 4A and 4B may be under construction concurrently.
- Landscaping shall be installed prior to the issuance of the 25th building permit for Phase 4B.

REVISIONS	Description	By	Date
1	REVISED PER CITY COMMENTS	LD	10/16/04
2	REVISED PER CITY COMMENTS	LD	11/16/04

**Landmark ENGINEERING Ltd.**  
ENGINEERS/ARCHITECTS/PLANNERS/SURVEYORS  
3521 West Eisenhower Blvd., Loveland, Colorado 80537  
(970) 667-6286 Denver (303) 629-7124 Fax (970) 667-6288

DATE: DEC. 2003  
SCALE: NOT TO SCALE  
DRAWN: JAH  
CHECKED: JAB  
APPROVED: KM

CLIENT: KB HOME  
TITLE: ASPEN KNOLLS SECOND SUBDIVISION  
FINAL DEVELOPMENT PLAN-PHASES 1C - 4B  
PHASING CONSTRUCTION PLAN  
JOB NO.: EMB  
266A02-217  
SHEET 5 OF 31

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**ASPEN KNOLLS FIRST AND SECOND SUBDIVISIONS**  
**VACATION OF RIGHT-OF-WAY**  
**AND REZONING**

**ASPEN KNOLLS SITE**

The map shows a residential area with a large brown-shaded region labeled 'ASPEN KNOLLS SITE'. To the left is a large body of water labeled 'Ryan Gulch Reservoir'. The map is overlaid with a grid of streets, including S Strat Ave, S Lincoln Ave, and various numbered streets (14th to 28th). A small green dot is visible near the center of the map, and a small blue dot is visible near the bottom right. The text 'P. 4' is visible in the top right corner.

**ASPEN KNOLLS FIRST AND SECOND SUBDIVISIONS**  
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- **Vacate all dedicated public rights-of-way (streets) within the Aspen Knolls First and Second Subdivisions.**
- **Rezone property from P-50 – Aspen Knolls Planned Unit Development (PUD) to DR – Developing Resource to remove all development entitlements.**
- **Re-plat property to remove all lots and easements within the Aspen Knolls First and Second Subdivisions. (Administrative action – not part of Planning Commission hearing.)**

# RECOMMENDATIONS

## VACATION

### CURRENT PLANNING

1. An ordinance vacating all public rights of way within Aspen Knolls First and Second Subdivisions shall not become effective until the Aspen Knolls Third Subdivision (re-plat) and Aspen Knolls rezoning is approved and recorded with Larimer County.

## REZONING

### CURRENT PLANNING

1. Rezoning of the property from Aspen Knolls Planned Unit Development (P-50) to DR - Developing Resource, shall be conditioned on approval of the ordinance vacating all public rights of way within Aspen Knolls First and Second Subdivisions and approval of the proposed re-platting processes. If these processes are not approved, the rezoning shall not be approved.

2. In accordance with LMC Section 18.72.080 Waiver of Vested Property Right, an ordinance vacating all public rights of way within Aspen Knolls First and second Subdivisions shall not become effective until the property owner has waived the vested rights associated with the Preliminary/Final Development Plans for Aspen Knolls First and second Subdivisions and the approved Public Improvements Construction Plans. Such rights shall be waived by separate agreement with the City, which agreement shall be recorded with the County Clerk and Recorder. The Agreement shall be recorded after the vacation and rezoning ordinances become effective and the re-platting of the property is approved and upon such recording, the vested rights associated with shall be deemed to have expired.

3. The affordable designation and associated fee reduction granted and extended by the City shall terminate.



# ASPEN KNOLLS FIRST AND SECOND SUBDIVISIONS VACATION OF RIGHT-OF-WAY AND REZONING

ASPEN  
KNOLLS  
SITE



**CITY OF LOVELAND****ECONOMIC DEVELOPMENT OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 2  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Economic Development Department  
**PRESENTER:** Mike Scholl, Economic Development Manager

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**TITLE:**

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for a Loan to Artspace Inc. for Acquisition of the Feed and Grain Property

**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
- 

**SUMMARY:**

This is an administrative action to approve the ordinance on second reading. The ordinance appropriates, from the City Council Reserve Fund, \$300,000 to be repaid over 30 years at 1.75% interest. Annual payments will be made to the City according to the repayment schedule in the agreement which City Council approved unanimously at the October 1, 2013 regular meeting. The loan would fill the gap in funding and complete the financing package to allow Artspace to close on the acquisition of the property and to close on the tax credits.

**BUDGET IMPACT:**

- ☐ Positive  
☒ Negative  
☐ Neutral or negligible
- 

**BACKGROUND:**

On February 5, 2013 Loveland City Council voted unanimously to offer a non-binding letter of commitment for the \$300,000 and the waiver of the Construction Materials Use Tax estimated to

be \$71,000. The commitment was contingent on Artspace being awarded the Low Income Housing Tax Credits (LIHTC) which occurred May, 2013. The City's participation will allow Artspace to move forward with the acquisition of the Feed and Grain property and to close on the Tax Credits. Construction of the affordable housing building is expected to begin by the end of the year.

The loan will subordinate to the first loan of \$1,100,000 and would be repaid over 30 years with residual cash flow at 1.75% interest. If the cash flow is insufficient to repay the principal, the unpaid balance would be due at the end of 30 years. Based on the cash flow, which is a conservative estimate of projected cash flow, the loan would be repaid by year 28. The bank is willing to accept a subordinate loan because the \$5,100,000 contribution from the Tax Credits, which do not need to be repaid, creates substantial equity in the project and nationally, LIHTC are seen as a good investment with very few instances of default. The loan is secured by a note and deed of trust, which is non-recourse to the Artspace ownership entity (secured only by the affordable housing building lot) and the City agrees not to foreclose without the consent of the senior lender.

The total project cost is estimated to be \$8,800,000 with the City's participation as follows:

City Expense	Amount
Pre-Development (Paid)	\$550,000
Loan	\$300,000
Materials Use Tax Waiver	\$71,000
Total	\$921,000

The City's contribution is roughly 10.4% of the total development cost. Of the \$8,800,000, \$1,500,000 would be used to stabilize the Feed and Grain building. The project is consistent with the City's approved Downtown Strategic Plan.

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**REVIEWED BY CITY MANAGER:**

*William D. Cabell*

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**LIST OF ATTACHMENTS:**

1. Ordinance

**FIRST READING**                      October 1, 2013

**SECOND READING**                      October 15, 2013

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR A LOAN TO ARTSPACE INC. FOR ACQUISITION OF THE FEED AND GRAIN PROPERTY**

**WHEREAS**, in October, 2010, the Loveland City Council (“Council”) approved a contract for ArtSpace, Inc. (“ArtSpace”) to provide pre-development services for a mixed use live/work artist space in Downtown Loveland; and

**WHEREAS**, since 2010 ArtSpace has been engaged in pre-development and planning activities for the Feed and Grain Building (the “Feed and Grain Building”) and related real property located at 103 W. 3<sup>rd</sup> Street, Loveland, Colorado (the Feed and Grain Building and real property are referred to jointly as the “Property”) and now is under contract to purchase the Property; and,

**WHEREAS**, ArtSpace plans to acquire the Property and build a new 30 unit multi-family affordable housing project on the Property to the west of the Feed and Grain Building (the “Affordable Housing Building”) (the “Project”) at an estimated the total Project cost at approximately \$8.8 million, a significant portion of which is anticipated to be funded by Low Income Housing Tax Credits (the “Tax Credits”); and

**WHEREAS**, as a part of the Project, ArtSpace plans to stabilize the Feed and Grain Building in preparation for renovation for gallery and studio space to complement the Affordable Housing Building, which renovation is referred to as “Phase II of the Project”: and

**WHEREAS**, ArtSpace has identified a funding gap in the financing of the Project based on current estimates and has requested that the City provide a loan in the amount of \$300,000 (the “Loan”) and the City and ArtSpace are also entering into an Incentive and Loan Agreement to setting forth the terms and conditions upon which the Loan is to be made (the “Incentive Agreement”); and

**WHEREAS**, the City has reserved funds not 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 reserves in the amount of \$300,000 from the Capital Reserve in the General Fund are available for appropriation. Revenues in the total amount of \$300,000 are hereby appropriated for a loan to ArtSpace Inc. for the acquisition of the Feed and Grain Property on terms and conditions set forth in the Agreement. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100**

<b>Revenues</b>		
Fund Balance		300,000
<b>Total Revenue</b>		<b>300,000</b>
<b>Appropriations</b>		
100-18-180-0000-43714	Payment to Outside Agencies	300,000
<b>Total Appropriations</b>		<b>300,000</b>

**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.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

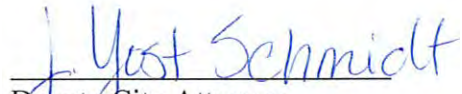
ADOPTED this \_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
Deputy City Attorney



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

---

**AGENDA ITEM:** 3  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Troy Bliss

---

**TITLE:**

An Ordinance on Second Reading Vacating a Portion of a Public Right-of-Way Located in the Loveland Addition to the City of Loveland, City of Loveland, Larimer County, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

Move to adopt the ordinance on second reading as presented.

**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
- 

**SUMMARY:**

Consideration of a legislative action for adoption of an ordinance on second reading to vacate a portion of existing public alley located within Block 21 of the Loveland Addition. The public right-of-way to be vacated is associated with the Artspace project. Upon vacation, the former right-of-way will be retained as a public access and utility easement. The ordinance was adopted unanimously on first reading by Council at the October 1, 2013 regular meeting.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible
- 

**BUDGET:**

Artspace proposes to build a 30-unit affordable housing development directly west and abutting the Loveland Feed & Grain building located at 130 W. 3<sup>rd</sup> Street. The site currently has two public alleys adjacent to the property. The alley vacations are being requested to accommodate

a more efficient sign design and easier access to site parking. The alley rights-of-way will be replaced with public access and utility easements.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Staff Memorandum (October 1, 2013)

**FIRST READING:** October 1, 2013

**SECOND READING:** October 15, 2013

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT OF WAY  
LOCATED IN THE LOVELAND ADDITION TO THE CITY OF LOVELAND, CITY OF  
LOVELAND, LARIMER COUNTY, COLORADO**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of that portion of a public right of way described below, located in the City of Loveland, Larimer County, Colorado; and

**WHEREAS**, it is necessary to assure ongoing provision of public and private utility services that the portion of right of way to be vacated be preserved as a public access and public utility easement; and

**WHEREAS**, it is further necessary, that the owners of all real property adjoining the portion of the right of way to be vacated submit to the City a fully executed public access and public utility easement, in a form acceptable to the City, for the land described below (the "Easement"); and

**WHEREAS**, it is also necessary that the Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition (re-plat) for the property on which the right of way is located (the "Amended Plat") be approved and recorded by the City; and

**WHEREAS**, as permitted by Loveland Municipal Code Section 16.36.060, this ordinance is conditioned upon receipt of the fully executed Easement and Amended Plat, which shall be recorded concurrently with this ordinance; and

**WHEREAS**, the City Council finds and determines that, upon receipt of the Easement, no land adjoining any portion of the 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; and

**WHEREAS**, the City Council finds and determines that upon receipt of the Easement the portion of the right of way to be vacated is 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 Center was signed by the owners of more than 50% of property abutting the right of way to be vacated.

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

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

**Section 2.** Subject to the conditions set forth in Section 3, the following described portion of a public right of way access easement shall be and the same is hereby vacated:

A PARCEL OF LAND BEING A PORTION OF BLOCK 21, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE NORTH LINE OF BLOCK 21, WHICH BEARS N 89°46'05" E.

**BEGINNING** AT THE NORTHEAST CORNER OF LOT 11, OF SAID BLOCK 21; THENCE N 89°46'05" E ON THE NORTH LINE OF SAID BLOCK 21, A DISTANCE OF 20.11 FEET, TO A POINT ON THE WEST LINE OF THE EAST 5.0 FEET OF LOT 10 OF SAID BLOCK 21; THENCE S 00°13'55" E, ON SAID WEST LINE, A DISTANCE OF 140.08 FEET, TO A POINT ON THE NORTH LINE OF THE EAST-WEST ALLEY OF SAID BLOCK 21; THENCE N 89°47'11" E, ON SAID NORTH LINE, A DISTANCE OF 130.31 FEET, TO THE SOUTHEAST CORNER OF LOT 5 OF SAID BLOCK 21; THENCE S 00°13'55" E, A DISTANCE OF 20.00 FEET, TO THE NORTHEAST CORNER OF LOT 28 OF SAID BLOCK 21; THENCE S 89°48'06" W, ON THE SOUTH LINE OF SAID ALLEY, A DISTANCE OF 150.43 FEET, TO THE NORTHEAST CORNER OF LOT 20 OF SAID BLOCK 21; THENCE N 00°13'47" W, ON THE SOUTHERN EXTENSION OF THE EAST LINE OF SAID LOT 11 AND THE WEST LINE OF SAID LOT 11, A DISTANCE OF 160.03 FEET, TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 5,823 SQUARE FEET, OR 0.1337 ACRES.

**Section 3.** As provided in Section 16.36.060 of the Loveland Municipal Code and in order to preserve and promote the public health, safety, and welfare of the inhabitants of the City and the public generally, the vacation of that portion of the public right of way as set forth in Section 2 above shall become effective only upon the satisfaction of the following conditions precedent (the "Conditions"):

a. The vacated portion of the public right of way shall be preserved as a public access and public utility easement, which condition shall be deemed satisfied upon receipt by the City of the Easement executed by the owners of all real property adjoining the portion of the right of way to be vacated; and

b. The Amended Plat is approved and recorded by the City.

**Section 4.** 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 5.** 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 6.** The City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes, and after receipt of the fully executed Easement and Amended Plat described above. The fully Easement and Amended Plat for the above-described property shall be recorded concurrently with this Ordinance.

Signed this \_\_\_\_ day of October, 2013.

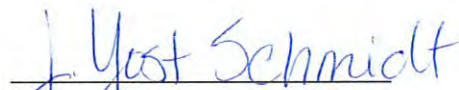
ATTEST:

**CITY OF LOVELAND, COLORADO:**

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

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

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



## 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](http://www.cityofloveland.org)

### MEMORANDUM

**TO:** City Council

**FROM:** Troy Bliss, City Planner II, Current Planning Division

**DATE:** October 1, 2013

**SUBJECT:** Artspace (Loveland Addition) Vacation of Public Right-of-Way

---

#### **I. EXHIBITS**

- A. Planning Commission packet
- B. Slide presentation

#### **II. KEY ISSUES**

Staff believes that all key issues regarding the vacation have been resolved through the staff review process. The Planning Commission unanimously recommends approval of the vacation as proposed.

#### **III. BACKGROUND**

The attached ordinance concerns a legislative action requesting to vacate public right-of-way for a portion of alley within the Loveland Addition. This vacation is part of an overall redevelopment plan associated with the Artspace Project. The right-of-way to be vacated includes an L-shaped alley that connects to the south side of W 3rd Street and terminates on the west side of the Feed & Grain building. The subject portion of right-of-way will need to continue to provide public access and does include existing utilities. A public access and utility easement will need to be retained in conjunction with vacation.

The subject property is a part of the original town of Loveland (Loveland Addition). The alley was platted as a 20-foot wide public right-of-way in an east/west alignment which split Block 21. However, when the Feed & Grain Building was constructed, the portion of alley connecting to Railroad Avenue was removed and the L-shaped connection up to 3rd Street was established.



#### **IV. VACATION**

The proposal is to vacate a portion of alley within Block 21 of the Loveland Addition. The alley to be vacated is illustrated on Attachment 2 of Exhibit A, which is the corresponding legal description and exhibit map to the vacation request. Further, please refer to Attachment 3 of Exhibit A that places these streets into context of the currently proposed Artspace Project redevelopment plan.

Artspace Projects Inc. is seeking to acquire the property for redevelopment. In general, Artspace Project proposes to build a 4-story 30 unit affordable housing/mixed use building on approximately 0.72 acres directly adjacent to the west of the Feed & Grain. The project is structured to provide live/work opportunities specifically for artists. Future plans include the refurbishment of the Feed & Grain that would make for a significant redevelopment to an iconic structure and property in downtown Loveland. In conjunction with the vacation, there continues to be a need for public access based on the proposed development. There also are some existing utilities within the right-of-way. Public access and utilities will need to be retained and kept in an easement. Agencies outside of the City which provide utility services including Century Link, Comcast, and Xcel Energy have all provided responses to this vacation request, indicating that there are no concerns.

#### **V. PLANNING COMMISSION REVIEW**

The vacation was reviewed by the Planning Commission at a public hearing on September 23, 2013. The item was placed on the consent agenda. No discussion was held on the matter and the Planning Commission unanimously recommended approval of the vacation subject to the reservation of a public access and utility easement in place of the right-of-way and that the vacation ordinance will not become effective until a corresponding re-plat is recorded. The vacation ordinance has been prepared to reflect these conditions.

#### **RECOMMENDATION**

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

**Development Services  
Current Planning**

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**MEMORANDUM**

September 23, 2013 – Consent Agenda 1

To: Loveland Planning Commission

From: Troy Bliss, City Planner II

**Subject: Artspace Project (Loveland Addition) Vacation (PZ #13-00123)**

The application to vacate a portion of alley right-of-way requested by Artspace Project, Inc. is a component of an overall redevelopment plan being proposed directly west and abutting the Feed & Grain building in downtown Loveland.

At the October 14, 2013 meeting, the Planning Commission will be presented with an application from Artspace for approval of their Site Development Plan. This will afford the Commission the opportunity to review the Artspace project in a comprehensive manner.

Due to an aggressive timeline established for seeking entitlements on the Artspace Project, Current Planning is requesting that Commissioner's clarifying questions regarding this alley vacation request be directed staff prior to the hearing on September 23, 2013. Staff is attempting to keep the alley vacation request on the consent agenda so it can move as quickly as possible onto the City Council. Questions should be directed to the staff planner, Troy Bliss, at (970) 962-2579 or send an email to [Troy.Bliss@cityofloveland.org](mailto:Troy.Bliss@cityofloveland.org)

Thank you.



## Development Services Current Planning

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www.cityofloveland.org

### Planning Commission Staff Report

September 23, 2013

**Agenda #:** Consent Agenda - 1  
**Title:** Artspace Project (Loveland Addition) Vacation (PZ #13-00123)  
**Applicant:** Artspace Projects Inc., Leah Swartz  
**Request:** **Vacation of public right-of-way**  
**Location:** South of W. 3<sup>rd</sup> Street between N. Railroad Avenue and N. Garfield Avenue (Block 21, Loveland Addition)  
**Existing Zoning:** Be – Established Business  
**Proposed Use:** Mixed Use Building  
**Staff Planner:** Troy Bliss

#### **Staff Recommendation**

Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

#### **Recommended Motions:**

1. Move to make the findings listed in Section VIII of the Planning Commission staff report dated September 23, 2013 and, based on those findings, recommend that City Council approve the requested vacation of public right-of-way subject to the conditions listed in Section IX, as amended on the record.

#### **Summary of Analysis**

This is a public hearing to consider a request for vacating public right-of-way within the Loveland Addition. The right-of-way to be vacated includes an L-shaped alley that connects to the south side of W 3<sup>rd</sup> Street and terminates on the west side of the Feed & Grain Building. The subject portion of right-of-way will need to continue to provide public access and does include existing utilities. A public access and utility easement will need to be retained in conjunction with vacation.

The alley currently separates the Artspace Project property. As a result of vacating the alley, the property could be merged together, creating a single parcel and unified development. Site design, including parking locations are also driving the need to vacate the alley. From an access and circulation perspective, the backing of vehicles into an easement is preferred over a public right-of-way. Additionally, because the section of alley heading east does not connect to Railroad Avenue, maintaining a dead-end alley does not promote policies of connecting rights-of-way. These are reasons why vacating the alley is desirable, even though the alignment will still be reserved for public access.

## I. SUMMARY

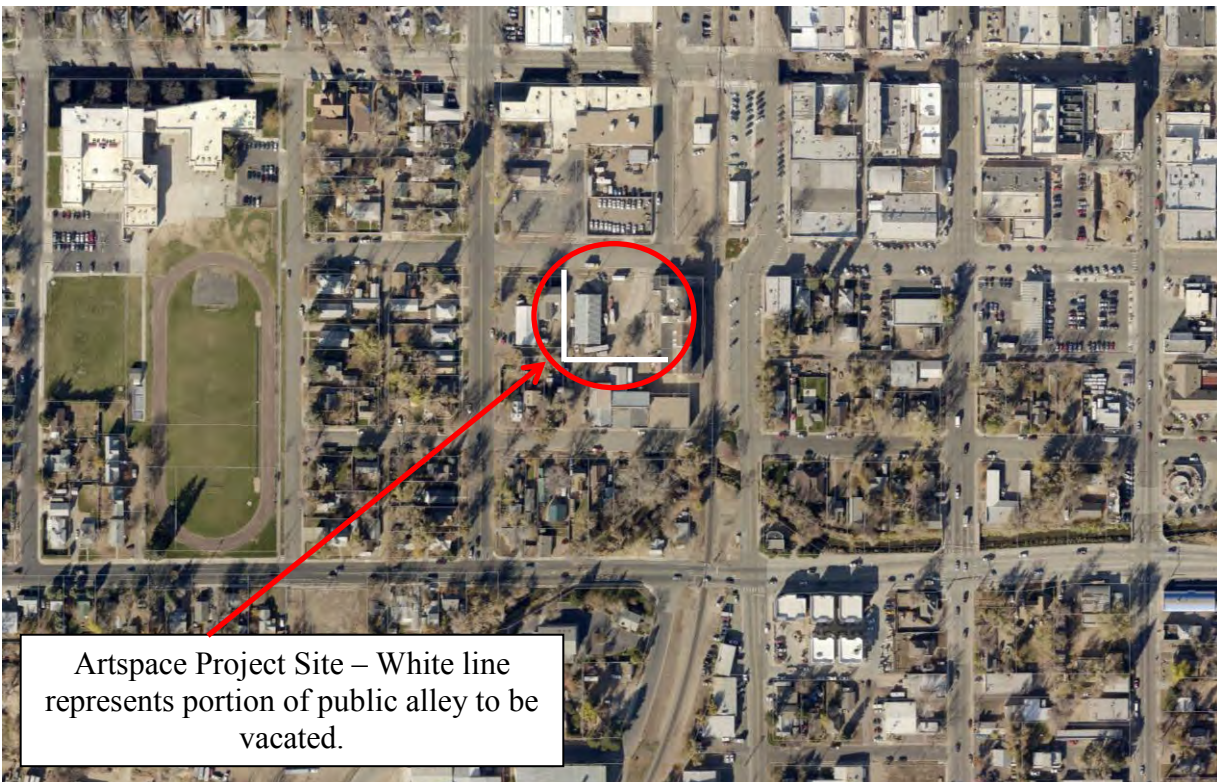
The applicant proposes to vacate an L-shaped portion of alley within the Loveland Addition. This alley to be vacated is illustrated on **Attachment 2**, which is the corresponding legal description and exhibit to the vacation request. Further, please refer to **Attachment 3** that places the alley into context of the proposed subdivision.

The proposed vacation of public right-of-way is a legislative action and component of a multi-faceted development currently under review referred to as Artspace Project. In general, Artspace Project proposes to build a 4-story 30 unit affordable housing/mixed use building directly adjacent to the west of the Feed & Grain. The project is structured to provide live/work opportunities specifically for artists. Future plans include the refurbishment of the Feed & Grain that would make for a significant redevelopment to an iconic structure and property in downtown Loveland. In conjunction with the vacation, there continues to be a need for public access based on the proposed development. There also are some existing utilities within the right-of-way. Public access and utilities will need to be retained and kept in an easement. Agencies outside of the City which provide utility services including Century Link, Comcast, and Xcel Energy have all provided responses to this vacation request, indicating that there are no concerns.

## II. ATTACHMENTS

1. Letter of request for Vacation of Right-of-Way
2. Vacation of Right-of-Way Legal Description and Exhibit
3. Artspace Project Site Plan (for reference purposes only)
4. Draft Vacation Ordinance

## III. VICINITY MAP



#### IV. SITE DATA

ACREAGE OF SITE: ..... APPROXIMATELY 5,823 SQUARE FEET (AREA OF RIGHT-OF-WAY TO BE VACATED)  
 .....  
 PROPERTY ZONING / USE ..... BE – ESTABLISHED BUSINESS/VACANT METAL GARAGE BUILDING  
 .....  
 EXISTING ZONING / USE - NORTH ..... BE – ESTABLISHED BUSINESS/CITY OF LOVELAND BUILDING  
 EXISTING ZONING / USE - SOUTH ..... BE – ESTABLISHED BUSINESS/SINGLE FAMILY RESIDENTIAL AND COMMERCIAL BUILDINGS  
 EXISTING ZONING / USE - EAST ..... BE – ESTABLISHED BUSINESS/VACANT FEED & GRAIN BUILDING  
 EXISTING ZONING / USE – WEST ..... BE – ESTABLISHED BUSINESS/AUTO SALES

#### V. KEY ISSUES

There are no key issues regarding this vacation request. All City Divisions and all applicable outside City utility providers have no objection to the vacation of alley. The City is however requiring that the right-of-way be retained as a public access and utility easement.

#### VI. BACKGROUND

The subject property is a part of the original town of Loveland (Loveland Addition). The alley was platted as a 20-foot wide public right-of-way in an east/west alignment which split Block 21. However, when the Feed & Grain Building was constructed, the portion of alley connecting to Railroad Avenue was removed and the L-shaped connection up to 3<sup>rd</sup> Street was established.

#### VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

- A. Notification:** An affidavit was received from Jason Kopecky, on behalf of the applicant, certifying that written notice was mailed to all surface owners abutting the right-of-way to be vacated and notices were posted in a prominent location on the perimeter on September 7, 2013. In addition, a notice was published in the Reporter Herald on September 7, 2013.
- B. Neighborhood Response:** A neighborhood meeting is not required in conjunction with an application to vacate public right-of-way. However, all surface owners and all owners of easements or right-of-way abutting the right-of-way to be vacated are notified of the application. Further, at least 50% of such owners must be party to the application. Given these requirements and the configuration of the property, only 1 owner was notified of the application beyond the applicant. No neighborhood response has been received at the time this staff report was prepared.

#### VIII. FINDINGS AND ANALYSIS

Chapter 16.36, Section 16.36.010.B

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 reestablished public or private right-of-way:*

In order to comply with this provision of the Municipal Code, the City must require that a public access and utility easement be established in conjunction with the vacation of right-of-way.

2. *That the right-of-way or easement to be vacated is no longer necessary for the public use and convenience.*

The right-of-way is no longer necessary for public use as an alley. However, it is needed as a public access and utility easement due to the proposed development and existing utilities being located within the right-of-way.

## Development Review Team Analysis

### Current Planning

The right-of-way to be vacated currently serves no purpose as an alley. Vehicle and pedestrian accessibility will be necessary for future development. Beyond some limited utilities that exist within the right-of-way, which will be retained in an easement, there is no public benefit in keeping this right-of-way as an alley based upon the proposed Artspace Project redevelopment.

### Transportation Development Review

The proposed right-of-way vacation will not create a negative impact upon the City's Public Streets. Once the amended plat for the property is approved and recorded the necessary access easements will be in place to provide adequate transportation circulation for the property

### Fire

Fire: Staff believes that this finding can be met, due to the following:

\*The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 1).

\*The proposed development will not negatively impact fire protection for the subject development.

### Water/Wastewater

The subject area to be vacated is the City's current service area for both water and wastewater. There are existing wastewater mains in the area to be vacated. Since there are existing facilities, the Department can only approve the vacation with the condition that the area be reserved for utility purposes.

\*The existing right-of-way to be vacated does not impact the existing water and wastewater utility configuration within and adjacent to this development.

\*The existing right-of-way to be vacated is no longer necessary for public use and convenience.

### Stormwater

The existing alleys proposed to be vacated, are not currently being used to convey Stormwater and thus are not necessary for the public use and conveyance of Stormwater.

### Power

No negative impacts on the City's electrical system are foreseen. The existing underground 200-amp feeder is an available and adequate source for electric distribution for the proposed development. The proposed development meets the criteria for level of service as outlined in the ACF ordinance.

**IX. RECOMMENDED CONDITION**

The following conditions are recommended by City Staff.

1. The portion of alley right-of-way within Lot 21 Loveland Addition shall be dedicated as a public access and utility easement in conjunction with the vacation request.
2. An ordinance vacating all public right-of-way within Block 21 of the Loveland Addition shall not become effective until the Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition to (re-plat) is approved and recorded with Larimer County.





12600 west colfax avenue  
suite c-200  
lakewood, colorado 80215-3758  
303-531-4990 ph  
303-531-4998 fax

principals  
ronald k. abo, aia, NCARB, LEED AP  
kevin k. yoshida, aia, NCARB  
john w. priebe, aia

Greg George, Director of Development Services  
City of Loveland  
500 East Third Street, Suite 210  
Loveland, CO 80537

### **ARTSPACE LOVELAND LOFTS – VACATION REQUEST EXPLANATION**

This letter is written on behalf of the applicant Artspace Projects Inc. in order to explain the reason for requesting vacation of portions of existing alleys at 130 West 3<sup>rd</sup> St.

Artspace Projects Inc. proposes to build a 30 unit affordable housing development adjacent to the Loveland Feed & Grain building at 130 West 3<sup>rd</sup> Street, Loveland CO 80537. Additionally the proposed project also includes redeveloping the site between the new building (Artspace Loveland Lofts) and the Loveland Feed & Grain building into an active plaza for the residents daily use and occasional artists' events. The project is also going through the Boundary Line Adjustment and Lot Merger process to divide the existing property into two simple lots, one for each building.

The property is currently owned by Barry Floyd. Artspace Projects, Inc. is in the process of purchasing the property from Barry Floyd.

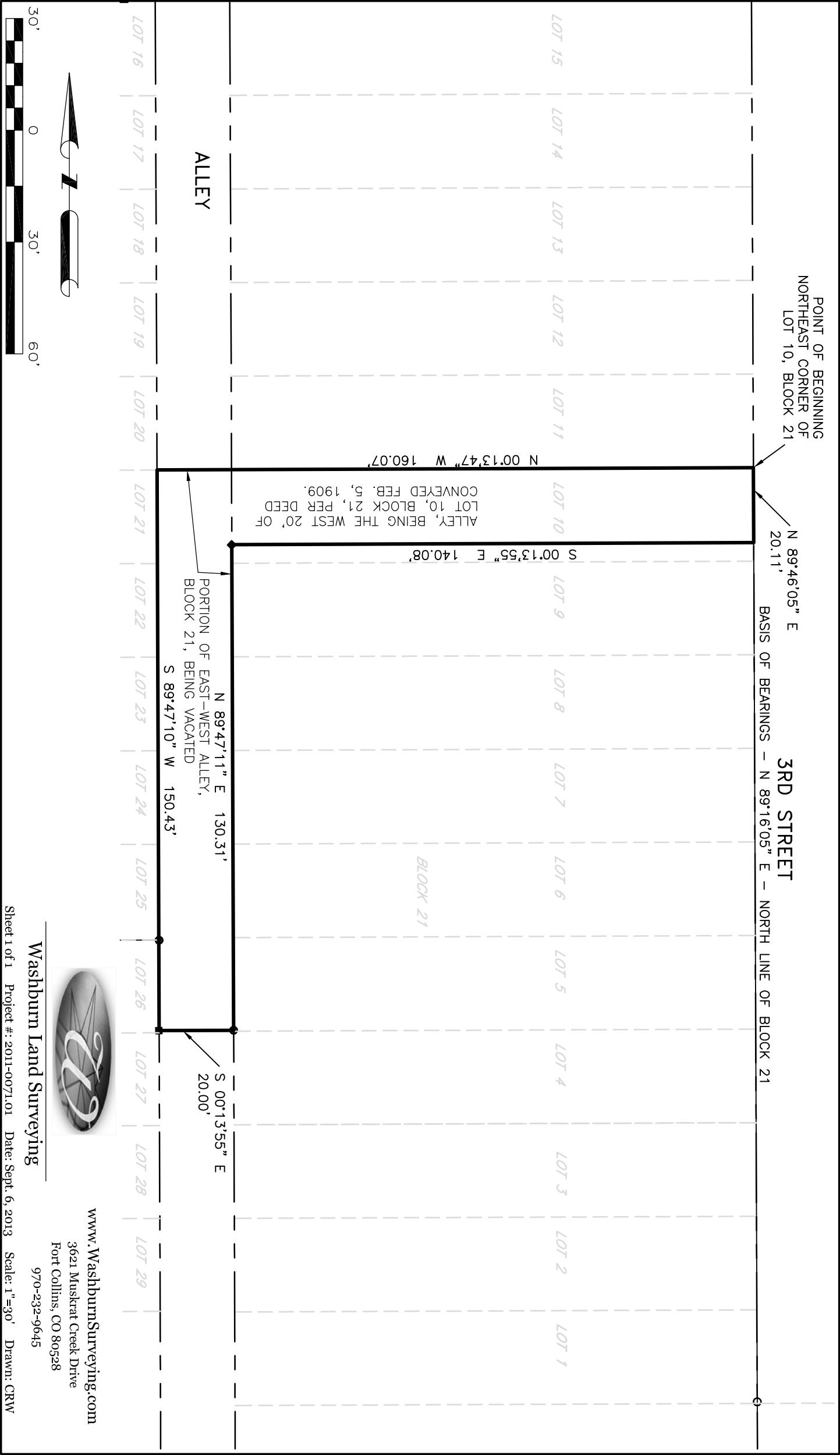
The site currently has two existing alleys adjacent to the property that provide access into and through the block. Given the urban location we felt that it was important to locate the parking areas for the project internally on the site. The design team has met with city staff multiple times through CRT meetings and developer meetings beginning in 2011 up through August of 2013. As a result of those meetings, it has been suggested by city staff that portions of those alleys be vacated and replaced with private drives in order to better serve the overall site design and parking goals for the project, which could not be met with the standards required by alleys.

Thank you for considering our request to vacate portions of the alleys indicated in the Vacation Request Application.

Respectfully,

Jason Kopecky  
Project Manager  
The Abo Group, Inc.







## Washburn Land Surveying

### Alley Vacation

A PARCEL OF LAND, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, BEING A PORTION OF THE EAST-WEST ALLEY OF BLOCK 21, CITY OF LOVELAND, ACCORDING TO THE PLAT THERE OF, AND THAT PARCEL OF LAND BEING THE WEST 20' OF LOT 10, BLOCK 21, CITY OF LOVELAND, PER DEED CONVEYED FEBRUARY 5, 1909, ALL IN THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

**BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE NORTH LINE OF BLOCK 21, WHICH BEARS N 89°46'05" E.

**BEGINNING** AT THE NORTHEAST CORNER OF LOT 11, OF SAID BLOCK 21;  
THENCE N 89°46'05" E ON THE NORTH LINE OF SAID BLOCK 21, A DISTANCE OF 20.11 FEET, TO A POINT ON THE WEST LINE OF THE EAST 5.0 FEET OF LOT 10 OF SAID BLOCK 21;  
THENCE S 00°13'55" E, ON SAID WEST LINE, A DISTANCE OF 140.08 FEET, TO A POINT ON THE NORTH LINE OF THE EAST-WEST ALLEY OF SAID BLOCK 21;  
THENCE N 89°47'11" E, ON SAID NORTH LINE, A DISTANCE OF 130.31 FEET, TO THE SOUTHEAST CORNER OF LOT 5 OF SAID BLOCK 21;  
THENCE S 00°13'55" E, A DISTANCE OF 20.00 FEET, TO THE NORTHEAST CORNER OF LOT 26 OF SAID BLOCK 21;  
THENCE S 89°48'06" W, ON THE SOUTH LINE OF SAID ALLEY, A DISTANCE OF 150.43 FEET, TO THE NORTHEAST CORNER OF LOT 20 OF SAID BLOCK 21;  
THENCE N 00°13'47" W, ON THE SOUTHERN EXTENSION OF THE EAST LINE OF SAID LOT 11 AND THE WEST LINE OF SAID LOT 11, A DISTANCE OF 160.03 FEET, TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 5,823 SQUARE FEET, OR 0.1337 ACRES.

*I, CHAD R. WASHBURN, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE PROPERTY DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.*

CHAD R. WASHBURN, PROFESSIONAL LAND SURVEYOR  
COLORADO NO. 37963  
FOR AND ON BEHALF OF WASHBURN LAND SURVEYING, LLC





ARTSPACE PROJECTS INC.

ARTSPACE LOVELAND LOFTS

140 W. 3RD STREET  
LOVELAND, CO 80537

ZONING		
EXISTING ZONING: Be - Established Central Business District		
LAND USE		
ARTSPACE LOVELAND LOFTS: Mixed use Residential		
SITE AREA		
TOTAL SITE AREA	31,413 SF	0.72 AC
GROSS AREA BY LEVEL		
LEVEL 1 GROSS FLOOR AREA		10,326 SF
LEVEL 2 GROSS FLOOR AREA		9,789 SF
LEVEL 3 GROSS FLOOR AREA		9,817 SF
LEVEL 4 GROSS FLOOR AREA		7,993 SF
TOTAL GROSS FLOOR AREA		37,925 SF
BUILDING OCCUPANCY		
ARTSPACE LOVELAND LOFTS: Mixed Use Residential: R-2 & A-3		
GROSS AREA BY OCCUPANCY		
T.O. LEVEL 1 - 4979.00	A-3	1,145 SF
		1,145 SF
T.O. LEVEL 1 - 4979.00	R-2	9,181 SF
T.O. LEVEL 2	R-2	9,789 SF
T.O. LEVEL 3	R-2	9,817 SF
T.O. LEVEL 4	R-2	7,993 SF
		36,780 SF
		37,925 SF
CONSTRUCTION TYPE		
ARTSPACE LOVELAND LOFTS: Type 5-A Construction - NFPA 13 Sprinkler System		
PARKING		
ARTSPACE LOVELAND LOFTS: Off Street Parking Spaces 1 - 30		
Standard Spaces	19	63%
Compact Spaces	09	30%
<u>Accessible Spaces</u>	02	07%
Total Spaces:	30	100%
ADJACENT PROPERTY Off Street Parking Spaces 31 - 42		
Standard Spaces	12	100%
Compact Spaces	00	00%
<u>Accessible Spaces</u>	00	00%
Total Spaces:	30	100%
LANDSCAPING		
Parking lot landscaped area:	959 SF	
Total landscaped area:	5,323 SF	
FEMA FLOOD PLAIN		
ARTSPACE LOVELAND LOFTS: None		
OPEN SPACE		
LOFTS FOOTPRINT	10,391 SF	33%
OPEN SPACE	21,021 SF	67%
		31,412 SF 100%

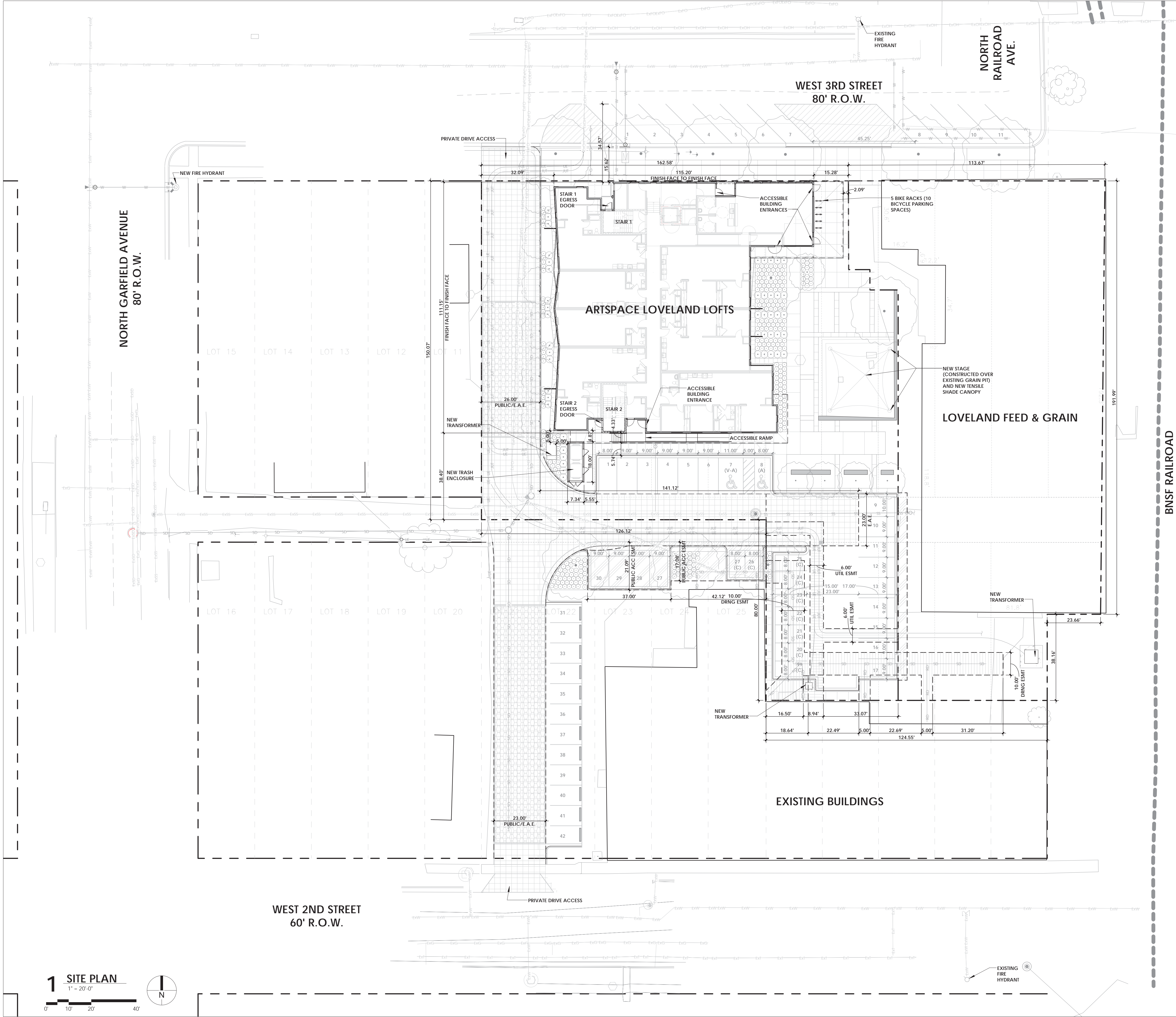
LEGEND

	EXISTING FIBER OPTIC
	EXISTING GAS LINE
	EXISTING OVERHEAD ELECTRIC
	EXISTING SANITARY SEWER
	EXISTING STORM DRAIN
	EXISTING TELEPHONE
	EXISTING WATER
	NEW GAS LINE
	NEW JOINT UTILITY TRENCH
	NEW ROOF DRAIN
	NEW SANITARY SEWER
	NEW STORM DRAIN
	NEW UNDERGROUND ELECTRIC
	NEW EMERGENCY ACCESS EASEMENT
	NEW PUBLIC ACCESS EASEMENT
	NEW DRAINAGE EASEMENT
	NEW UTILITY EASEMENT
	PERMEABLE PAVERS

SITE PLAN

SDP 1.00

PC ATTACHMENT 3



**FIRST READING:** October 1, 2013

**SECOND READING:** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT OF WAY  
LOCATED IN THE LOVELAND ADDITION TO THE CITY OF LOVELAND, CITY OF  
LOVELAND, LARIMER COUNTY, COLORADO**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of that portion of a public right of way described below, located in the City of Loveland, Larimer County, Colorado; and

**WHEREAS**, it is necessary to assure ongoing provision of public and private utility services that the portion of right of way to be vacated be preserved as a public access and public utility easement; and

**WHEREAS**, it is further necessary, that the owners of all real property adjoining the portion of the right of way to be vacated submit to the City a fully executed public access and public utility easement, in a form acceptable to the City, for the land described below (the "Easement"); and

**WHEREAS**, it is also necessary that the Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition (re-plat) for the property on which the right of way is located (the "Amended Plat") be approved and recorded by the City; and

**WHEREAS**, as permitted by Loveland Municipal Code Section 16.36.060, this ordinance is conditioned upon receipt of the fully executed Easement and Amended Plat, which shall be recorded concurrently with this ordinance; and

**WHEREAS**, the City Council finds and determines that, upon receipt of the Easement, no land adjoining any portion of the 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; and

**WHEREAS**, the City Council finds and determines that upon receipt of the Easement the portion of the right of way to be vacated is 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 Center was signed by the owners of more than 50% of property abutting the right of way to be vacated.

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

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

**Section 2.** Subject to the conditions set forth in Section 3, the following described portion of a public right of way access easement shall be and the same is hereby vacated:

A PARCEL OF LAND BEING A PORTION OF BLOCK 21, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE NORTH LINE OF BLOCK 21, WHICH BEARS N 89°46'05" E.

**BEGINNING** AT THE NORTHEAST CORNER OF LOT 11, OF SAID BLOCK 21; THENCE N 89°46'05" E ON THE NORTH LINE OF SAID BLOCK 21, A DISTANCE OF 20.11 FEET, TO A POINT ON THE WEST LINE OF THE EAST 5.0 FEET OF LOT 10 OF SAID BLOCK 21; THENCE S 00°13'55" E, ON SAID WEST LINE, A DISTANCE OF 140.08 FEET, TO A POINT ON THE NORTH LINE OF THE EAST-WEST ALLEY OF SAID BLOCK 21; THENCE N 89°47'11" E, ON SAID NORTH LINE, A DISTANCE OF 130.31 FEET, TO THE SOUTHEAST CORNER OF LOT 5 OF SAID BLOCK 21; THENCE S 00°13'55" E, A DISTANCE OF 20.00 FEET, TO THE NORTHEAST CORNER OF LOT 28 OF SAID BLOCK 21; THENCE S 89°48'06" W, ON THE SOUTH LINE OF SAID ALLEY, A DISTANCE OF 150.43 FEET, TO THE NORTHEAST CORNER OF LOT 20 OF SAID BLOCK 21; THENCE N 00°13'47" W, ON THE SOUTHERN EXTENSION OF THE EAST LINE OF SAID LOT 11 AND THE WEST LINE OF SAID LOT 11, A DISTANCE OF 160.03 FEET, TO THE **POINT OF BEGINNING**.

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a. The vacated portion of the public right of way shall be preserved as a public access and public utility easement, which condition shall be deemed satisfied upon receipt by the City of the Easement executed by the owners of all real property adjoining the portion of the right of way to be vacated; and

b. The Amended Plat is approved and recorded by the City.

**Section 4.** 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 5.** 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 6.** The City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes, and after receipt of the fully executed Easement and Amended Plat described above. The fully Easement and Amended Plat for the above-described property shall be recorded concurrently with this Ordinance.

Signed this \_\_\_\_ day of October, 2013.

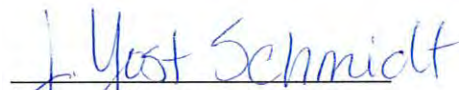
ATTEST:

**CITY OF LOVELAND, COLORADO:**

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

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

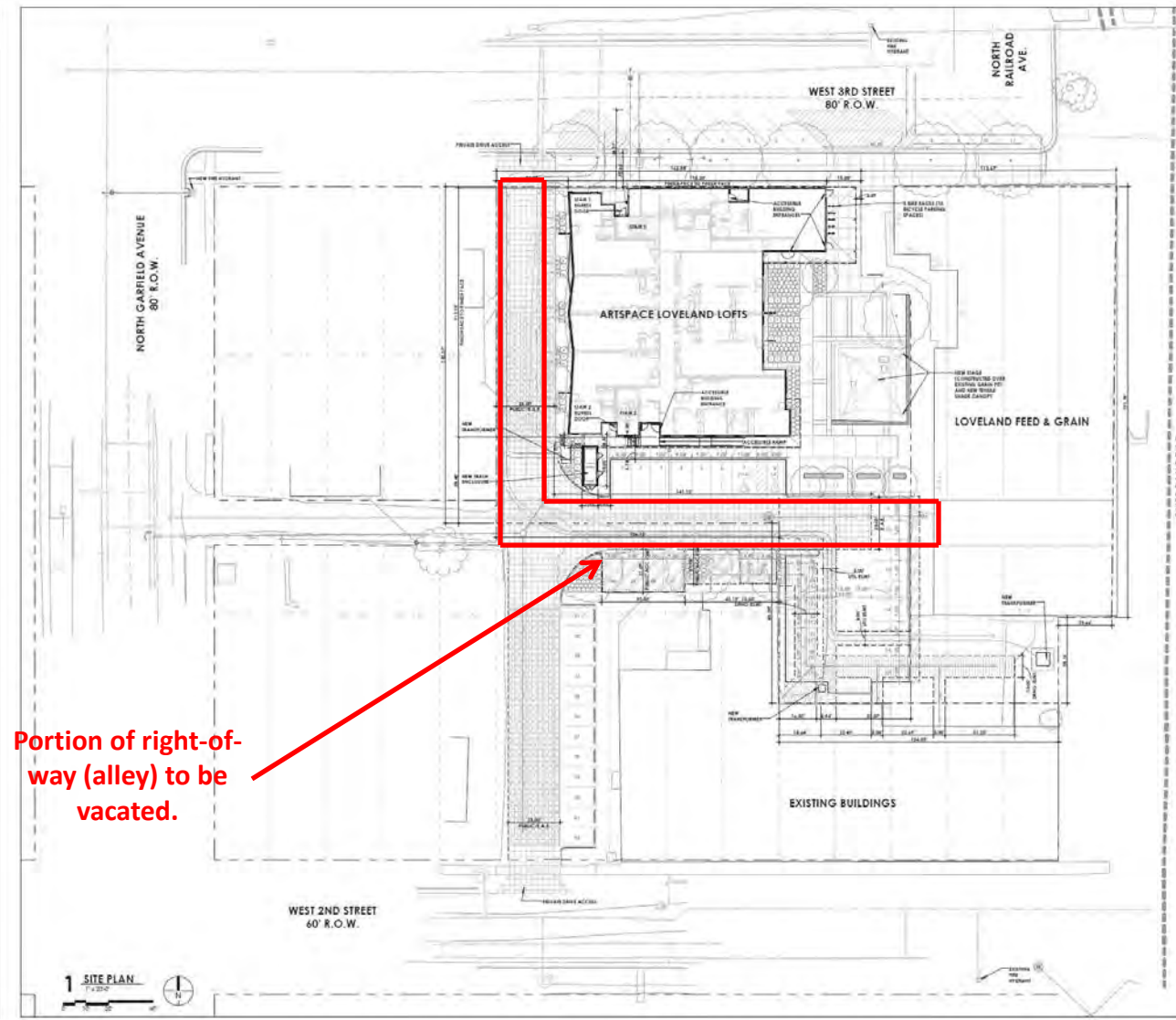
  
\_\_\_\_\_  
Deputy City Attorney

# ARTSPACE (LOVELAND ADDITION) VACATION OF RIGHT-OF-WAY



Portion of public right-of-way (alley)  
to be vacated





Portion of right-of-way (alley) to be vacated.

ZONING	
EXISTING ZONING:	Re - Established Central Business District
LAND USE	
ARTSPACE LOVELAND LOFTS:	Mixed Use Residential
SITE AREA	
TOTAL SITE AREA:	31,413 SF [0.72 AC]
GROSS AREA BY LEVEL	
LEVEL 1 GROSS FLOOR AREA:	10,334 SF
LEVEL 2 GROSS FLOOR AREA:	9,799 SF
LEVEL 3 GROSS FLOOR AREA:	9,817 SF
LEVEL 4 GROSS FLOOR AREA:	7,993 SF
TOTAL GROSS FLOOR AREA:	37,943 SF
BUILDING OCCUPANCY	
ARTSPACE LOVELAND LOFTS:	Mixed Use Residential, B-2 & A-2
GROSS AREA BY OCCUPANCY	
T.O. LEVEL 1 - 4977.00:	A-2 1,148 SF
T.O. LEVEL 1 - 4977.00:	B-2 9,186 SF
T.O. LEVEL 2:	B-2 9,799 SF
T.O. LEVEL 3:	B-2 9,817 SF
T.O. LEVEL 4:	B-2 7,993 SF
	34,780 SF
	37,943 SF
CONSTRUCTION TYPE	
ARTSPACE LOVELAND LOFTS:	Type III-A Construction - 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th
PARKING	
ARTSPACE LOVELAND LOFTS:	On Street Parking Spaces 1 - 30
Standard Spaces:	19 63%
Compact Spaces:	09 30%
Accessible Spaces:	02 7%
Total Spaces:	30 100%
LANDSCAPING	
ADJACENT PROPERTY:	On Street Parking Spaces 31 - 42
Standard Spaces:	12 100%
Compact Spaces:	00 0%
Accessible Spaces:	00 0%
Total Spaces:	12 100%
FEMA FLOOD PLAIN	
ARTSPACE LOVELAND LOFTS:	None
OPEN SPACE	
LOFTS/COMMONS:	10,781 SF 100%
COMMONS:	21,021 SF 100%
TOTAL:	31,802 SF 100%

LEGEND	
---	EXISTING FIBER OPTIC
---	EXISTING GAS LINE
---	EXISTING OVERHEAD ELECTRIC
---	EXISTING SANITARY SEWER
---	EXISTING STORM DRAIN
---	EXISTING TELEPHONE
---	EXISTING WATER
---	NEW GAS LINE
---	NEW JOINT UTILITY TRENCH
---	NEW ROOF DRAIN
---	NEW SANITARY SEWER
---	NEW STORM DRAIN
---	NEW UNDERGROUND ELECTRIC
---	NEW EMERGENCY ACCESS EASEMENT
---	NEW PUBLIC ACCESS EASEMENT
---	NEW DRAINAGE EASEMENT
---	NEW UTILITY EASEMENT
---	PERMISSIBLE PAVES

the abogroup inc.  
SUSTAINABLE ARCHITECTURE  
17000 West 10th Avenue  
Suite 200  
Westminster, Colorado 80057  
Phone: (303) 440-4400  
Fax: (303) 440-4401  
denver@theabogroup.com

**ARTSPACE PROJECTS INC.**  
**ARTSPACE LOVELAND LOFTS**  
140 W. 3RD STREET  
LOVELAND, CO 80037

DATE: 01/11/11	BY: [Signature]
DATE: 01/11/11	BY: [Signature]
DATE: 01/11/11	BY: [Signature]
DATE: 01/11/11	BY: [Signature]

SITE PLAN  
SDP 1.00

Artspace Site Plan – For Reference



AMENDED PLAT OF LOTS 1-10 AND 26-30, BLOCK 21, LOVELAND ADDITION TO THE CITY OF LOVELAND

BEING A LOT MERGER OF LOTS 1-10 AND 26-30, BLOCK 21, LOVELAND ADDITION, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN,  
CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

TITLE COMMITMENT NOTES:

FOR ALL INFORMATION REGARDING EASEMENTS, RIGHT-OF-WAY OR TITLE OF RECORD, WASHBURN LAND SURVEYING, LLC RELIED UPON TITLE COMMITMENT NUMBER SAC-F030322-383-JNS BY FIDELITY NATIONAL TITLE INSURANCE COMPANY, DATED JUNE 2, 2001 AT 7:00 AM.  
THE FOLLOWING COMMENTS ARE IN REGARDS TO THE ABOVE-MENTIONED TITLE COMMITMENT.

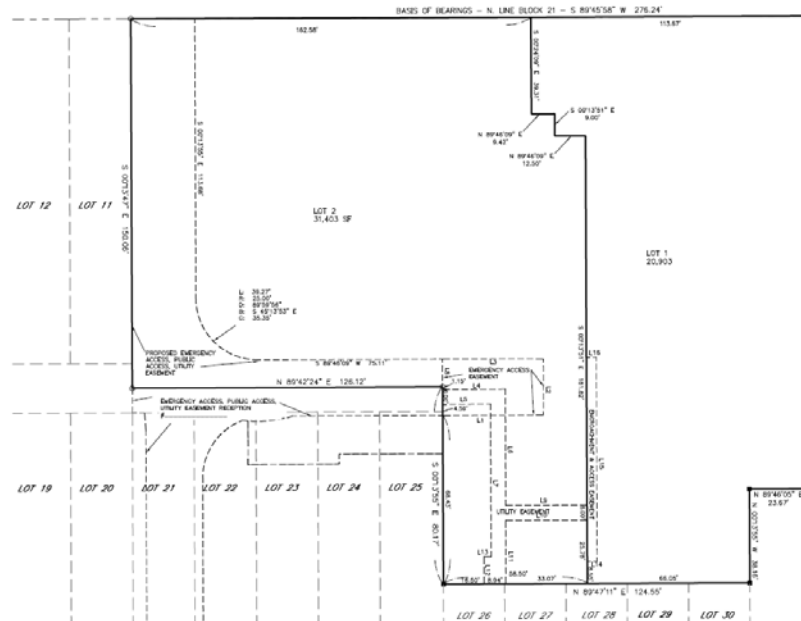
GENERAL NOTES:

1. OPINION, CONSIDERATION AND A PROFESSIONAL OPINION BASED ON HIS BEST DISPOSITION OF CONSCIENCE, KNOWLEDGE, INFORMATION AND BELIEFS. IT IS EXPRESSLY UNDERSTOOD THAT THE PROFESSIONAL CERTIFICATION OF A GEONOTE'S EVIDENCE INCLUDES NO OTHER PARTY OF INTEREST OR CONSIDERATION.
2. EVIDENTS AND PUBLIC EVIDENTS SHOWN OR NOTED HEREIN WERE EXAMINED AS TO LOCATION AND PURPOSE AND WERE NOT EXAMINED AS TO REPERCUSSIONS, RESTRICTIONS, CONDITIONS, DELAYATIONS, TERMS, OR AS TO THE RIGHT TO GRANT THE SAME.
3. FOR C.R.S. 38-5-101-103, ALL LINEAL UNITS DERIVED ON THIS LAND SURVEY PLOT ARE U.S. SURVEY AND WATER EVIDENCE 38-5-101-103, EXACTLY ACCORDING TO THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

BASIS OF BEARING STATEMENT:

THE BASE OF BEARINGS IS THE NORTH LINE OF BLOCK 21, CITY OF LOVELAND, MONUMENTED AS SHOWN HEREON.

EAST THIRD STREET



OWNER'S STATEMENT

KNOW ALL PERSONS BY THESE PRESENTS THAT (THE UNDERSIGNED), BEING ALL THE OWNERS AND LSH HOLDERS OF THE FOLLOWING DESCRIBED PROPERTY, EXCEPT ANY EXISTING PUBLIC STREETS, ROADS OR HIGHWAYS, WHICH PROPERTY IS LOCATED IN SECTION 13, TOWNSHIP 3 NORTH, RANGE 69 WEST OF THE 6TH P.M., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 9, INCLUSIVE AND THE EAST 5.0 FEET OF LOT 10 AND THE NORTH  $\frac{1}{2}$  OF LOTS 20 THROUGH 30, INCLUSIVE, ALL IN BLOCK 21, IN THE CITY OF LOVELAND, COLORADO;

ANS

ALL OF THE VACATED ALLEY LYING BETWEEN LOTS 1, 2, 3, AND 4 ON ONE SIDE AND LOTS 27,28,29 AND 30 ON THE OTHER SIDE, IN SAID BLOCK 21, IN THE CITY OF LOVELAND, COLORADO;

AND

THE WESTLEY 25.0 FEET OF THE SULLIVAN TRACT AND SANTA FE RAILWAY COMPANY'S OWNERSHIP, THE COLORADO & SOUTHERN RAILWAY COMPANY'S 100.00 FOOT WEST RIGHT-OF-WAY BEING 50.0 FEET WIDE ON EACH SIDE OF SANTA FE RAILWAY COMPANY'S MAIN TRACT CENTERLINE, AS NOW LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS THE SW 1/4, SW 1/4 OF SECTION 13, TOWNSHIP 31 NORTH, RANGE 88 WEST OF THE 10TH PRINCIPAL MERIDIAN, SOUTHERN PLAINS, WYOMING, BEING 100.00 FEET WIDE EAST-TO-WEST, RESPECTIVELY, 25.0 FEET AND 50.0 FEET WESTWARD, AS MEASURED AT RIGHT ANGLES FROM SANTA FE MAIN TRACT CENTERLINE, BOUNDED ON THE NORTH BY THE EASTWARD EXTENSION OF THE SOUTH LINE OF THIRD STREET, 100.00 FEET WIDE, AND ADJACENT TO THE WEST BY THE WESTWARD EXTENSION OF THE SOUTH LINE OF THIRD STREET, 100.00 FEET WIDE, AND ADJACENT TO THE SOUTH BY THE WESTWARD EXTENSION OF THE SOUTH LINE OF THIRD STREET, 100.00 FEET WIDE, COUNTY OF LARIMER, STATE OF COLORADO.

476

THAT PORTION OF LOT 10, BLOCK 25, BEING THE ALLEY VACATED BY ORDINANCE # \_\_\_\_\_, TOGETHER WITH THE NORTH HALF OF THE EAST-WEST ALLEY OF BLOCK 27, LINDEN AVE. ADDITION, VACATED BY ORDINANCE # \_\_\_\_\_.

10

CONTAINING 1,200S ACRES MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY ON RECORD OR EXISTING, AND OF HIGHWAY DESIGNATION AND DEGREE: (1) ALL SUCH RIGHTS-OF-WAY AND EASEMENTS OF UTILITY, IRRIGATION AND DRAINAGE, INCLUDING ANY RIGHT-OF-WAY FOR THE CONVEYANCE OF WATER, ELECTRICITY, GAS, OIL, STEAM, HEAT, COOLING, AIR CONDITIONING, TELEPHONE, CABLE, OR OTHER PUBLIC USE FOR THE INSTALLATION AND MAINTENANCE OF UTILITY, IRRIGATION AND DRAINAGE FACILITIES; AND (2) ALL HIGHWAY DESIGNATION THE SAME ADJACENT PLAT OF LOTS 1-10 AND 26-30, BLOCK 21, LOVELAND ACCORD TO THE CITY OF LOVELAND.

OWNER'S SIGNATURE(S)

\_\_\_\_\_  
LEAD HOLDER'S SIGNATURE(S)

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

AS  
WITNESS MY HAND AND SEAL OF OFFICE

WITNESS MY HAND AND OFFICE  
MY COMMISSION EXPIRES \_\_\_\_\_  
NOTARY PUBLIC

**Keywords:** child sexual abuse; disclosure; self-blame

**SURVEYOR'S STATEMENT:**  
I, GARY R. WATKINSON, BEING A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, HEREBY CERTIFY THAT THE SURVEY OF WAS MADE BY ME OR UNDER MY SUPERVISION AND THAT THE SURVEY IS ACCURATELY REPRESENTED ON THIS PLAN AND THAT THE STATEMENTS CONTAINED HEREON WERE READ BY ME AND THE SAME ARE TRUE TO THE BEST OF MY KNOWLEDGE DATED 7/15/2011 DAY OF JULY, 2011.



CHAD R. WASHBURN, COLORADO LICENSED PROFESSIONAL LAND SURVEYOR #37963  
FOR AND ON BEHALF OF WASHBURN LAND SURVEYING, LLC

- FOUND NAIL AND DISC MARKED PLS 34714
- FOUND NAIL AND DISC MARKED PLS 34714
- FOUND #4 REBAR WITH BLUE PLASTIC CAP MARKED PLS 34714
- ▲ FOUND 2" ALUMINUM CAP MARKED 2" WC PLS 34714

LINE	ORGANIC	INORGANIC	PERCENTAGE
1	2.00000000	0.00000000	100.000000
2	1.99999999	0.00000001	99.999999
3	1.99999998	0.00000002	99.999998
4	1.99999997	0.00000003	99.999997
5	1.99999996	0.00000004	99.999996
6	1.99999995	0.00000005	99.999995
7	1.99999994	0.00000006	99.999994
8	1.99999993	0.00000007	99.999993
9	1.99999992	0.00000008	99.999992
10	1.99999991	0.00000009	99.999991
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23	1.99999978	0.00000022	99.999978
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25	1.99999976	0.00000024	99.999976
26	1.99999975	0.00000025	99.999975
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28	1.99999973	0.00000027	99.999973
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220	1.99999781	0.00000219	99.999781
221	1.99999780	0.00000220	99.999780
222	1.99999779	0.00000221	99.999779
223	1.99999778		

ATTORNEY'S CERTIFICATION:

AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF COLORADO CERTIFY THAT I HAVE EXAMINED TITLE TO THE ABOVE DESCRIBED LAND DEDICATED TO THE CITY OF LOVELAND, COLORADO, AND THAT THE PARTIES EXECUTING THE DEDICATION ARE THE OWNERS THEREOF IN FEE SIMPLE AND THE DEDICATED LAND IS FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES, EXCEPT AS SET FORTH HEREIN.

50 Journal of Management Inquiry / December 2006

DO NOT SIGN THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

DIRECTOR OF DEVELOPMENT SERVICES CERTIFICATION:

THIS PLAN IS APPROVED BY THE DIRECTOR OF DEVELOPMENT SERVICES OF THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, FOR FILING WITH THE CLERK AND RECORDS OF LARIMER COUNTY AND FOR CONVEYANCE TO THE CITY OF THE PUBLIC DECLARATIONS SHOWN HEREON, WHICH ARE ACCEPTED SUBJECT TO THE PROVISION THAT APPEARAL IN NO WAY COMBATES THE CITY OF LOVELAND, FOR THE FINANCING OR CONSTRUCTING OF IMPROVEMENTS ON LAND, STRIPES, OR EASEMENTS DECREASED TO THE PUBLIC EXCEPT AS SPECIALLY AGREED TO BY THE DIRECTOR OF DEVELOPMENT SERVICES.

DIRECTOR OF DEVELOPMENT SERVICES

[illegible]

WITNESSES MAY  
ATTEND:

 **Washburn Land Surveying**  
www.WashburnSurveying.com  
3621 Muskrat Creek Drive  
Fort Collins, CO 80528  
970-232-9645

Sheet 1 of 1    Project #: 2010-0079    Date: Aug. 14, 2013    Scale: 1"=50'    Drawn: CDB/CRW



**CITY OF LOVELAND**  
CITY ATTORNEY'S OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2540 • FAX (970) 962-2900 • TDD (970) 962-2620

---

**AGENDA ITEM:** 4  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Judy Schmidt, Deputy City Attorney  
**PRESENTER:** Julia Holland, Director, Human Resources/Risk Management

---

**TITLE:**

An Ordinance on Second Reading Amending Section 2.68.020 of the Loveland Municipal Code Regarding the Manner of Adopting the Employee Pay Plan

**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
- 

**SUMMARY:**

This is a legislative action to consider an ordinance, on second reading, amending the Section 2.68.020 Loveland Municipal Code to permit adoption of the employee pay plan from time to time by resolution, as opposed to an ordinance. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible
- 

**BACKGROUND:**

Loveland Municipal Code Section 2.68.020 calls for the Employee Pay Plan, establishing pay grades and compensation ranges for all employees of the City, to be adopted by ordinance from time to time.

In order to simplify the process of adopting the pay plan, the proposed amendment to Section 2.68.020 of the Loveland Municipal Code will permit such adoption by a resolution, rather than an ordinance.

In addition, the Employee Pay Plan has historically been approved at the same time as the annual budget resolutions and ordinances, although there is no legal requirement that these items be considered together. If the proposed ordinance amending the Loveland Municipal Code is adopted, the 2014 Pay Plan will be brought to Council for consideration, by adoption of a resolution, after this change becomes effective, at the November 5, 2013 Council meeting.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance

**FIRST READING**      October 1, 2013

**SECOND READING**      October 15, 2013

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING SECTION 2.68.020 OF THE LOVELAND MUNICIPAL CODE REGARDING THE MANNER OF ADOPTING THE EMPLOYEE PAY PLAN**

**WHEREAS**, Section 2.68.020 of the Loveland Municipal Code provides that the City Council shall, from time to time, adopt an employee pay plan by adoption of an ordinance; and

**WHEREAS**, neither the City Charter nor state law requires that such action be accomplished by adoption of an ordinance, as opposed to a resolution; and

**WHEREAS**, in order to simplify the process of adopting the annual pay plan, the Council desires to amend Section 2.68.020 to permit adoption of a pay plan by resolution.

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

**Section 1.** That Section 2.68.020 of the Loveland Municipal Code is hereby amended to read as follows:

**2.68.020 Employee pay plan.**

The city council shall, from time to time, adopt, by resolution, an employee pay plan setting forth pay grades and compensation ranges for all employees of the city.

**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 \_\_\_\_\_ day of October, 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

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**AGENDA ITEM:** 5  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

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**TITLE:**

2014 City Of Loveland Budget

1. A Resolution on Second Reading Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the Storm Water Enterprise of the City of Loveland, Colorado and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees
2. A Resolution on Second Reading Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the Water and Power Department of the City of Loveland and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees
3. An Ordinance on Second Reading Adopting the 2013 Mill Levy for the General Fund of the City of Loveland, Colorado
4. An Ordinance on Second Reading Adopting the 2014 Budget for the City of Loveland, Colorado
5. An Ordinance on Second Reading Making an Appropriation for the Fiscal Year Beginning January 1, 2014 and Ending December 31, 2014 for the City of Loveland, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

1. Approval of the Resolution on Second Reading setting the 2014 Rates, Charges and Fees for the Storm Water Enterprise.
2. Approval of the Resolution on Second Reading setting the 2014 rates, Charges and Fees for the Water & Power Department.
3. Approval on Second Reading of all of the Ordinances.

**OPTIONS:**

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

**SUMMARY:**

This is an administrative action to adopt the fee resolutions and ordinances, except for the mill levy ordinance, and to approve the 2014 Budget on second reading. The adoption of the 2013 mill levy is a legislative action. Included are all the Fee Resolutions and Ordinances necessary to adopt and implement the 2014 Budget. City ordinance requires that the fee resolutions for the utilities be approved on two readings. The Fee Resolutions and the ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**BUDGET IMPACT:**

- ☐ Positive
- ☐ Negative
- ☒ Neutral or negligible

These items establish the budget for the City of Loveland, Colorado in 2014 and implement fees and rates to meet the revenue projections in the budget.

**BACKGROUND:**

The total Net City Budget for January 1 to December 31, 2014 of \$223.4 million is designed to strengthen critical services. Compared to the 2013 Net Adopted Budget of \$206.8 million, the budget will increase eight percent (8.0%). Revenues have continued to recover from the lows of 2009. The Budget reflects an effort to direct resources to the Council's high priority areas. The General Fund budget for 2014 at \$77.2 million is an increase from the 2013 Adopted Budget of \$65.2 million by 18.4%. The increase is driven by a planned spend down of fund balance for priority capital items and intra-fund loan repayment.

The 2013 Revised Budget numbers in the material represent supplemental budget appropriations through June, 2013, and the percentage change is a comparison to the 2013 Adopted Budget. Staff believes this is the most accurate assessment of the change in the budget, since it is not affected by one-time grants that have occurred during the year or incomplete capital projects balances rolled forward.

**Current Environment**

The local economy has shown improvement, although growth continues to be slow. The number of jobs has increased over the same time as last year and the unemployment rate has come down, although still significantly higher than pre-recession numbers. Sales tax collections through September have been stronger than expected. There are signs of the beginning of a recovery in residential building, but commercial construction remains severely constrained. The following statistics are indicators of the improvement:

- Sales tax collections through August are 7.6% higher than collections in 2012 through the same time period, and have recovered to be above 2007 collections when inflation is taken into account;
- Building permit revenue is up 11% and Building Use Tax is up 28.3% from the same period last year, although as noted above the growth is due only to residential construction.



- The employment based on July figures has grown by 800 jobs from the same period the previous year.
- Property values are projected to be up about 4% from 2012 values, after no increase in the previous year.
- General Fund Revenues are above expenditures through August by \$13.4 million.

The current projections indicate the ten year financial plan is balanced, with operating revenue exceeding operating expense in all years in the plan. If all the proposals included in the 2014 Budget are accepted by Council for the General Fund, revenue available for operations and capital exceeds expenses through all years in the Financial Master Plan. The Unassigned Fund balance continues to be above the our fund balance policy amount by about \$3.4 million and is projected to grow in future years, providing flexibility to meet both economic contingencies and downstream effects from the flooding that has recently occurred.

### **Priorities for Developing the 2014 Budget**

The 2014 budget was developed based on strengthening critical services using the revenue growth we are currently experiencing. However the increases are done with caution and staff was not willing to appropriate all of the revenue increase to provide a cushion if the economy falters. The following paragraphs outline the changes that are included in the proposed budget.

#### **Revenues**

Revenue projections set the parameters for the budget and are based on the following assumptions:

- Property tax revenue is projected to be higher by 4.0% compared to 2012.
- The base sales tax is projected to increase 6.0% over the projected 2013 collections.
- We are projecting continued growth in residential construction, with commercial and multifamily projects staying flat to 2013;
- Water rate increase of 13.0%, 1% for the raw water reservoir project and 12.0% for treatment plant and distribution system capital improvements;
- Storm Water rate increases of 9.6%for infrastructure improvements;
- Power rate increase of 1.65% to cover the increase in the wholesale rate from Platte River Power Authority.
- An increase of 8.9% in the Wastewater Enterprise for treatment plant and collection system improvements.
- Interest is calculated at 1.02% of the beginning fund balance.

#### **Expenses**

Details on the significant General Fund expenses increases are below.

- No base or core budget inflationary increases;
- The employee merit pool is set at 3.5%;

- Continue to manage health claims costs through the new employee health clinic. The opening of the clinic is projected to reduce the inflation in claims costs by more than the cost of the clinic by the third year of operation. This will provide savings to the City in the amount of the claims paid and savings to the employees in deductibles on office visits.
- \$334,110 – Operating costs for the addition of six new firefighters and the operational cost for the Station 2 expansion and relocation.
- \$250,000 – One-time consulting costs for the Comprehensive Master Plan update.
- \$177,290 – Addition of a Detective position; the costs include the purchase of vehicle and one-time equipment.
- \$166,780 – Addition of a Police officer position; the costs include the purchase of vehicle and one-time equipment.
- \$156,450 – Additional operating expenses for the Loveland Fire Rescue Authority.
- \$105,230 – an additional FTE and partial year operating costs for the new Service Center expansion.
- \$70,360 – Funding for recorders and a contract transcription service for police reports.
- \$65,550 – Addition of a Police Report Technician position.
- \$66,440 – Addition of a Communication Specialist position in the Dispatch Center.
- \$50,000 – Increase in the Human Services Grant Program.
- \$50,000 – Funding for security upgrades at city facilities.

***Major Capital Projects for General Fund Agencies in 2014 include:***

- \$5.3 million in the Street Rehabilitation Program, which is increased by \$1 million from 2013 amount;
- \$3.0 million to replace the Police Records Management System;
- \$2.4 million for Open Space acquisitions funded by Open Space sales tax revenue and Open Space CEF fees;
- \$2.3 million for the Transportation Program, funded by Street CEF fees and General Fund TABOR reserves;
- \$1.4 million to replace a Fire Rescue ladder truck;
- \$1.0 million for projects in the downtown area;
- \$0.9 million to complete the funding for the relocation and expansion of Fire Station 2;
- \$0.7 million to replace the City telephone system;
- \$0.6 million to replace ball field lighting at Barnes Park;
- \$0.5 million for major facility maintenance projects, funded by General Fund revenues;
- \$0.3 million for neighborhood park renovations;
- \$0.3 million for Recreation Trail expansion funded by Lottery funds;
- \$0.2 million for park restroom renovation; and
- \$0.1 million to replace/repair bridges within the City.

From the discussion with Council at the study session in September the following changes have been made to the Recommended Budget:

- The contribution to the Economic Development Fund is increased by \$100,000 to a total of \$350,000;
- The Downtown Development Fund has been eliminated. The \$1 million for potential downtown projects is now transferred to and appropriated in the Capital Projects Fund as we have done in past years.

The fund summary pages that have changed as a result of these changes are attached.

### **Mill Levy**

The 2013 General Fund mill levy will remain at the same amount as 2012 at 9.564. The 2013 Mill Levy combined with the assessed property value determines the amount of property tax revenue. 2013 Property Taxes are due and payable in 2014 and are used to fund a portion of the 2014 General Fund budget.

Staff believes it is presenting a conservative budget that maintains the services currently provided, while also maintaining our financial stability. Reserves in the operating funds meet or exceed the adopted fund balance policy that would require 15% of operating fund expenditures for the purposes of meeting unforeseen contingencies that may occur and to provide the City with a bridge if economic conditions result in lower than projected revenues.

Council approved all of these actions by unanimous vote on first reading at the October 1, 2013 regular meeting.

---

### **REVIEWED BY CITY MANAGER:**




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### **LIST OF ATTACHMENTS:**

1. Resolution on Second Reading adopting the 2014 Schedule of Rates, Charges and Fees for services provided by the Storm Water Enterprise of the City of Loveland, Colorado and superseding all prior resolutions establishing such rates, charges, and fees.
2. Resolution on Second Reading adopting the 2013 Schedule of Rates, Charges and Fees for services provided by the Water & Power Department of the City of Loveland.
3. Ordinance on Second Reading adopting the mill levy for the General Fund of the City of Loveland, Colorado.
4. Ordinance on Second Reading adopting the 2014 budget for the City of Loveland, Colorado.
5. Ordinance on Second Reading making an appropriation for the fiscal year beginning January 1, 2014 and ending December 31, 2014 for the City of Loveland, Colorado.

**FIRST READING**      October 1, 2013

**SECOND READING**      October 15, 2013

**RESOLUTION #R- 79-2013**

**A RESOLUTION ADOPTING THE 2014 SCHEDULE OF RATES, CHARGES, AND FEES FOR SERVICES PROVIDED BY THE STORM WATER ENTERPRISE OF THE CITY OF LOVELAND, COLORADO AND SUPERSEDING ALL PRIOR RESOLUTIONS ESTABLISHING SUCH RATES, CHARGES, AND FEES**

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

**WHEREAS**, the City Council last set the rates, charges, and fees for the services provided by the Storm Water Enterprise in Resolution #R-64-2012; and

**WHEREAS**, the City Council periodically adjusts the rates, charges, and fees for services provided by the Storm Water Enterprise to more accurately reflect the cost of providing such services to its customers; and

**WHEREAS**, City staff has presented to the City Council a revised “Schedule of Rates, Charges, and Fees,” a copy of which is attached hereto as Exhibit A and incorporated herein by reference (“Schedule of Rates, Charges, and Fees”).

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

**Section 1.** That the Schedule of Rates, Charges, and Fees, attached hereto as Exhibit A, is hereby adopted for services provided by the Storm Water Enterprise of the City of Loveland, Colorado and beginning with billings mailed on or after January 1, 2014.

**Section 2.** That this Resolution shall supersede in all respects all previous resolutions of the City Council which set the rates, charges, and fees now being set, including those set in Resolution #R-64-2012, for all affected billings mailed on or after January 1, 2014.

**Section 3.** That notwithstanding the foregoing, the rates, charges, and fees as set in Resolution #R-64-2012 shall continue in full force and effect from the date of this Resolution until they are superseded on and after January 1, 2014 as provided herein.

**Section 4.** 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 15<sup>th</sup> day of October, 2013.

---

Cecil A. Gutierrez, Mayor

ATTEST:

---

City Clerk

APPROVED AS TO FORM:

  
Assistant City Attorney



# **Exhibit A**

## **City of Loveland, Colorado**

### **Schedule of Rates, Charges and Fees for the Storm Water Utility**

**Effective January 1, 2014**

## **STORM WATER UTILITY – Fund 43**

“Monthly fee” means the fee imposed upon a customer for a utility billing cycle, whether or not such cycle is a calendar month.

“Unit” means a lot, tract, or parcel of land containing an impervious surface.

“Unit size” means the area of a unit as shown on the subdivision or annexation map creating the unit. In the case of two-family and multiple-family dwellings on a single unit, unit size shall be the lot, tract or parcel size divided by the number of dwellings. In the case of multiple industrial, institutional, and commercial uses on a single lot, tract or parcel, unit size shall be the lot, tract or parcel; unit size shall be the lot, tract or parcel size pro-rated among the multiple uses in the same proportions as their building floor areas and related outdoor impervious surfaces bear to each other. Outdoor impervious surfaces used in common by such multiple users shall be prorated in the same proportions as the building floor areas and related outdoor impervious surfaces bear to each other.

There shall be excluded from the unit size for all residential units over one acre that portion of any residential unit in excess of two times the total impervious surface.

“Commercial unit” means any unit devoted to any commercial purpose or any other purpose not included within the definitions of industrial unit, institutional unit or residential unit.

“Industrial unit” means any unit devoted primarily to manufacturing, processing, assembly or storage of tangible personal property, research facilities, experimental or testing laboratories, warehouses, distribution and wholesale uses, utility service facilities, aircraft hangars and repair facilities for aircraft, and caretaker's quarters and other accessory buildings reasonably required for maintenance or security of the uses set out in this section.

“Institutional unit” means any unit devoted primarily to schools, hospitals, churches, libraries, and similar public and quasi-public uses.

“Residential unit” means any unit devoted primarily to one-family, two-family or multiple-family dwellings, as such terms are defined in Chapter 18.04 of the Loveland Municipal Code.

## **STORM WATER UTILITY**

### **Inspection of Storm Drainage Improvements:**

Single Family Unit	\$75.00
Duplex Unit	\$50.00
Multi-Family Unit	\$25.00
All other Buildings	\$150.00
Plus \$50 per acre for lots over two (2) acres, per acre	\$50.00

### **Storm Water Fee:**

<u>Residential Lot Size (square feet)</u>	
Less than 3999	\$5.05
4000-5999	\$6.30
6000-7999	\$9.10
8000-9999	\$11.39
Greater than 9999	\$12.64
<u>Non-Residential, per acre</u>	
Commercial	\$69.02
Industrial	\$57.72
Institutional	\$27.18

**Adjustments to monthly fee:** A non-residential customer may request an adjustment to the regular fee by one of the following methods, in order to allow for less impervious surface than the average for the class of use (Method A) or for on-site detention facilities (Method B). The two methods are not cumulative, and only the method resulting in the lower fee shall be used.

**Method A:** The fee shall be one-half of the regular fee, plus one-half of the regular fee multiplied by the percent of impervious area multiplied by the class factor. The Commercial class factor is 1.11, the Industrial class factor is 1.174, and the Institutional class factor is 2.49.

**Method B:** The fee shall be one-half of the regular fee, plus one-half of the regular fee multiplied by the ratio of the storm water runoff rate calculated to result after construction of detention facilities to the storm water runoff rate which would occur in the absence of detention facilities.

**Administration:** The City Manager or his designee shall implement the provisions of this resolution, and shall have full authority to consider and decide all adjustments to fees.

The fees imposed herein shall be billed in arrears.

**Storm Water System Impact Fee:**

High Density – more than 11 units per acre	\$3,700.00
Medium Density – more than 6 and up to 11 dwellings per acre	\$3,020.00
Low Density – more than 1 and up to 6 dwelling units per acre	\$2,620.00
Estate – up to 1 dwelling unit per acre	\$1,100.00
Commercial, per acre	\$4,660.00
Industrial, per acre	\$4,800.00
Institution, per acre	\$2,460.00

**FIRST READING**      October 1, 2013

**SECOND READING**      October 15, 2013

**RESOLUTION #R-80-2013**

**A RESOLUTION ADOPTING THE 2014 SCHEDULE OF RATES, CHARGES, AND FEES FOR SERVICES PROVIDED BY THE WATER AND POWER DEPARTMENT OF THE CITY OF LOVELAND AND SUPERSEDING ALL PRIOR RESOLUTIONS ESTABLISHING SUCH RATES, CHARGES, AND FEES**

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

**WHEREAS**, the City Council last set such rates, charges, and fees for the City's Water and Power Department in Resolution #R-65-2012; and

**WHEREAS**, the City Council periodically adjusts the fees for such utility services to more accurately reflect the cost of providing the services to its customers; and

**WHEREAS**, City staff has presented to the City Council a revised "Schedule of Rates, Charges, and Fees," a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference ("Schedule of Rates, Charges, and Fees").

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

**Section 1.** That the Schedule of Rates, Charges, and Fees, attached hereto as Exhibit A, is hereby adopted for services provided by the Water and Power Department of the City of Loveland and beginning with billings mailed on or after January 1, 2014.

**Section 2.** That this Resolution shall supersede in all respects all previous resolutions of the City Council which set the rates, charges, and fees now being set, including those set in Resolution #R-65-2012, for all affected billings mailed on or after January 1, 2014.

**Section 3.** That notwithstanding the foregoing, the rates, charges, and fees as set in Resolution #R-65-2012, shall continue in full force and effect from the date of this Resolution until they are superseded on and after January 1, 2014 as provided herein.

**Section 4.** 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 15<sup>th</sup> day of October, 2013.

---

Cecil A. Gutierrez, Mayor

ATTEST:

---

City Clerk

APPROVED AS TO FORM:

  
Assistant City Attorney

# CITY OF LOVELAND, COLORADO



## Water and Power Department Schedule of Rates, Charges and Fees

*Effective 1/1/~~43~~14*

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City of Loveland, Colorado  
Water and Power Department  
~~2013-2014~~ Schedule of Rates, Charges and Fees  
SUMMARY

## SUMMARY

### Electric Rates

Annexation Surcharge	5%
Renewable Energy Premium per 100 kilowatt-hour (kWh)	\$2.70

	Jan.-June, Oct.-Dec.	July-Sept.
Residential (Schedule R)		
Base Charge per Month	<del>\$8.94</del> 10.77	<del>\$8.94</del> 10.77
Energy Charge per kWh	<del>\$0.0660</del> 0.06180	<del>\$0.0722</del> 0.07380
PILT per kWh	<del>\$0.0059</del> 0.00592	<del>\$0.0063</del> 0.00649
Residential Demand (Schedule RD)		
Base Charge per Month	<del>\$18.00</del> 19.05	<del>\$18.00</del> 19.05
Energy Charge per kWh	<del>\$0.0280</del> 0.03150	<del>\$0.0280</del> 0.03150
PILT per kWh	<del>\$0.0046</del> 0.00438	<del>\$0.0049</del> 0.00504
Demand Charge per kW	<del>\$8.21</del> 7.30	<del>\$8.75</del> 8.80
Small General Service (Schedule SG)		
Base Charge per Month	<del>\$14.20</del> 17.22	<del>\$14.20</del> 17.22
Energy Charge per kWh	<del>\$0.0664</del> 0.06790	<del>\$0.0710</del> 0.07350
PILT per kWh	<del>\$0.0055</del> 0.00584	<del>\$0.0058</del> 0.00613
Plant Investment Fee per kWh	\$0.00514	\$0.00514
Large General Service (Schedule LG)		
Base Charge per Month	<del>\$65.00</del> 77.98	<del>\$65.00</del> 77.98
Energy Charge per kWh	<del>\$0.0335</del> 0.03501	<del>\$0.0349</del> 0.03349
PILT per kWh	<del>\$0.0046</del> 0.00473	<del>\$0.0049</del> 0.00511
Plant Investment Fee per kWh	\$0.00514	\$0.00514
Demand Charge per kW	<del>\$10.49</del> 9.85	<del>\$11.51</del> 12.65
Primary Service with Customer Owned Transformer (Schedule PT)		
Base Charge per Month	<del>\$81.00</del> 90.17	<del>\$81.00</del> 90.17
Energy Charge per kWh	<del>\$0.0327</del> 0.03432	<del>\$0.0341</del> 0.03283
PILT per kWh	<del>\$0.0038</del> 0.00400	<del>\$0.0041</del> 0.00424
Plant Investment Fee per kWh	\$0.00499	\$0.00499
Demand Charge per kW	<del>\$9.49</del> 9.20	<del>\$10.51</del> 12.00

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City of Loveland, Colorado  
 Water and Power Department  
~~2013~~ 2014 Schedule of Rates, Charges and Fees  
 SUMMARY

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**Electric Rates Cont'd**

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Coincident Peak Demand Service (see page 24)

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Transmission Voltage by Contract (Schedule TS)

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Area Lighting (Schedule AL)

Rate per watt of bulb

PILT per watt of bulb

Jan.-Dec.

~~\$0.0471~~ \$0.04935

~~\$0.00353~~ \$0.00369

Flat Rates (Schedule FR)

Signal Amplifiers

PILT

Automatic Sprinkler Controls

PILT

Bus Shelters

PILT

Jan.-Dec.

~~\$27.80~~ \$29.08

~~\$2.08~~ \$2.18

~~\$4.13~~ \$4.32

~~\$0.34~~ \$0.32

~~\$17.09~~ \$17.88

~~\$1.28~~ \$1.34



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City of Loveland, Colorado  
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### **Wastewater Rates**

#### Monthly Flat Rate

	<u>Inside City</u>	<u>Outside City</u>
Single-family residential	<del>\$18.81</del> <u>20.89</u>	<del>\$28.22</del> <u>31.35</u>
Multi-family residential per unit	<del>\$11.22</del> <u>12.44</u>	<del>\$16.83</del> <u>18.68</u>
Non-residential property (Commercial or Industrial)	<del>\$125.87</del> <u>121.43</u>	<del>\$188.81</del> <u>182.31</u>

#### Metered Water Service

Monthly base charge – single-family residential	<del>\$8.22</del> <u>9.12</u>	<del>\$12.33</del> <u>13.68</u>
Monthly base charge – multi-family residential	<del>\$3.43</del> <u>3.81</u>	<del>\$5.15</del> <u>5.72</u>
Monthly base charge – commercial	\$8.00	\$12.00

Volume charge per 1,000 gallons – single-family residential	<del>\$2.59</del> <u>2.87</u>	<del>\$3.89</del> <u>4.31</u>
Volume charge per 1,000 gallons – multi-family residential	<del>\$2.59</del> <u>2.87</u>	<del>\$3.89</del> <u>4.31</u>
Volume charge per 1,000 gallons – commercial	\$3.21	\$4.82

#### High Strength Surcharge

BOD charge per pound when discharge is greater than 276 mg/l	<del>\$0.44</del> <u>0.49</u>	<del>\$0.66</del> <u>0.74</u>
TSS charge per pound -when discharge is greater than 207 mg/l	<del>\$0.26</del> <u>0.29</u>	<del>\$0.39</del> <u>0.44</u>

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## Water Rates

### Metered Rates

The monthly service charge shall be the sum of the base charge and the use fee per 1,000 gallons as set forth below:

#### Single-Family Residential Base Charge

<u>Tap Size (in inches)</u>	<u>Inside City</u>	<u>Outside City</u>
0.75	<del>\$10.07</del> <u>11.38</u>	<del>\$15.11</del> <u>17.07</u>
1.00	<del>\$12.97</del> <u>14.66</u>	<del>\$19.46</del> <u>21.99</u>
1.50	<del>\$15.86</del> <u>17.92</u>	<del>\$23.79</del> <u>26.88</u>
2.00	<del>\$23.84</del> <u>26.94</u>	<del>\$35.76</del> <u>40.41</u>
3.00	<del>\$82.53</del> <u>93.26</u>	<del>\$123.80</del> <u>139.89</u>
4.00	<del>\$104.27</del> <u>117.83</u>	<del>\$156.41</del> <u>176.75</u>
6.00	<del>\$155.00</del> <u>175.15</u>	<del>\$232.50</del> <u>262.73</u>

#### Multi-Family Residential Base Charge

<u>Tap size (in inches)</u>	<u>Inside City</u>	<u>Outside City</u>
0.75	<del>\$14.83</del> <u>16.76</u>	<del>\$22.25</del> <u>25.14</u>
1.00	<del>\$17.73</del> <u>20.03</u>	<del>\$26.60</del> <u>30.05</u>
1.25	<del>\$19.18</del> <u>21.67</u>	N/A
1.50	<del>\$20.62</del> <u>23.30</u>	<del>\$30.93</del> <u>34.95</u>
2.00	<del>\$28.59</del> <u>32.31</u>	<del>\$42.89</del> <u>48.47</u>
3.00	<del>\$87.24</del> <u>98.58</u>	<del>\$130.86</del> <u>147.87</u>
4.00	<del>\$108.96</del> <u>123.12</u>	<del>\$163.44</del> <u>184.68</u>
6.00	<del>\$159.64</del> <u>180.39</u>	<del>\$239.46</del> <u>270.59</u>

#### Commercial Base Charge

<u>Tap size (in inches)</u>	<u>Inside City</u>	<u>Outside City</u>
0.75	<del>\$10.07</del> <u>11.38</u>	<del>\$15.11</del> <u>17.07</u>
1.00	<del>\$12.97</del> <u>14.66</u>	<del>\$19.46</del> <u>21.99</u>
1.50	<del>\$15.86</del> <u>17.92</u>	<del>\$23.79</del> <u>26.88</u>
2.00	<del>\$23.84</del> <u>26.94</u>	<del>\$35.76</del> <u>40.41</u>
3.00	<del>\$82.53</del> <u>93.26</u>	<del>\$123.80</del> <u>139.89</u>
4.00	<del>\$104.27</del> <u>117.83</u>	<del>\$156.41</del> <u>176.75</u>
6.00	<del>\$155.00</del> <u>175.15</u>	<del>\$232.50</del> <u>262.73</u>

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**Water Rates Cont'd**

Irrigation Base Charge

<u>Tap size (in inches)</u>	<u>Inside City</u>	<u>Outside City</u>
0.75	<del>\$10.07</del> <u>11.38</u>	<del>\$15.44</del> <u>17.07</u>
1.00	<del>\$12.97</del> <u>14.66</u>	<del>\$19.46</del> <u>21.99</u>
1.50	<del>\$15.86</del> <u>17.92</u>	<del>\$23.79</del> <u>26.88</u>
2.00	<del>\$23.84</del> <u>26.94</u>	<del>\$35.76</del> <u>40.41</u>
3.00	<del>\$82.53</del> <u>93.26</u>	<del>\$123.80</del> <u>139.89</u>
4.00	<del>\$104.27</del> <u>117.83</u>	<del>\$156.41</del> <u>176.75</u>
6.00	<del>\$155.00</del> <u>175.15</u>	<del>\$232.50</del> <u>262.73</u>

Charges for larger taps will be set by City Council.

Use Fee per 1,000 gallons

	<u>Inside City</u>	<u>Outside City</u>
Single-Family Residential	<del>\$1.75</del> <u>1.98</u>	<del>\$2.63</del> <u>2.97</u>
Multi-Family Residential	<del>\$1.64</del> <u>1.82</u>	<del>\$2.42</del> <u>2.73</u>
Commercial	<del>\$1.76</del> <u>1.99</u>	<del>\$2.64</del> <u>2.99</u>
Irrigation	<del>\$2.45</del> <u>2.43</u>	<del>\$3.23</del> <u>3.65</u>

Hidden Valley Monthly Base Charge for 0.75 inch tap ~~\$160.70~~131.00

Excess Water Use – Surcharge per 1,000 gallons ~~\$0.75~~0.85

Fire Hydrant Charge per month

Residential	\$2.50
Commercial	\$6.20
Fire Protection Tap Service Fee per month	\$1.80
Tank and Hydrant Rate per 300 gallons	<del>\$1.00</del> <u>1.10</u>

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### **Plant Investment Fees - Electric**

Residential Service	
Residential over 150 amp service	\$1,630.00
Residential 150 amp service or less	\$1,270.00
Non-Residential per kWh	
Small General Service	\$0.00514
Large General Service	\$0.00514
Primary Service w/customer equipment	\$0.00499

### **System Impact Fees – Wastewater**

	<u>Inside City</u>	<u>Outside City</u>
Detached one-family dwelling	<del>\$2,510.00</del> <u>2,410.00</u>	<del>\$3,770.00</del> <u>3,620.00</u>
Attached one-family dwelling, per unit	<del>\$2,240.00</del> <u>2,110.00</u>	<del>\$3,360.00</del> <u>3,170.00</u>
Two-family dwelling, per unit	<del>\$2,240.00</del> <u>2,110.00</u>	<del>\$3,360.00</del> <u>3,170.00</u>
Multifamily dwelling containing 3-8 dwelling units, per unit	<del>\$2,240.00</del> <u>2,110.00</u>	<del>\$3,360.00</del> <u>3,170.00</u>
Multifamily dwelling containing 9 or more dwelling units, per unit	\$1,620.00	\$2,430.00

#### **Nonresidential**

<u>Tap size (in inches)</u>	<u>Inside City</u>	<u>Outside City</u>
0.75	<del>\$5,450.00</del> <u>5,770.00</u>	<del>\$8,180.00</del> <u>8,660.00</u>
1.00	<del>\$17,820.00</del> <u>18,850.00</u>	<del>\$26,730.00</del> <u>28,280.00</u>
1.50	<del>\$31,360.00</del> <u>33,210.00</u>	<del>\$47,040.00</del> <u>49,820.00</u>

Nonresidential taps above 1.5-inch pays the capital recovery surcharge

### **Capital Recovery Surcharge – Wastewater**

Inside City per 1,000 gallons of sewer billed	<del>\$0.74</del> <u>50.715</u>
Outside City per 1,000 gallons of sewer billed	<del>\$1.11</del> <u>81.073</u>

City of Loveland, Colorado  
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### System Impact Fees – Water

	<u>Inside City</u>	<u>Outside City</u>
Detached one-family dwelling	\$4,670.00	\$7,010.00
Attached one-family dwelling, per unit	<del>\$2,810.00</del> <u>2,790.00</u>	<del>\$4,220.00</del> <u>4,190.00</u>
Two-family dwelling, per unit	<del>\$2,810.00</del> <u>2,790.00</u>	<del>\$4,220.00</del> <u>4,190.00</u>
Multifamily dwelling containing 3-8 dwelling units, per _unit	<del>\$2,810.00</del> <u>2,790.00</u>	<del>\$4,220.00</del> <u>4,190.00</u>
Multifamily dwelling containing 9 or more dwelling units, per unit	<del>\$2,010.00</del> <u>2,070.00</u>	<del>\$3,020.00</del> <u>3,110.00</u>
Nonresidential		
<u>Tap size (in inches)</u>	<u>Inside City</u>	<u>Outside City</u>
0.75	<del>\$5,480.00</del> <u>5,830.00</u>	<del>\$8,220.00</del> <u>8,750.00</u>
1.00	<del>\$17,350.00</del> <u>18,390.00</u>	<del>\$26,030.00</del> <u>27,590.00</u>
1.50	<del>\$31,890.00</del> <u>33,790.00</u>	<del>\$47,840.00</del> <u>50,690.00</u>
Irrigation		
<u>Tap size (in inches)</u>	<u>Inside City</u>	<u>Outside City</u>
0.75	<del>\$11,930.00</del> <u>12,640.00</u>	<del>\$17,900.00</del> <u>18,960.00</u>
1.00	<del>\$32,760.00</del> <u>34,690.00</u>	<del>\$49,140.00</del> <u>52,040.00</u>
1.50	<del>\$84,120.00</del> <u>89,240.00</u>	<del>\$126,180.00</del> <u>133,860.00</u>
2.00	<del>\$105,940.00</del> <u>112,360.00</u>	<del>\$158,910.00</del> <u>168,540.00</u>
3.00	<del>\$271,720.00</del> <u>284,740.00</u>	<del>\$407,580.00</del> <u>427,110.00</u>

Tap sizes larger than 3-inch shall be established by City Council. The impact fee for taps larger than 1.5 inch applies only to irrigation meters. Nonresidential taps above 1.5 inch pay the capital recovery surcharge.

#### Hidden Valley Water Tap Activation Fee:

This fee applies to all water taps applied for on or after January 1, 2010 to serve lots authorized pursuant to Resolutions #R-35-2004 and #R-83-2005. Payment of this fee shall be due upon application for the water tap. The fee shall be calculated as follows:  $A \times B \times C = \text{fee}$ .

A = Number of months from July 1, 2005 to the activation fee due date

B = \$67.00 per month

C = *Engineering News Record* 20 Cities Construction Cost Index (used to inflate the construction costs to current dollars)

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City of Loveland, Colorado  
Water and Power Department  
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**Capital Recovery Surcharge - Water**

Inside City per 1,000 gallons of water	\$0.721
Outside City per 1,000 gallons of water	\$1.082

**Fire Tap Plant Investment Fee**

Fire Tap Plant Investment Fee (outside City only)	\$553.00
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**Raw Water Development Fee**

Detached One-Family Dwelling	\$1,000.00
Attached One-Family Dwelling, per unit	\$1,000.00
Multifamily dwelling containing 2-24 dwelling units, per unit	\$626.00
Multifamily dwelling containing 25 or more dwelling units, per unit	\$123.00

Nonresidential

Tap size (in inches)

0.75	\$1,000.00
1.00	\$1,700.00
1.50	\$3,300.00
2.00	\$5,300.00
3.00	\$10,000.00

Tap sizes larger than 3-inch shall be established by City Council. The impact fee for taps larger than 1.5 inch applies only to irrigation meters. Commercial taps above 1.5 inch pay the capital recovery surcharge.

**Raw Water Capital Recovery Surcharge Per 1,000 Gallons**

Raw Water Capital Recovery Surcharge Per 1,000 Gallons	\$0.15
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*City of Loveland, Colorado*  
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**SUMMARY**

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***Electric Fees***

Service Turn-On at the meter	\$35.00
Service Turn-On at the meter – After Hours	\$65.00
Service Turn-Off at the meter resulting from an unauthorized Service Turn-On	\$30.00
Disconnect/Reconnect Services	\$155.00
Disconnect/Reconnect Services with Engineering	\$255.00
Permanent Service Connect (No Disconnect Needed)	\$155.00
Permanent Disconnect of Service	\$155.00
Charges When Access Denied	
Appointment or Special Trip to Read the Meter	\$15.00
Appointment or Special Trip to Read the Meter After Hours	\$25.00
Appointment or Special Trip to Change the Meter	\$55.00
Appointment or Special Trip to Change Meter After Hours or Weekends	\$70.00
Service is disconnected at the junction box or the overhead pole	\$155.00
When access to the pole is denied, actual costs will be billed	
Residential Service Installations	
Typical Underground with 1/0 CIC	\$590.00
Typical Underground with 4/0 CIC	\$800.00
Typical Overhead	\$310.00
Multiplex 3-6 Units	\$700.00
Multiplex 7 or More Units (deposit, to be billed on actuals)	\$855.00

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*City of Loveland, Colorado*  
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***Electric Fees Cont'd***

Field Engineering Deposits

Residential and duplex single phase installations, 1-2 lots	\$800.00
Single commercial buildings, transformer upgrades, raising, lowering, or removing existing power	\$1,200.00
Residential subdivision of 3-25 lots, commercial subdivision of 2-10 lots, raising, lowering, or removing existing power	\$1,600.00
Residential subdivision of more than 25 lots, commercial subdivision of more than 10 lots, malls, shopping centers, hospitals	\$3,000.00

Other Deposits – See Section Fees – Electric “Other Deposits”

Temporary Residential Connections \$170.00

Termination and energizing electric services to small devices \$285.00

Installation of Area Light \$325.00

Electric Vehicle Charging Station

\$1.00/hour

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City of Loveland, Colorado  
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### **Wastewater Fees**

Pretreatment Inspection Fee	\$70.00
Pretreatment Significant Industrial User (SIU) Laboratory Analysis	<del>Actual Cost Plus</del> \$60.00
Pretreatment SIU Public Notification of Violation	\$82.00
Tapping Fees 4 inch or 6 inch Tap	\$215.00
4 inch Saddle and Stainless Strap	\$60.00
6 inch Saddle and Stainless Strap	\$80.00

### **Water Fees**

Construction Water Fee	
<u>Tap size (in inches)</u>	
0.75	\$34.00
1.00	\$56.00
1.50	\$113.00
2.00	\$180.00
3.00	\$336.00
4.00	\$559.00

Above 4.00 inch tap will be negotiated with the Water and Power Department

Water Turn-on Fee – Regular Hours	\$35.00
Water Turn-on Fee – After Regular Hours	<del>\$60.00</del> \$65.00
Water Turn-off Fee for Unauthorized Service Turn-on	\$30.00
Water Meter Appointment Fee – Regular Hours	\$20.00
Water Meter Appointment Fee – After Regular Hours	\$30.00
Raw Water Cash-in-lieu Fee per Acre-Foot (City Code Sec.19.04.040)	Set by Loveland Utilities Commission
Native Raw Water Storage Fee per Acre-Foot	
Barnes Ditch	\$5,750.00
Big Thompson Ditch & Manufacturing Co.	\$3,530.00
Buckingham Irrigation Co. (Geo. Rist Ditch)	\$7,400.00
Chubbuck Ditch	\$7,400.00
Louden Irrigating Canal and Reservoir Co.	\$6,850.00
South Side Ditch Company	\$6,770.00

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### **Water Fees Cont'd**

Construction Hydrant Meter Deposit	\$1,000.00
Hydrant Meter Rental	
Daily Rental	\$5.00
Install Fee	\$25.00
Remove Fee	\$25.00
Moving Meter Fee	\$25.00
Water Use	<del>\$1.00</del> <u>1.10</u> /300 gallons
Meter Fees	
0.75 inch Meter and Readout	\$180.00
1.00 inch Meter and Readout	\$255.00
Install Meter and Inspection	
Meter inspect	\$45.00
Meter install	\$75.00
Water Tapping Fee	
0.75 inch	\$285.00
1.00 inch	\$285.00
1.50 inch	\$325.00
2.00 inch	\$340.00
Above 2.00 inch	\$355.00

### **Miscellaneous Fees**

Late Payment Penalty	\$12.00
Field Collection Fee	\$18.00
New Account Fee	\$11.00
Reactivation Fee	\$10.00
New Account Meter Reading Fee	\$10.00
Interfering or Tampering with a Meter – electric or water	\$50.00
Return Check (Insufficient Funds) Charge	\$25.00
Filing Fee for Unpaid Bills	\$35.00

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*City of Loveland, Colorado*  
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**RATES - ELECTRIC**

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## **I. Rates - Electric**

### ***Resale of Electric Current Prohibited***

It is unlawful for any consumer who purchases electric service from the City to sell such service to others.

### ***Surcharge***

There is imposed a surcharge in the amount of five percent of base charges plus charges for energy, demand, payment-in-lieu-of-taxes (PILT) for the sale of electric power to services that come into existence in all areas annexed to the City after January 31, 1987, which areas were formerly a part of an exclusive service territory granted to a cooperative electric association by the Public Utilities Commission. Such surcharge shall expire ten years after the effective date of annexation of each such area.

### ***Renewable Energy Premium***

#### **Availability**

The renewable energy premium is available as an option to all residential, commercial, and industrial customers served under Schedules R, RD, SG, LG, PS, ~~and PT~~, and Coincident Peak Demand Service. The renewable energy premium is not available to Transmission Voltage Service, Area Light or Flat Rate customers served under Schedules TS, AL or FE.

#### **Monthly Rate**

Premium per each 100 kWh increment of energy .....\$2.70

This charge is in addition to all other regular charges the customer incurs for electric service.

#### **Monthly Minimum**

The minimum bill shall be \$2.70 for each 100 kWh increment requested by the customer in the service agreement, plus the minimum bill as identified in the principal rate schedule for the customer.

#### **Conditions**

Service Restrictions – The supply of renewable energy is limited to the resources made available to the department by its power supplier, Platte River Power Authority (PRPA), and is therefore subject to all terms and conditions identified in PRPA’s tariff for Renewable Energy Service.

#### **Service Agreement**

The renewable energy premium is an optional charge and requires the customer to sign a service agreement with Loveland Water and Power.

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*City of Loveland, Colorado*  
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**RATES - ELECTRIC**

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**Service Agreement Period**

The renewable energy premium for all eligible rate schedules shall be available for a minimum initial period of 12 consecutive months and then continuing month to month thereafter until terminated. After the minimum period, the obligation to purchase or provide renewable energy may be terminated upon 30 days notice by either party. Termination of the principal service shall also terminate the agreement unless the customer chooses to advance the agreement to the new service address.

**Service Agreement Amount**

Customer may request renewable energy in 100 kWh increments. The billable monthly renewable energy premium will be the number of 100 kWh increments requested by the customer in the service agreement. The actual kilowatt-hours used by the customer in any given month may be more or less than the average.



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RATES - ELECTRIC

### Self-Generation Rate

#### Availability

The Self-Generation Rate is available as an option to all electric service customers who own, operate and maintain their own generation equipment.

#### Monthly Rate – System Size 1-50 kW

	<b>Jan. – June, Oct. – Dec.</b>	<b>July – Sept.</b>
<b>Residential</b>		
Base charge	<del>\$8.94</del> <u>10.77</u>	<del>\$8.94</del> <u>10.77</u>
Energy charge per kWh	<del>\$0.066000</del> <u>0.06180</u>	<del>\$0.072200</del> <u>0.07380</u>
Buyback charge per kWh	<del>\$0.037980</del> <u>0.03716</u>	<del>\$0.040710</del> <u>0.04356</u>
Monthly minimum bill	<del>\$8.94</del> <u>10.77</u>	<del>\$8.94</del> <u>10.77</u>
System size range limitation	1-50 kW	1-50 kW
PILT per kWh	<del>\$0.005930</del> <u>0.00592</u>	<del>\$0.006330</del> <u>0.00649</u>
<b>Small General</b>		
Base charge	<del>\$14.20</del> <u>17.22</u>	<del>\$14.20</del> <u>17.22</u>
Energy charge per kWh	<del>\$0.066400</del> <u>0.06790</u>	<del>\$0.071000</del> <u>0.07350</u>
Buyback charge per kWh	<del>\$0.037980</del> <u>0.03716</u>	<del>\$0.040710</del> <u>0.04356</u>
Monthly minimum bill	<del>\$14.20</del> <u>17.22</u>	<del>\$14.20</del> <u>17.22</u>
System size range limitation	1-50 kW	1-50 kW
PILT per kWh	<del>\$0.005540</del> <u>0.00584</u>	<del>\$0.005860</del> <u>0.00613</u>
Plant Investment Fee per kWh	\$0.00514	\$0.00514
<b>Large General</b>		
Base charge	<del>\$65.00</del> <u>77.98</u>	<del>\$65.00</del> <u>77.98</u>
Energy charge per kWh	<del>\$0.033500</del> <u>0.03501</u>	<del>\$0.034900</del> <u>0.03349</u>
Demand per kW	<del>\$10.499</del> <u>8.5</u>	<del>\$11.51</del> <u>12.65</u>
Buyback charge per kWh	<del>\$0.037980</del> <u>0.03716</u>	<del>\$0.040710</del> <u>0.04356</u>
Monthly minimum bill	<del>\$65.00</del> <u>77.98</u>	<del>\$65.00</del> <u>77.98</u>
System size range limitation	1-50 kW	1-50 kW
PILT per kWh	<del>\$0.004660</del> <u>0.00473</u>	<del>\$0.005000</del> <u>0.00511</u>
Plant Investment Fee per kWh	\$0.00514	\$0.00514

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### **Self-Generation Rate Cont'd**

#### **Conditions**

The city will net meter all energy consumed by the customer and produced by the customer's generation system. Net metering shall be, for billing purposes, the net consumption as measured at the service meter on a monthly basis. Consumption will be measured monthly and in the event net metering is negative in a given month, such that the customer's generation system production is greater than the customer's consumption, there will not be a monthly cash credit for such production. All such excess energy, expressed in kilowatt-hours, shall be carried forward from month to month and credited against the customer's energy consumption, expressed in kilowatt-hours, in subsequent months. In the event that a negative net consumption balance remains after twelve consecutive months following the effective date of customer's commencing on the Self Generation Rate, or any annual anniversary thereafter, the City will pay the customer for such negative balances at the Self Generation Buyback Charge Rate.

#### **Monthly Rate – System Size 51 – 400 kW**

<b>Large General Service</b>	<b>Jan. – Jun. Oct. – Dec.</b>	<b>July – Sept.</b>
Base Energy	<del>\$65.00</del> <u>77.98</u>	<del>\$65.00</del> <u>77.98</u>
Energy Charge per kWh	<del>\$0.0335</del> <u>0.03501</u>	<del>\$0.0349</del> <u>0.03349</u>
PILT per kWh	<del>\$0.00466</del> <u>0.00473</u>	<del>\$0.00500</del> <u>0.00511</u>
Plant Investment Fee per kWh	\$0.00514	\$0.00514
Demand per kW	<del>\$10.499</del> <u>.85</u>	<del>\$11.51</del> <u>12.65</u>
Buyback charge per kWh	<del>\$0.0529</del> <u>0.04726</u>	<del>\$0.0622</del> <u>0.06215</u>
Monthly Minimum Bill	<del>\$65.00</del> <u>77.98</u>	<del>\$65.00</del> <u>77.98</u>
System Size Range Limitation	51-400 kW	51-400 kW

The Self-Generating customer must be in compliance with the technical specifications and requirements contained in the Standard for Interconnecting Distributed Resources with the City of Loveland Electric Power System as found in the City's Municipal Code, Section 13.12.240 and must enter into a contract with the City.

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## **Residential Service Schedule R**

### **Availability**

Residential Service is available for single-family dwelling units and individually metered multi-family dwelling units at any location within the area served by Loveland Water and Power. Single-family dwelling units and individually metered multi-family dwelling units shall mean those buildings or units used solely as residences and not used in part for any other purpose. This rate is applicable to existing and new residential customers. Service will be delivered through a single meter per dwelling unit, at one point of delivery.

### **Monthly Rate**

The rate for Residential Service shall consist of the sum of the base charge, energy charge, and PILT in accordance with the following table:

### **Monthly Rate**

The rate for Residential Service shall consist of the sum of the base charge, energy charge, and PILT in accordance with the following table:

	<b>Jan. – June, Oct. – Dec.</b>	<b>July – Sept.</b>
Base charge	<del>\$8.94</del> <u>10.77</u>	<del>\$8.94</del> <u>10.77</u>
Energy charge per kWh	<del>\$0.0660</del> <u>0.06180</u>	<del>\$0.0722</del> <u>0.07380</u>
PILT charge per kWh	<del>\$0.00593</del> <u>0.00592</u>	<del>\$0.00633</del> <u>0.00649</u>
Monthly minimum bill	<del>\$8.94</del> <u>10.77</u>	<del>\$8.94</del> <u>10.77</u>

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## ***Residential Demand Service Schedule RD***

### **Availability**

Residential Demand Service is available for single-family dwelling units and individually metered multi-family dwelling units at any location within the area served by Loveland Water and Power. Single-family dwelling units and individually metered multi-family units shall mean those buildings or dwelling units used solely as residences and not used in part for any other purpose. Existing accounts may elect service under this schedule by making application to Loveland Water and Power. Service will be delivered through a single meter per dwelling unit, at one point of delivery.

### **Monthly Rate**

The rate for Residential Demand Service shall consist of the sum of the base charge, energy charge, demand charge and PILT in accordance with the following table:

	<b><u>Jan. – June, Oct. – Dec.</u></b>	<b><u>July – Sept.</u></b>
Base charge	<del>\$18.00</del> <u>19.05</u>	<del>\$18.00</del> <u>19.05</u>
Energy charge per kWh	<del>\$0.028000</del> <u>0.03150</u>	<del>\$0.028000</del> <u>0.03150</u>
PILT charge per kWh	<del>\$0.004660</del> <u>0.00438</u>	<del>\$0.004970</del> <u>0.00504</u>
Demand charge per kW	<del>\$8.21</del> <u>7.30</u>	<del>\$8.75</del> <u>8.80</u>
Monthly minimum bill	<del>\$18.00</del> <u>19.05</u>	<del>\$18.00</del> <u>19.05</u>

### **Billing Demand**

The demand shall be the highest rate of use in kilowatts during any 15 minute interval of the billing period.

### **Power Factor Charge**

Power factor charge of one hundred percent of the power factor charge incurred by the City on account of and attributable to service to the customer may be billed to the customer.

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## **Small General Service Schedule SG**

### **Availability**

Small General Service is required for all non-residential customers with a monthly average demand over a consecutive 12-month period of less than or equal to 50 kW ~~demand per month in ten months of a consecutive 12-month period~~. This also includes temporary power for non-permanent non-residential customers (for example: firework stands and holiday lights).

### **Monthly Rate**

The rate for Small General Service shall consist of the sum of the base charge, energy charge and PILT in accordance with the following table:

	<b>Jan. – June, Oct. – Dec.</b>	<b>July – Sept.</b>
Base charge	<del>\$14.20</del> <u>17.22</u>	<del>\$14.20</del> <u>17.22</u>
Energy charge per kWh	<del>\$0.0664</del> <u>0.06790</u>	<del>\$0.0710</del> <u>0.07350</u>
PILT charge per kWh	<del>\$0.00554</del> <u>0.00584</u>	<del>\$0.00586</del> <u>0.00613</u>
Plant Investment Fee per kWh	\$0.00514	\$0.00514
Monthly minimum bill	<del>\$14.20</del> <u>17.22</u>	<del>\$14.20</del> <u>17.22</u>

### **Conditions**

- A. Whenever metered demand exceeds a monthly average 50 kW in ~~a any three months out of a~~ consecutive 12-month period, Loveland Water and Power will notify the customer and further service provided to such customer shall be furnished at the Large General Service Rate. The department may install such meters as it deems necessary in order to determine the metered demand.
- B. For single-phase, three-wire service, the customer's equipment shall be connected so that the current carried by the neutral conductor shall be not greater than 15 percent of the maximum current in either of the two conductors. For three-phase wye or delta service, the customer's equipment shall be connected so that the current carried by any one-phase conductor shall be no greater than 115 percent of the current in either of the two-phase conductors.

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## Large General Service Schedule LG

### Availability

Large General Service is required for all non-residential customers with a monthly average demand over a consecutive 12-month period exceeding 50 kW ~~demand in any three months out of a consecutive 12-month period.~~

### Continuation for Certain Customers

Customers on the Large General Service rate on January 31, 1999, with a monthly average demand over a consecutive 12-month period ~~less than three months~~ of 50 kW ~~demand in a consecutive 12-month period~~ will be grandfathered into the LG rate.

### Monthly Rate

The rate for Large General Service shall consist of the sum of the base charge, energy charge, demand charge and PILT in according with the following table:

	<b>Jan. – June, Oct. – Dec.</b>	<b>July – Sept.</b>
Base charge	<del>\$65.00</del> <u>77.98</u>	<del>\$65.00</del> <u>77.98</u>
Energy charge per kWh	<del>\$0.0335</del> <u>0.03501</u>	<del>\$0.0349</del> <u>0.03349</u>
PILT charge per kWh	<del>\$0.00466</del> <u>0.00473</u>	<del>\$0.00499</del> <u>0.00511</u>
Demand charge per kW	<del>\$10.499</del> <u>.85</u>	<del>\$11.51</del> <u>12.65</u>
Plant Investment Fee per kWh	\$0.00514	\$0.00514
Monthly minimum bill	<del>\$65.00</del> <u>77.98</u>	<del>\$65.00</del> <u>77.98</u>

### Billing Demand

The demand shall be the highest rate of use in kilowatts during any 15-minute interval of the billing period.

### Power Factor Charge

Power factor charge of one hundred percent of the power factor charge incurred by the City on account of and attributable to service to the customer may be billed to the customer.



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## **Primary Service with Transformer Schedule PT**

### **Availability**

Primary Service is available to all non-residential customers with a monthly average demand over a consecutive 12-month period exceeding 50 kW ~~demand in any three months within a 12-month period~~ where service is delivered and metered at the available primary voltage and all serving facilities on the customer's side of the metering point are owned, operated and maintained by the customer.

### **Monthly Rate**

The rate for Primary Service where the customer owns the transformers shall consist of the sum of the base charge, energy charge, demand charge and PILT in accordance with the following table:

	<b>Jan. – June, Oct. – Dec.</b>	<b>July – Sept.</b>
Base charge	<del>\$81.00</del> <u>90.17</u>	<del>\$81.00</del> <u>90.17</u>
Energy charge per kWh	<del>\$0.032760</del> <u>.03432</u>	<del>\$0.034130</del> <u>.03283</u>
PILT charge per kWh	<del>\$0.003840</del> <u>.00400</u>	<del>\$0.004120</del> <u>.00424</u>
Demand charge per kW	<del>\$9.499</del> <u>.20</u>	<del>\$10.51</del> <u>12.00</u>
Plant Investment Fee per kWh	\$0.00499	\$0.00499
Monthly minimum bill	<del>\$81.00</del> <u>90.17</u>	<del>\$81.00</del> <u>90.17</u>

### **Billing Demand**

The demand shall be the highest rate of use in kilowatts during any 15-minute interval of the billing period.

### **Power Factor Charge**

A power factor charge of one hundred percent of the power factor charge incurred by the City on account of and attributable to service to the customer may be billed to the customer.

### **Conditions**

Transformer ownership and maintenance is the responsibility of the customer receiving service under this rate schedule. The customer requesting this rate schedule is solely responsible for all costs associated with the installation and maintenance of the primary metering equipment and facilities. See the Water and Power Department's *Contractor Construction Standards* for equipment specifications.

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## ***Transmission Voltage Service*** ***Schedule TS***

### **Eligibility Requirements**

Transmission Voltage Service is available to any customer: (i) whose load is of sufficient magnitude or of an unusual nature such that it cannot be served from the distribution system; and (ii) whose premises are adjacent to transmission lines that are, or by contract can become, lines that supply wholesale power to the city's system; and (iii) who meets the criteria for large user service as set forth in Platte River Power Authority's Tariff 9, or applicable successor tariff.

### **Character of Service**

The power furnished under Schedule TS shall be three phase alternating current and approximately 60 hertz, and delivered at approximately 115kV, or at other voltages subject to conditions as agreed upon, metered at each delivery point.

### **Charges for Service**

The charges for service under Schedule TS shall be determined based on the unique load characteristics and service requirements of the customer. The rate for service delivered under Schedule TS shall at a minimum be sufficient to recover the city's cost of service, including, without limitation, wholesale rates and the city's projected operating and maintenance costs. In addition, the customer shall be responsible for all wholesale charges and fees incurred by the city in providing service under Schedule TS to the customer, including, without limitation, power factor charges.

### **Conditions of Service**

In order to receive service under Schedule TS, the customer must meet the eligibility requirements set forth above and enter into an electric service agreement with the city. All such agreements must meet the requirements of this Schedule TS, protect the integrity of the City's electric system, protect against interference with other city electric customers, and shall address, at a minimum, the following material terms:

- term of the agreement, including initial date of service;
- charges for service, including rate adjustments;
- metering, including configuration, ownership, and maintenance;
- infrastructure, including ownership and maintenance;
- load factor, including any penalties for failure to comply;
- nature and frequency of interruptions (if service is provided on an interruptible basis), including any penalties for failure to comply;
- any other terms and conditions required to be addressed pursuant to Platte River Power Authority's Tariff 9, or applicable successor tariff.

In addition, the agreement must include a waiver of all liability for the city and Platte River Power Authority for actual and consequential damages resulting from interruptions in accordance with the agreement.

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**Transmission Voltage Service Cont'd**

The city manager shall be authorized to negotiate all such agreements, in consultation with Platte River Power Authority, and to execute such agreements on behalf of the city.

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## **Coincident Peak Demand Service**

### **Availability**

- 1) Coincident Peak Demand Service is required for non-residential customers where the monthly average distribution facilities demand exceeds 1,400 kW over 12 consecutive months. For a customer with two or more meters located on a campus, the average monthly distribution facilities demand will be determined by adding the distribution facilities demand for each meter on the campus.
- 2) The Coincident Peak Demand rate classification will be applicable to all new customers without an annual billing history based on the following:
  - a. The new customer must present sufficient information to the City indicating that the operating schedule and electrical equipment are such that the monthly distribution facilities demand would qualify it for the rate.
  - b. The City reserves the right to analyze and verify all information provided. If the City is satisfied that the monthly distribution facilities demand of the new customer will exceed 1,400 kW, such customer will be placed on the Coincident Peak Demand rate.
  - c. If the monthly distribution facilities demand during the first two months indicate that the customer does not qualify for the Coincident Peak Demand rate, the City will immediately transfer such new customer to the appropriate rate classification.
- 3) Once qualified, each such customer shall remain on the Coincident Peak Demand rate for a minimum of twelve consecutive months. After twelve months, the City will use the twelve-month running average distribution facilities demand to determine applicability of the Coincident Peak Demand rate.

### **Monthly Rate**

Rates shall be developed for each individual customer subject to the Coincident Peak Demand rate classification. The rates shall be based on the cost of service to each individual customer and will apply only to such customer. Rates will be updated annually to reflect the cost of service to the individual customer, and shall include the following:

1. Base Charge: Based on customer cost of service and energy usage profile.
2. Energy Charge: All kWh consumed, per kWh, based on customer cost of service and energy usage profile.
3. Coincident Demand Charge: All coincident demand, per kW, based on customer cost of service and energy usage profile.
4. Distribution Facilities Demand Charge: All distribution facilities demand, per kW, based on customer cost of service and energy usage profile
5. Plant Invest Fee: \$0.00499 per kWh for customers whose service is delivered at the available primary voltage and all serving facilities on the customer's side of the metering point are owned, operated and maintained by the customer. \$0.00514 per kWh for all other customers.

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**Coincident Peak Demand Service Cont'd**

The Water and Power Department Director shall be authorized to develop the rate for each individual customer subject to the Coincident Peak Demand rate classification in accordance with this rate definition.

**Power Factor Charge**

Power factor charge of one hundred percent of the power factor charge incurred by the City on account of and attributable to service to the customer may be billed to the customer.

For the purposes of the Coincident Peak Demand Rate, the following definitions shall apply:

**1. Campus:**

One parcel, or two or more contiguous parcels, where each parcel is owned or leased by a single customer.

**2. Coincident Demand:**

The 60 minute integrated demand recorded during the Platte River Power Authority's system peak hour and day in the billing period.

**3. Distribution Facilities Demand:**

The highest rate of use in kilowatts during any 15-minute interval of the billing period.

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**Area Lighting**  
**Schedule AL**

**Availability**

Area lights will be furnished to customers who request this service for the purpose of lighting private property or alleys or other areas where City street lighting would normally not be installed. Decisions for location of the lights shall be in the discretion of the City. Applications for area lights should be made at the City of Loveland Water and Power Department.

**Monthly Rate (Jan.-Dec.)**

The rate per watt for area lights shall be

.....~~\$0.04717~~\$0.049  
35

The PILT charge per watt for area lights shall be

.....~~\$0.00353~~\$0.003  
69

**Conditions**

All area lights shall be high pressure sodium vapor units.

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## **Flat Rate Service Schedule FE**

### **Availability**

Small devices attached to the City's electric distribution system for the purpose of amplifying cable TV and telephone signals or operating automatic sprinkler controls in remote locations after June 1, 1992, will not require metering and will be billed on a flat monthly rate. Accounts existing prior to June 1, 1992, shall continue to be metered and billed at their present rate unless the customer requests conversion to the flat rate set forth in this schedule.

### **Monthly Rates (Jan.-Dec.)**

Signal amplifiers .....	<del>\$27.80</del> <u>\$29.08</u>
Signal amplifiers PILT charge .....	<del>\$2.08</del> <u>\$2.18</u>
Automatic sprinkler controls.....	<del>\$4.13</del> <u>\$4.32</u>
Automatic sprinkler controls PILT charge .....	<del>\$0.31</del> <u>\$0.32</u>
Bus shelters .....	<del>\$17.09</del> <u>\$17.88</u>
Bus shelters PILT charge .....	<del>\$1.28</del> <u>\$1.34</u>

### **Conditions**

- A. Signal amplifiers can be no greater than 5 amps per device.
- B. Automatic sprinkler controls can be no greater than 1.0 amp per device.
- C. The department may randomly install meters as it deems necessary in order to monitor the actual consumption.
- D. A customer with multiple device locations existing prior to June 1, 1992, requesting a conversion of said devices to the Flat Rate Schedule, must convert all devices existing prior to June 1, 1992, to the Flat Rate Schedule.

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**Public Electric Vehicle Charging Station Service User Fees**

**Availability**

Designated electric vehicle charging stations will be made available by the City for public use within the corporate limits of the City at the user fees set forth below. The fees set forth below shall apply to all public electric vehicle charging stations owned and operated by the City.

**User Fees**

Public electric vehicle charging station service user fees (including payment in lieu of taxes and franchise) will be provided and billed on a session basis as follows:

Level 2 – 240 Volt Charging: \$1.00 per hour of charging. The minimum charge is \$1.00.

**Payment of Fees**

Payment for electric vehicle charging station services will be collected directly from the customer at the point of service (the charging station) through credit card or other electronic payment processing service.

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## **II. Fees - Electric**

### ***Applications for Electric Service***

Every person desiring a supply of electric current from the City, or an upgrade or other change in existing service, shall make application therefore to the City upon forms furnished for that purpose.

### ***Plant Investment Fee***

Plant Investment Fees provide for the additional electric transmission, substation and distribution facilities made necessary by the extension of electric service to new connections. The Plant Investment Fee provided herein shall be, in addition to, all of the rates and charges made in connection with the furnishing by the City of electric service, and shall be payable as provided for in this section.

- A. Schedule R – Residential Service and Schedule RD – Residential Demand Service.** At the time application is made for any dwelling unit to be built within the corporate boundaries of the City, or at the time of application for electric service for any dwelling unit to be built outside the corporate boundaries of the City, there shall be paid to the City a Plant Investment Fee in the amount of \$1,630.00 for each electric meter to be installed in connection with the dwelling unit with a service size of greater than 150 amps and \$1,270.00 for each electric meter to be installed in connection with the dwelling unit with a service size of 150 amps or less. (Each dwelling unit within a structure containing more than one dwelling unit shall be separately metered). No energization of a permanent connection to any dwelling unit served by the City shall occur unless and until the Plant Investment Fee is paid.

For the purpose of this section, “dwelling unit” means one or more rooms and a kitchen area designed for or occupied as a unit for living and cooking purposes, which is located within a single family, multiple family or mobile home, but excluding congregate care facilities, as those terms are defined in Municipal Code Chapter 18.04. A congregate care facility may receive service under Schedules R, RD, SG, LG, ~~or PT~~, or Coincident Peak Demand Service.

Upon application, the Water and Power Department may allow a single meter to serve a multiple family dwelling if such multiple family dwelling is a federally assisted and federally supervised project and the project sponsor is required by the federal agency having jurisdiction thereof to include the provision of electric service within the rent structure for the project. Such project may receive service under Schedules R, RD, SG, LG, ~~or PT~~, or Coincident Peak Demand Service. If any such projects should cease to be federally supervised, then the project shall revert to the requirement of individual metering, the Plant Investment Fee for residential service shall be paid and a credit shall be applied against such Plant Investment Fee in the amount of the Plant Investment Fees paid while receiving service under another class.

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***Plant Investment Fee ~~(e~~Cont'd)***

**B. Schedule SG** – Small General Service. The Plant Investment Fee for accounts receiving small general service shall be collected in each billing period. The amount of the Plant Investment Fee to be billed in each period shall be equal to \$0.00514 per kWh used by the account during the billing period.

In establishing the Plant Investment Fees in 1979, customers served prior to May 1, 1979, are exempt from the Plant Investment Fee at the existing location only. Customers who have paid the five-year Plant Investment Fee for a particular location are exempt from the fee at the location covered.

**C. Schedule LG** – Large General Service. The amount of Plant Investment Fee to be billed in each billing period shall be equal to \$0.00514 per kWh used by the account during the billing period.

**D. Schedule PT**– Primary Service with Transformer. The amount of Plant Investment Fee to be billed in each billing period shall be equal to \$0.00499 per kWh used by the account during the billing period.

**E. Coincident Peak Demand Service.** The amount of Plant Investment Fee to be billed in each billing period shall be equal to \$0.00499 per kWh used by the account during the billing period for customers whose primary voltage and all serving facilities on the customer's side of the metering point are owned operated and maintained by the customer. A Plant Investment Fee of \$0.00514 per kWh to be billed in each billing period for all other customers.

**~~EF.~~**

.....**Discontinuan**  
**ce of Service.** In addition to all of the remedies available to the City, electric service may be discontinued for failure to pay the Plant Investment Fee provided for in this section, and such discontinuance shall be in accordance with the notice procedures set forth in Municipal Code Section 13.02.070.

***Service Turn-On Fee at the Meter***

During regularly scheduled work hours, there is imposed a fee in the amount of \$35.00 for each service turn-on where power is energized at the meter.

After regularly scheduled work hours, there is imposed a fee in the amount of \$65.00 for each service turn on where the power is energized at the meter.

After hours fees apply to all requests received after 4 p.m. Monday through Friday, anytime Saturday or Sunday, and all holidays observed by the City of Loveland.



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### ***Disconnect and Reconnect Services***

Water and Power will perform a typical service disconnect/reconnect where power is energized or de-energized on the line side of the meter, on a flat fee basis.

There is imposed a fee in the amount of \$155.00 for each typical service disconnect/reconnect and \$255.00 for each typical service disconnect/reconnect with engineering.

A typical service disconnect/reconnect is defined as one where there is no increase in wire size or length.

All other service disconnect/reconnects will be billed at Water and Power's actual cost.

### ***Permanent Disconnect and Removal of Service***

Where a request for permanent disconnection and removal of single-phase service has been requested, there is imposed a flat fee of \$155.00.

Where a request for permanent termination of three-phase service has been requested, charges will be billed at Water and Power's actual cost.

### ***Charges When Access Denied***

There is imposed a charge as set forth in this section, that shall be due and payable when billed, to cover the additional costs and expenses incurred by the City whenever clear access to the meter location is denied. Clear access shall be deemed to be denied whenever, because of locked gates, animals confined in the same space as the meter location, or for any other reason, and after making a reasonable attempt to locate a person upon the premises to gain access, an authorized representative of the City is unable to read the meter, change the meter, or perform such other function as such representative is lawfully authorized to perform. The amount of such charge shall be as follows:

- A. When clear access is denied for two successive meter readings, and an appointment is made with the consumer or a special trip is made for reading the meter, a charge of \$15.00 is imposed for such appointment or special trip occurring during regular business hours, and \$25.00 for such appointment occurring during off-duty hours and weekends.
  - B. When clear access is denied and a special trip is made to change a meter on the department's regular maintenance program, a \$55.00 charge is imposed.
  - C. When clear access is denied for the purpose of disconnecting service, and service is disconnected at the junction box or overhead pole, a charge of \$155.00 is imposed.
  - D. When clear access is denied for the purpose of disconnecting service at the junction box or overhead pole, the actual costs will be billed.
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***Residential Service Installations and Upgrades for Single Family and Duplex Dwellings***

A. A typical new residential service installation will be performed by the Water and Power Department on a flat fee basis. A typical new underground service is defined as having a trench length of 100 feet or less; trenching to be performed in normal soil conditions.

1. For a service using 1/0 triplex CIC with a panel size of 150 amps or less, the fee is \$590.00 and the Plant Investment Fee, as described in the Resolution Schedule of Rates, Charges and Fees as adopted by City Council, shall also be collected.
2. For a service using 4/0 triplex CIC with a panel size of 200 amps, the fee is \$800.00 and the Plant Investment Fee, as described in the Resolution Schedule of Rates, Charges and Fees as adopted by City Council, shall also be collected.

A typical new overhead service is defined as a service length of 80 feet or less, does not require setting a pole or transformer, is #2 triplex with a panel size of 150 amps or less, or 1/0 triplex with panel size of 200 amps. The fee for such service is \$310.00.

A service not meeting the above criteria shall be billed at the Water and Power Department's actual cost of installation.

Within the city limits of the City of Loveland, the fees shall be collected by the department issuing the building permit for the residence. If outside the city limits, the fee will be collected by the Water and Power Department before work can proceed.

B. Residential service upgrades resulting in services larger than 150 amps and no larger than 200 amps shall require a deposit of \$300.00 for overhead, and \$800.00 for underground. This deposit will be applied to the actual costs billed by the Water and Power Department upon completion of work performed.

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*City of Loveland, Colorado*  
*Water and Power Department*  
~~2013-2014~~ *Schedule of Rates, Charges and Fees*  
**FEES - ELECTRIC**

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***Residential Service Installations and Upgrades for Multiplex Service Installations***

- A. For purposes of this Resolution, a “multiplex” is defined as a structure containing not less than three and not more than six dwellings.
- B. A “typical” multiplex electric service installation will be provided by and installed by the contractor per National Electric Code. It will be energized by the Water and Power Department on a flat fee basis.

A 3-6 unit multiplex service installation will be provided by the contractor in which an electrical secondary source is already in existence. The fee for installation of an electric service in a 3-6 unit multiplex project is \$700.00 for the project and the Plant Investment Fee, as described in the current Schedule of Rates, Charges and Fees as adopted by the City Council, shall also be collected for each unit.

A 7 unit or more multiplex service termination and meter set service installation requires a deposit of \$855.00 to be made at the Water and Power Department. The contractor is to provide and install all materials. This deposit will be applied to the actual costs billed by the Water and Power Department upon completion of work performed.

Multiplexes requiring an underground service in an overhead service area will have an underground service provided by and installed by the contractor per National Electric Code. They will be billed the actual costs incurred by the Water and Power Department.

If there is no existing source for electric service and an extension of secondary power is necessary, the customer shall pay the actual costs incurred by the Water and Power Department to extend the secondary power source.

Requests for overhead multiplex service installations will be evaluated for feasibility by the Water and Power Department. If overhead service is deemed appropriate, it will be installed and billed at the actual cost incurred by the Water and Power Department.

All services to multiplexes will be installed as described in the National Electric Code pertaining to commercial services. NOTE: Duplexes will be billed as outlined in the “Residential Service Installations and Upgrades for Single and Duplex Dwellings” section in the current Schedule of Rates and Charges – Electric.

- C. Buildings with greater than six dwelling units:  
 Any complex containing more than six dwelling units shall pay the actual costs incurred by the Water and Power Department to have a contractor-installed service energized.

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*City of Loveland, Colorado*  
*Water and Power Department*  
~~2013~~ 2014 *Schedule of Rates, Charges and Fees*  
**FEES - ELECTRIC**

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### ***Field Engineering Deposits***

A customer requesting a new or modified electric service, relocation of facilities, or other work requiring engineering and construction, must make a deposit with the department. If the project is cancelled, the deposit will be applied to the actual charges incurred, any resulting credit or debit will be refunded or billed to the customer. Upon completion of engineering, the customer will deposit with the department the total deposit required.

#### **ENGINEERING DEPOSITS**

- |    |   |            |
|----|---|------------|
| A. | Residential and duplex single phase installations, 1-2 lots.....  | \$800.00   |
| B. | Single commercial buildings, transformer upgrades, raising, lowering, or removing existing power.....                               | \$1,200.00 |
| C. | Residential subdivision of 3-25 lots, commercial subdivision of 2-10 lots, raising, lowering, or removing existing power.....       | \$1,600.00 |
| D. | Residential subdivision of more than 25 lots, commercial subdivision of more than 10 lots, malls, shopping centers, hospitals ..... | \$3,000.00 |

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City of Loveland, Colorado  
Water and Power Department  
~~2013-2014~~ Schedule of Rates, Charges and Fees  
FEES - ELECTRIC

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### **Other Deposits**

The following jobs are standard in nature, and specific deposits have been established for them. In all cases actual costs will be tracked and any resulting credit or debit will be refunded or billed to the customer.

A. Install and terminate secondary riser up to 100 feet (no transformer required)	
Residential to 200 amps .....	\$1,155.00
Commercial (cable supplied and installed by customer) .....	\$805.00
B. Open transformer to pull in secondary and terminate cable up to 130' .....	\$565.00
C. Single phase padmount transformer upgrade (no other customers)	
Upgrade one transformer size .....	\$1,965.00
Upgrade two transformer sizes .....	\$2,510.00
Upgrade three transformer sizes .....	\$3,055.00
D. Single phase padmount transformer upgrade (other customers)	
Upgrade one transformer size .....	\$2,525.00
Upgrade two transformer sizes .....	\$3,070.00
Upgrade three transformer sizes .....	\$3,335.00
E. Single phase overhead transformer upgrade (no other customers)	
Upgrade one transformer size .....	\$1,665.00
Upgrade two transformer sizes .....	\$2,175.00
F. Single phase overhead transformer upgrade (other customers)	
Upgrade one transformer size .....	\$2,225.00
Upgrade two transformer sizes .....	\$2,735.00

Note: Work tickets (not work orders) will be opened for these jobs and the actual costs will be billed. The cutoff for work tickets is \$1,000.00 except for transformer upgrades.



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*City of Loveland, Colorado*  
*Water and Power Department*  
~~2013-2014~~ *Schedule of Rates, Charges and Fees*  
**FEES - ELECTRIC**

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### ***Temporary Extensions***

The following requirements apply to all temporary extensions/connections necessary to serve customers such as transient shows, carnivals, fairs, circuses, concessions, residential construction work, or others of a temporary nature, excluding commercial development construction as defined in the *Contractor Construction Standards*.

- A. The customer shall pay a flat rate of \$170.00 for the cost of installation and removal of the temporary extension as defined in the *Contractor Construction Standards*, under “Temporary Construction Service”. Customers with extensions not meeting these standards will be billed for the actual costs.
- B. The customer shall pay for electric consumption monthly under the applicable rate.
- C. No temporary service shall continue beyond the time of building occupancy, or eighteen months from connection of such temporary service, whichever occurs sooner, without the consent of the City.
- D. The City may refuse to connect additional customers to temporary extensions until the temporary extensions have become permanent.

### ***Area Lighting***

A 100-watt high pressure sodium vapor fixture will be furnished and installed by the City at a fixed one time charge. Any fixture other than a 100-watt fixture, poles, secondary conductor and other apparatus, if required, will be provided at an additional charge based on actual costs incurred by the Water and Power Department. Decisions for location of the lights shall be at the discretion of the City.

Applications for area lights should be made at the City of Loveland Water and Power Department. The fee for the installation of a 100-watt high pressure sodium vapor fixture is \$325.00.

### ***Energizing of Electric Service to Small Devices Qualifying for Flat Rate Service***

There will be a flat fee for the energizing of electric service to small devices attached to the City’s electric distribution system for the purpose of amplifying cable TV and telephone signals or operating automatic sprinkler controls in remote locations. A fee of \$285.00 shall be charged to the customer for the actual installation of the service. No outlets will be permitted, nor shall there be lighting of any kind connected to this type of service. If there is no existing source and an extension of secondary power is necessary, the customer will pay for actual costs to energize the device

### ***Pole Attachment Fee***

Each attachment by a non-City utility to a City of Loveland power pole will be charged \$21.64 per year.

### ***Public Electric Vehicle Charging Station Service User Fees***

Level 2 – 240 Volt Charging: \$1.00 per hour of charging.

*City of Loveland, Colorado*  
*Water and Power Department*  
*Schedule of Rates, Charges and Fees*  
**FEES - MISCELLANEOUS**

### **III. Fees - Miscellaneous**

#### **After Hours~~After Hours~~**

After hours fees apply to all requests received after 4:00 p.m. Monday through Friday, anytime Saturday or Sunday, and all holidays observed by the City of Loveland.

#### **Fire Hydrant and Fire Protection Tap~~Fire Hydrant and Fire Protection Tap~~**

A charge of \$2.50 per residence and \$6.20 per business per month shall be paid by water users outside the city who are located within one thousand feet of a fire hydrant, measured along roads or streets, and \$6.20 per month per tap for each fire protection tap serving premises outside the city. If fire protection tap service is the only city utility service received by the premises, an administrative fee of \$1.80 per month shall also be paid.

#### **Hydrant Meter Guidelines~~Hydrant Meter Guidelines~~**

**General:** Fire hydrants are installed for the main purpose of fire protection. Whenever a hydrant meter is placed on a hydrant, that hydrant is, for all practical purposes, out of service and the chances of causing damage to that hydrant are increased. For these reasons and the potential for problems involved with providing hydrant meters on a rental basis, it has become necessary to establish more clearly defined guidelines for the use of hydrant meters.

**Intent:** The use of fire hydrant meters is intended for only those situations when a large volume of water is needed in a short period of time. These meters shall not be used as a temporary substitute for a permanent water service connection or a permanent irrigation tap. Examples of acceptable and unacceptable uses are as follows:

**Acceptable:**

- Providing water for increasing moisture during earthmoving.
- Filling swimming pools.
- Filling tanks on water truck (No chemicals allowed in tank).

**Unacceptable**

- Masonry work
- Car washes
- Irrigation
- Water for concrete saws
- Washing streets or parking lots

*City of Loveland, Colorado*  
*Water and Power Department*  
*Schedule of Rates, Charges and Fees*  
**FEES - MISCELLANEOUS**

## **Hydrant Meter Guidelines ~~(eCont'd)~~**

**Guidelines & Procedures:** The following guidelines shall be used for regulating the use of fire hydrant meters:

1. Requests for hydrant meters must be received a minimum of 48 hours prior to the time needed. All requests should be made by contacting the Water and Power Department at 970-962-3701. The applicant must sign the Hydrant Meter Request Form at the Water and Power Department, 200 N. Wilson Avenue, and post a deposit of \$1,000.00 (money order or cashier's check) before the meter will be set. The deposit shall be held until all costs associated with the hydrant rental are paid in full and may be used to offset any such costs not paid within 30 days of issuance of the final invoice.
2. Each request will be reviewed to determine if the proposed use meets the intent of these guidelines. The use of the water from a hydrant meter for other than the stated purposes or misrepresentation of that use will result in the loss of the convenience of obtaining water in this manner.
3. The City will determine on a case-by-case basis whether or not a particular hydrant is acceptable for the installation of a meter. Not all hydrants are available for use with a meter. If the requested hydrant is not available, alternate hydrants will be suggested.
4. Water Utility personnel will install the meter, secure it to the hydrant, and operate the hydrant. Customer shall control flow of water with valve provided on meter assembly. Customer is responsible for securing this valve to prevent the unauthorized use of water by others. Removal of the handle or hand wheel from the control valve is not an acceptable method of securing the valve. ONLY trained City employees will be authorized to operate fire hydrants.
5. During the winter months, hydrant meters will be issued only on a day-to-day basis when outside temperatures are above freezing and are expected to remain above freezing for most of the day. Meters will be installed as soon after 8:00 a.m. as practical, and will be picked up at approximately 3:00 p.m. or earlier if outside temperatures drop below freezing, or if requested.
6. Meters will be issued with a male 2½" National Standard thread connection. No hoses or adapters will be provided.
7. Customer is responsible for all rental fees and other charges. A copy of the current fees is attached. These fees will include charges for all water use.
8. Customer is responsible for any and all damage to the meter and/or fire hydrant while meter is installed. If damage occurs, an invoice will be issued to cover all repair or replacement costs, and customer shall promptly pay the invoiced amount.
9. Number of hydrant meters is limited; therefore the meters are available on a first-come/first-served basis. A separate request form must be submitted for each location and/or time period requested.
10. In accordance with the City Code, it is unlawful to waste water. Every effort should be made to conserve this valuable resource. Wasteful uses will not be allowed.
11. Failure to comply with these guidelines, or illegally obtaining water from, or in any way tampering with a fire hydrant, is in violation of the City Code, and upon conviction is punishable by a fine or imprisonment.

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*City of Loveland, Colorado*  
*Water and Power Department*  
*Schedule of Rates, Charges and Fees*  
FEES - MISCELLANEOUS

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**Hydrant Meter Guidelines Cont'd**

Alternate Source of Water: For building construction projects, water is also available through permanent water taps at a construction billing rate. This source of water is handled by the Building Division, 500 E. 3<sup>rd</sup> Street, 962-2504, and typically issued along with a building permit.

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*City of Loveland, Colorado*  
*Water and Power Department*  
*Schedule of Rates, Charges and Fees*  
**FEES - MISCELLANEOUS**

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### ***Summary of Hydrant Meter Fees and Charges***

Installation of meter	\$25.00*
Moving meter	\$25.00*
Removal of meter	\$25.00*
Meter rental	\$5.00/day
Water used	<del>\$1.00</del> <u>1.10</u> /300 gallons

\*After hour services (normal hours are Monday through Friday, 7:30 a.m. to 4:00 p.m.) will be charged for overtime labor rates in addition to the \$25.00 charge

### ***New Account or Reactivation Fee and New Account Meter Reading Fee***

Connection fees in the following amounts are hereby imposed, to be collected with the first utility bill rendered after utility service has been established or a customer account or utility service is reactivated following voluntary or involuntary termination:

Activation or establishment of a customer account for a service address .....	\$11.00
Meter reading charge for service address if read by Utility Billing Division.....	\$10.00
Reactivation of a customer account for a service address .....	\$10.00
Interfering or Tampering with a Meter .....	\$50.00

### ***Automated Load Profile Metering Program (ALPS)***

**No new ALPS customers will be accepted after 2009.**

Commercial and industrial customers will be given the option of utilizing specialized metering equipment that will allow them to monitor their utility consumption on a daily basis through a web-based program. The fees to participate in this program are according to the following schedule:

<b>Monthly Fee Per Meter</b>	
First 9 meters	\$67.50
Meters 10 through 19	\$54.00
Meters 20 and up	\$50.00

Customers that will be enrolling to use this service will need to provide their own telephone line, preferably a line dedicated solely for this purpose. The cost of the telephone line will be borne by the customer. If a customer signs up for the program, and then decides to leave the program in less than one year, the customer will be subject to a \$200 exit fee per meter.



**FIRST READING**      October 1, 2013

**SECOND READING**      October 15, 2013

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADOPTING THE 2013 MILL LEVY FOR THE GENERAL FUND OF THE CITY OF LOVELAND, COLORADO**

**WHEREAS**, the City Council desires, for 2013, to maintain the gross mill levy rate at the same level set for 2012, without any increase in the mill levy rate; and

**WHEREAS**, the 2013 mill levy rate impacts 2013 taxes, due and payable in 2014.

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

**Section 1.**      That the mill levy rate of 9.564 mills is hereby adopted as the tax rate to be levied upon every dollar of the assessed valuation of all taxable property within the City of Loveland, Colorado, for the year 2013.

**Section 2.**      That the City Clerk of the City of Loveland be and is hereby authorized and directed to send a certified copy of this Ordinance to the Board of County Commissioners of Larimer County, Colorado.

**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.**      That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

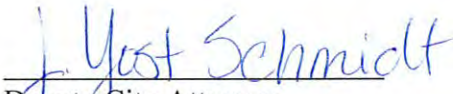
ADOPTED this \_\_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
Deputy City Attorney

**FIRST READING**      October 1, 2013

**SECOND READING**      October 15, 2013

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADOPTING THE 2014 BUDGET FOR THE CITY OF  
LOVELAND, COLORADO**

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

**Section 1.**      That the 2014 Budget, which has been filed with the City Clerk's Office, for all funds for the fiscal year beginning January 1, 2014 and ending December 31, 2014, with revenues and estimated fund balance in the amount of \$390,413,410, and expenditures of \$243,625,120 for capital and departmental operations, is hereby adopted as the budget for all funds of the City of Loveland, Colorado for the year 2014.

**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.

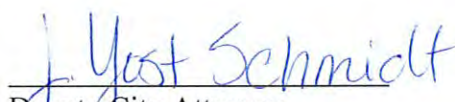
**Section 3.**      That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this \_\_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk  
APPROVED AS TO FORM:

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

**FIRST READING**      October 1, 2013

**SECOND READING**      October 15, 2013

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE MAKING AN APPROPRIATION FOR THE FISCAL  
YEAR BEGINNING JANUARY 1, 2014 AND ENDING DECEMBER 31,  
2014 FOR THE CITY OF LOVELAND, COLORADO**

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

**Section 1.** That out of estimated revenues to be derived from all sources, as set forth in the 2014 Budget, to be received from the funds listed below, which together with estimated fund balance on January 1, 2014, make up a total of estimated resources listed below, there is hereby appropriated to each such fund for the fiscal year beginning January 1, 2014 the amount listed below:

<b>Fund Name</b>	<b>Estimated Revenue</b>	<b>Estimated Fund Balance</b>	<b>Total Resources</b>	<b>Appropriation</b>	<b>Fund Balance</b>
General Fund	72,669,830	31,220,890	103,890,720	77,171,380	26,719,340
Art in Public Places	398,570	54,670	453,240	348,560	104,680
Capital Projects	7,336,110	202,260	7,538,370	7,336,110	202,260
Park Capital Expansion Fees	1,080,080	3,187,900	4,267,980	361,830	3,906,150
Recreation Capital Expansion Fees	1,408,080	3,604,720	5,012,800	57,100	4,955,700
Trails Capital Expansion Fees	177,760	688,300	866,060	202,200	663,860
Open Space Capital Expansion Fees	263,540	238,650	502,190	279,400	222,790
General Government Capital Expansion Fees	406,070	3,179,720	3,585,790	4,900	3,580,890
Fire Capital Expansion Fees	1,368,910	12,660	1,381,570	905,770	475,800
Police Capital Expansion Fees	383,610	4,616,600	5,000,210	4,400	4,995,810
Library Capital Expansion Fees	216,980	185,720	402,700	2,900	399,800
Cultural Services Capital Expansion Fees	200,770	2,241,510	2,442,280	2,300	2,439,980
Streets Capital Expansion Fees	1,372,840	1,845,730	3,218,570	1,498,900	1,719,670
Comm. Dev. Block Grant	309,640	-	309,640	309,640	-
Conservation Trust	694,190	3,682,550	4,376,740	274,420	4,102,320
Economic Incentive	350,000	-	350,000	-	350,000
Lodging Tax	845,030	756,730	1,601,760	693,570	908,190
Open Space	2,147,590	11,863,050	14,010,640	2,586,330	11,424,310
Parks Improvement	84,350	1,954,750	2,039,100	205,000	1,834,100
PEG Fee	75,300	226,160	301,460	140,480	160,980
Seizure & Forfeiture Fund	-	-	-	-	-
Transt Fund	1,913,480	-	1,913,480	1,913,480	-
Transportation Fund	13,742,550	-	13,742,550	13,742,550	-
Golf Course	3,800,910	2,084,770	5,885,680	4,077,600	1,808,080
Power	56,096,040	17,345,630	73,441,670	60,871,030	12,570,640
Power Plant Improvement Fee	3,297,790	7,908,310	11,206,100	2,850,230	8,355,870
Raw Water	1,604,840	20,960,660	22,565,500	1,883,730	20,681,770
Solid Waste	6,920,400	2,111,280	9,031,680	7,589,800	1,441,880
Storm Water	4,849,960	674,570	5,524,530	5,346,830	177,700
Wastewater	8,890,750	4,184,550	13,075,300	10,099,250	2,976,050
Wastewater System Improvement Fee	1,134,760	4,466,430	5,601,190	495,710	5,105,480
Water	11,739,530	12,323,570	24,063,100	18,363,560	5,699,540
Water System Improvement Fee	1,711,450	8,651,330	10,362,780	5,827,500	4,535,280
Employee Benefits Fund	9,060,820	5,283,350	14,344,170	10,970,600	3,373,570
Fleet Fund	1,320,520	6,920,200	8,240,720	1,303,000	6,937,720
Risk Management	2,398,380	3,381,630	5,780,010	2,924,870	2,855,140
Vehicle Maintenance	3,858,060	325,070	4,183,130	4,080,190	102,940
<b>TOTAL</b>	<b>224,129,490</b>	<b>166,383,920</b>	<b>390,513,410</b>	<b>244,725,120</b>	<b>145,788,290</b>



**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.

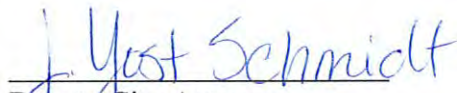
**Section 3.** That this Ordinance shall be in full force and effect upon adoption, as provided in City Charter Section 11-5(d).

ADOPTED this \_\_\_\_\_ day of October, 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

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**AGENDA ITEM:** 6  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

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**TITLE:**

An Ordinance on Second Reading Adopting the 2014 Budget for the Loveland Special Improvement District #1

**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
- 

**SUMMARY:**

This is an administrative action. The City serves as the sponsoring agency for the Special Improvement District (SID) and the ex officio Board of Directors. The SID #1 was established to allow for the collection of assessments from property owners in the District to back bonded debt used to construct infrastructure improvements in the district. The City does not have any legal obligation towards this debt. By State law, all special districts with a connection to the City must adopt a budget. The City of Loveland serves as staff for the District. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible

This action adopts the budget and appropriates funds for the 2014 expenditures of the District.

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**BACKGROUND:**

The appropriation is for debt service on bonds issued by the district; supported by the special assessments to the property owners within the district. The Special Improvement District #1 (SID) was established to allow for the collection of assessments from property owners in the district to back bonded debt used to construct infrastructure improvements located within the district. The District is in east Loveland north of Eisenhower Boulevard along Rocky Mountain Avenue, extending north above Houts Reservoir.

The City does not have any legal obligation for payment of this debt.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Ordinance

FIRST READING      October 1, 2013

SECOND READING      October 15, 2013

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ADOPTING THE 2014 BUDGET FOR THE  
LOVELAND SPECIAL IMPROVEMENT DISTRICT #1.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
LOVELAND, COLORADO, acting as the governing body of the Loveland Special  
Improvement District #1:**

**Section 1.** That monies and revenues to be derived from all sources, as set forth in the 2014 budget, to be received into the Loveland Special Improvement District #1 Fund 702 during the year 2014, plus anticipated revenues and fund balance as of January 1, 2014, make a total of estimated revenue and cash in the sum of \$1,159,300 available in 2014. Out of such estimated revenue and cash, there is hereby appropriated \$690,650 to the Loveland Special Improvement District #1 Fund 702.

**Section 2.** That the budget for the Loveland Special Improvement District #1 for the year 2014, which has been filed with the City Clerk's Office, setting forth expenditures of \$690,650 and providing revenues from assessments, which together with all other sources of revenue available to it are adequate to meet the proposed expenditures, be and is hereby approved.

**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.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

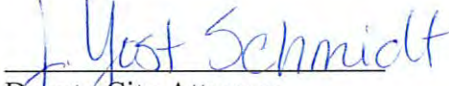
ADOPTED this \_\_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
Deputy City Attorney

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

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(970) 962-2329 • FAX (970) 962-2901 • TDD (970) 962-2620

---

**AGENDA ITEM:** 7  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

---

**TITLE:**

An Ordinance on Second Reading of the Board of Commissioners of the Loveland Urban Renewal Authority Adopting the 2014 Budget for the Loveland Urban Renewal Authority

**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
- 

**SUMMARY:**

This is an administrative action. City Council serves as the Board of Commissioners for the Loveland Urban Renewal Authority. By State budget law, the Board must approve an annual budget for the Authority. The City of Loveland serves as staff for the District. The Authority is funded by tax increment revenues from property and sales taxes. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible

This action adopts the budget and appropriates funds for the 2014 expenditures of the Authority.

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**BACKGROUND:**

Currently there are three project areas within the Authority, the Downtown Project Area, the Finley Block Project Area, and the U.S. 34 Crossroads Project Area. Within the Downtown

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Project Area, \$10,000 is appropriated for developer reimbursements based on existing agreements and \$35,000 for continuation of the Façade Grant Program. Within the Finley Block Project area \$195,000 is appropriated for the payment to the development for infrastructure. Within the U.S. 34/Crossroads Project area, \$50,000 is appropriated for City administrative costs, \$972,000 is appropriated to be paid to the school fund, and \$10,048,720 is appropriated for the transfer of revenue collected within the U.S. 34 Crossroads Project Area to the Centerra Metropolitan District #1 (to meet contractual obligations between the Authority and the District under the Master Financing Agreement).

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance

FIRST READING      October 1, 2013

SECOND READING      October 15, 2013

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ADOPTING THE 2014 BUDGET FOR THE  
LOVELAND URBAN RENEWAL AUTHORITY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND,  
COLORADO, acting as the Commissioners of the Board of the Loveland Urban Renewal  
Authority:**

**Section 1.** That monies and revenues to be derived from all sources, as set forth in the 2014 budget, to be received into the Loveland Urban Renewal Authority Fund 603 during the year 2014, plus anticipated revenues and estimated fund balance as of January 1, 2014, make a total of estimated revenue and cash in the sum of \$12,569,600 available in 2014. Out of such estimated revenue and cash, there is hereby appropriated \$11,310,720 to the Loveland Urban Renewal Authority Fund 603.

**Section 2.** That the budget for the Loveland Urban Renewal Authority for the year 2014, which has been filed with the City Clerk's Office, setting forth expenditures of \$11,310,720 and providing revenues from taxes, which together with all other sources of revenue available to it are adequate to meet the proposed expenditures, be and is hereby approved.

**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.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

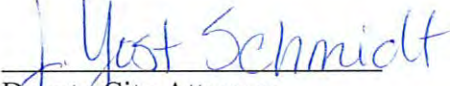
ADOPTED this \_\_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
Deputy City Attorney

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---

**AGENDA ITEM:** 8  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

---

**TITLE:**

1. An Ordinance on Second Reading Adopting the 2014 Budget for the Loveland General Improvement District #1
2. An Ordinance on Second Reading Setting the 2013 Mill Levy for the Loveland General Improvement District #1

**RECOMMENDED CITY COUNCIL ACTION:**

1. Approve the ordinance on second reading.
2. 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
- 

**SUMMARY:**

1. The ordinance adopting the budget is an administrative action.
2. The ordinance setting the mill levy is a legislative action.

City Council serves as the ex-officio Board of Directors for the District. The Board must approve a budget and set the mill levy for the District. The City of Loveland serves as staff for the District. The ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible

These items establish a budget and appropriate funds for District expenses in 2014, and set the mill levy rate for the property tax collections.

---

**BACKGROUND:**

The 2014 appropriation for the District is \$24,500. The funding is for parking lot repair and maintenance and landscaping maintenance within the District. The mill levy will be the same as in 2012. The District encompasses the downtown area with boundaries of 3<sup>rd</sup> Street on the south, 7<sup>th</sup> Street on the north, Railroad Avenue on the west and Jefferson Avenue to the east, except along 4<sup>th</sup> Street where Washington Avenue is the eastern boundary.

The 2013 mill levy applied to the 2013 Assessed Valuation determines the 2013 Property taxes. These taxes are due and payable in 2014, and the revenue funds the 2014 budget.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Ordinance Adopting the 2014 Budget for the GID #1
2. Ordinance Setting the 2013 Mill Levy for the GID #1

FIRST READING      October 1, 2013SECOND READING      October 15, 2013

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ADOPTING THE 2014 BUDGET FOR THE LOVELAND  
GENERAL IMPROVEMENT DISTRICT #1**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF  
LOVELAND, COLORADO, acting as the ex officio Board of Directors of the Loveland  
General Improvement District #1:**

**Section 1.** That monies and revenues to be derived from all sources, as set forth in the 2014 budget, to be received into the Loveland General Improvement District #1 Fund 602 during the year 2014, plus anticipated revenues and fund balance on hand as of January 1, 2014, make a total of estimated revenue and cash in the sum of \$70,060 available in 2014. Out of such estimated revenue and cash, there is hereby appropriated \$24,500 to the Loveland General Improvement District #1 Fund 602.

**Section 2.** That the budget for the Loveland General Improvement District #1 for the year 2014, which has been filed with the City Clerk's Office, setting forth expenditures of \$24,500 and providing revenues from taxes, which together with all other sources of revenue available to it are adequate to meet the proposed expenditures, be and is hereby approved.

**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.** That 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 October, 2013.

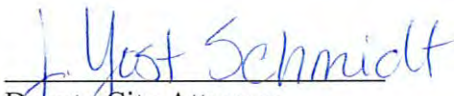
\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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



APPROVED AS TO FORM:

  
Deputy City Attorney

**FIRST READING**      October 1, 2013

**SECOND READING**      October 15, 2013

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE SETTING THE 2013 MILL LEVY FOR THE  
LOVELAND GENERAL IMPROVEMENT DISTRICT #1**

**WHEREAS**, the City Council, acting as the ex-officio Board of Directors of the Loveland General Improvement District #1, desires to maintain the 2013 mill levy rate at the same level as 2012; and

**WHEREAS**, the 2013 mill levy rate impacts 2013 taxes, due and payable in 2014.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, acting as the ex officio Board of Directors of the Loveland General Improvement District #1:**

**Section 1.** That the mill levy rate of 2.684 mills is hereby adopted as the rate of levy upon every dollar of the valuation for assessment of taxable property within the Loveland General Improvement District #1, for the year 2013.

**Section 2.** That the City Clerk of the City of Loveland be and is hereby authorized and directed to send a certified copy of this ordinance to the Board of County Commissioners of Larimer County, Colorado.

**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.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

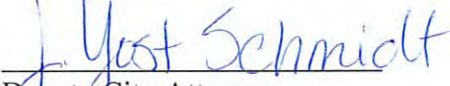
ADOPTED this \_\_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
Deputy City Attorney

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**AGENDA ITEM:** 9  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

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**TITLE:**

An Ordinance on Second Reading Adopting the 2014 Budget for the Fort Collins-Loveland Municipal Airport

**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
- 

**SUMMARY:**

This is an administrative action. The City of Loveland provides staff support to the Airport through the Intergovernmental agreement with the City of Ft. Collins. As a part of this function the City Council approves the Airport budget, which includes the City's share of the Airport Budget. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible

The ordinance establishes a budget and appropriates funds for Airport expenses in 2014.

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**BACKGROUND:**

The 2014 appropriation for the Ft. Collins-Loveland Municipal Airport is \$2,298,710. The funding is for the operations and capital improvement program at the Airport. Operations expenses of

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\$783,750 include funding for the Airport staff and day to day operating costs, funded through Airport Revenues. The capital program with appropriations of \$1,514,960 to continue airport improvements is funded by a Federal Aviation Administration entitlement grant, a grant from the State of Colorado, and contributions from the two cities.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance

**FIRST READING**      October 1, 2013

**SECOND READING**    October 15, 2013

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ADOPTING THE 2014 BUDGET FOR THE FORT COLLINS-LOVELAND MUNICIPAL AIRPORT.**

**WHEREAS**, the Intergovernmental Agreement (IGA) between the Cities of Loveland and Fort Collins related to ownership and operation of the Fort Collins-Loveland Municipal Airport (the “Airport”) provides that the City of Loveland serves as the staff support for administrative services. Under the IGA, both cities budget for their share of the Airport Annual Operating Budget and Capital Budget (collectively, the “Airport Budget”), and the Steering Committee approves the Airport Budget as whole, and the City of Loveland includes the Airport Budget in its City Budget Document for reference purposes; and

**WHEREAS**, the City of Loveland 2014 Budget appropriated Loveland’s contribution to the 2014 Airport Budget of \$117,500 and included the 2014 Airport Budget in the City’s 2014 Budget Book (pages 4-44 and pages 20-5 through 20-7) for reference purposes; and

**WHEREAS**, for transparency to the Council and the public, for governance, management, and audit of the Airport Budget, and to provide a mechanism to track and approve changes to the Airport Budget, it is appropriate for the City of Loveland, as a part of its administrative duties under the IGA, to approve the 2014 Airport Budget as whole and any subsequent changes.

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

**Section 1.** That the 2014 Airport Budget as set forth on **Exhibit A**, attached hereto and incorporated herein by reference, is hereby adopted and the City of Loveland’s share of the 2014 Airport Budget is hereby appropriated;

**Section 2.** That monies and revenues to be derived from all sources, as set forth in the 2014 Airport Budget, to be received into the Fort Collins-Loveland Municipal Airport Fund 600 during the year 2014, plus anticipated revenues and estimated fund balance as of January 1, 2014, make a total of estimated revenue and cash in the sum of \$3,406,680 available in 2014. Out of such estimated revenue and cash, there is hereby appropriated \$2,298,710 to the Fort Collins-Loveland Municipal Airport Fund 600.

**Section 3.** That the 2014 Airport Budget, which has been filed with the City Clerk’s Office, setting forth expenditures of \$2,298,710 which together with all other sources of revenue available to it are adequate to meet the proposed expenditures, be and is hereby approved.



**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.

**Section 5.** This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

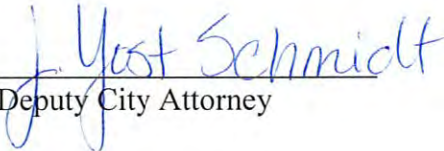
ADOPTED this \_\_\_\_\_ day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

## Exhibit A

### Airport Fund

The Airport Fund receives revenue for operating and capital expenses primarily from revenues generated by airport operations. Additional revenues are provided by the airport partners, the Cities of Loveland and Fort Collins, and, for approved projects, from the FAA and Colorado Department of Transportation. Use of money in the Fund is restricted to the airport. The Fund is managed by the Public Works Department. Details on the expenditures are in the Other Entities chapter.

### Airport Fund Summary

	'12 Actual	'13 Adopted Budget	'13 Revised Budget as of June	'14 Budget	'14 Budget / '13 Adopted Change
<b>Airport</b>	<b>\$1,724,772</b>	<b>\$2,208,600</b>	<b>\$3,546,610</b>	<b>\$2,298,710</b>	<b>4.1%</b>
<b>REVENUE</b>					
<b>Beginning Balance</b>	<b>\$530,312</b>	<b>\$892,560</b>	<b>\$1,115,480</b>	<b>\$1,045,630</b>	
AIRPORT REVENUE	1,151,972	930,800	455,130	580,380	(37.6%)
INTERGOVERNMENTAL	1,146,036	1,575,000	3,010,920	1,769,960	12.4%
INTEREST	11,930	10,710	10,710	10,710	-
<b>Total Revenue</b>	<b>\$2,309,938</b>	<b>\$2,516,510</b>	<b>\$3,476,760</b>	<b>\$2,361,050</b>	<b>(6.2%)</b>
<b>Total Resources</b>	<b>\$2,840,250</b>	<b>\$3,409,070</b>	<b>\$4,592,240</b>	<b>\$3,406,680</b>	
<b>EXPENSE BY CATEGORY</b>					
PERSONNEL SERVICES	389,741	435,890	360,100	373,800	(14.2%)
SUPPLIES	26,256	36,700	27,350	37,700	2.7%
PURCHASED SERVICES	440,806	331,010	650,530	372,250	12.5%
CAPITAL	867,969	1,405,000	2,508,630	1,514,960	7.8%
<b>Total Expense</b>	<b>\$1,724,772</b>	<b>\$2,208,600</b>	<b>\$3,546,610</b>	<b>\$2,298,710</b>	<b>4.1%</b>
<b>Ending Balance</b>	<b>\$1,115,478</b>	<b>\$1,200,470</b>	<b>\$1,045,630</b>	<b>\$1,107,970</b>	

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**AGENDA ITEM:** 10  
**MEETING DATE:** 10/1/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

---

**TITLE:**

A Resolution Approving the Loveland Fire Rescue Authority 2014 Schedule of Rates, Charges, and Fees for Services and 2014 Budget

**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
- 

**SUMMARY:**

This is an administrative action. The resolution provides for Council approval of the Loveland Fire Rescue Authority Budget and fees schedule for 2014. Council approval of the budget is required for the Authority's budget to be in effect.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible

The resolution provides approval of the budget and fees and charges included within the budget for 2014. The City's contribution is included in the City of Loveland 2014 Budget.

---

**BACKGROUND:**

The Loveland Fire Rescue Authority was created through the Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate

Governmental Entity (IGA). The IGA authorizes the Authority to adopt a budget and to fix, maintain, and revise fees, rates and charges for functions, services, or facilities.

Both the budget and the schedule of rates, charges and fees become effective upon the approval of both the City of Loveland and the Loveland Rural Fire District.

The City's contribution to the Authority has been included in the City of Loveland 2014 Budget.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution approving the Loveland Fire Rescue Authority 2014 Schedule of Rates, Charges, and Fees for Service and 2013 Budget with Exhibit A
2. Fire Authority Budget Executive Summary (Exhibit B)
3. Fire Authority Resolution #R-025 approving the Schedule of Rates, Charges and fee for Service
4. Fire Authority Resolution R-026 Adopting the 2014 Budget

**RESOLUTION #R-85-2013****A RESOLUTION APPROVING  
THE LOVELAND FIRE RESCUE AUTHORITY  
2014 SCHEDULE OF RATES, CHARGES, AND FEES FOR SERVICES AND  
2014 BUDGET**

**WHEREAS**, the Loveland Fire Rescue Authority (“Fire Authority”) is established pursuant to that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 18, 2011 (the “Authority IGA”) between the City of Loveland, a Colorado home rule municipality (“City”) and the Loveland Rural Fire Protection District, a Colorado Special District (“District”); and

**WHEREAS**, the Fire Authority is authorized under Section 4.1 of the Authority IGA to adopt an annual budget for maintenance and operation costs, capital costs, costs of services, and personnel costs, which shall include costs related to the City’s employees assigned to the Fire Authority, which annual budget becomes effective upon the approval of the governing bodies of the City and the District; and

**WHEREAS**, the Fire Authority is authorized under Section 1.9(f) of the Authority IGA to fix, maintain, and revise fees, rates and charges for functions, services, or facilities provided by it, which fees, rates, and charges become effective upon the approval of the governing bodies of the City and the District; and

**WHEREAS**, the Fire Authority, by adoption of Resolution #R-026, approved its 2014 Budget; and

**WHEREAS**, the Fire Authority, by adoption of Resolution #R-025, approved its 2014 Schedule of Rates, Charges and Fees for Services; and

**WHEREAS**, the Fire Authority Board of Directors has submitted the Fire Authority’s 2014 Schedule of Rates, Charges, and Fees for Services, which is attached hereto and **Exhibit A** and incorporated herein by reference, to the City and the district for approval as required by Section 1.9(f) of the Authority IGA; and

**WHEREAS**, the Fire Authority Board of Directors has also submitted the Fire Authority’s 2014 Budget, which is attached hereto as **Exhibit B** and incorporated herein by reference, to the City and the District for approval as required by Section 4.1 of the Authority IGA; and

**WHEREAS**, the City Council desires to approve the Fire Authority’s 2014 Schedule of Rates, Charges, and Fees for Services and 2014 Budget.

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

**Section 1.** That the 2014 Schedule of Rates, Fees, and Charges for Services provided by the Loveland Fire Rescue Authority, attached hereto as **Exhibit A** and incorporated herein by reference, is hereby approved.

**Section 2.** That the 2014 Loveland Fire Rescue Authority Budget, attached hereto as **Exhibit B** and which has been filed with the Fire Authority Administrative Office in its entirety, for the fiscal year beginning January 1, 2014 and ending December 31, 2014, with revenues and estimated fund balance in the amount of \$10,732,450, and expenditures of \$10,732,450 for operations, is hereby approved.

**Section 3.** That this Resolution shall take effect as of the date of its adoption.

**ADOPTED** this 15<sup>th</sup> day of October, 2013.

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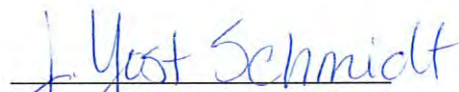
Cecil a. Gutierrez, Mayor

ATTEST:

---

City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney



**LOVELAND FIRE & RESCUE AUTHORITY****No Changes in 2014**

Description	2013 Fee	2014 Fee	2014 Change Revenue Impact
<b><u>Fire Permit Fees (Hazardous Processes, Conditions or Locations):</u></b>			
Bonfire Standby, per event	\$350.00 minimum	\$350.00 minimum	0
Record Retrieval ( <i>one hour minimum</i> ), per hour	\$35.00	\$35.00	0
Compressed Gas Facilities, small - single tank dispensing	\$50.00	\$50.00	0
Compressed Gas Facilities, large - bulk facilities	\$100.00	\$100.00	0
Explosive or Blasting Permit	\$100.00	\$100.00	0
Fireworks Retail & Wholesale Sales Permit	\$1,500.00	\$1,500.00	0
Fireworks Display Permit	\$200.00	\$200.00	0
Flammable or Combustible Liquid Tank Removal, per tank	\$100.00	\$100.00	0
Hazardous Materials Storage/Dispensing/Production	\$100.00	\$100.00	0
High-Piled Combustible Storage Permit	\$100.00	\$100.00	0
Hot-Work Operations and Cutting Permit	\$50.00	\$50.00	0
Open Burning Permit	\$50.00	\$50.00	0
Special Event Fee - small	\$100.00	\$100.00	0
Special Event Fee - large	\$200.00	\$200.00	0
Standby Event Coverage, per hour, per person required	\$40.00	\$40.00	0
Report Fee	\$5-15.00	\$5-15.00	0
School Inspection Fee	\$125.00	\$125.00	0
School Building Plan Review	\$300.00	\$300.00	0
Tent & Canopy Permit	\$50.00	\$50.00	0
Cryogenic Fluid Facility	\$100.00	\$100.00	0
<b><u>Fire Inspection Fees:</u></b>			
<b><u>Sprinkler Installation Inspections:</u></b>			
<b><u>1-9 Heads:</u></b>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<b><u>10-99 Heads:</u></b>			
Per Inspection	\$70.00	\$70.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<b><u>100 to 1000 Heads:</u></b>			
Per Inspection	\$95.00	\$95.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<b><u>Additional Inspections for All Sprinkler Systems:</u></b>			
(i.e. 200 lb. test, 2" drain test and inspectors tests), per inspection	\$40.00	\$40.00	0
<b><u>Alarm &amp; Detection Systems:</u></b>			
Per Inspection (up to 5 devices)	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
Per Inspections (6 - 30 devices)	\$70.00	\$70.00	0
Per Re-Inspection	\$75.00	\$75.00	0
Per Inspection (over 30 devices)	\$95.00	\$95.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<b><u>Hood &amp; Duct Extinguishing Systems:</u></b>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<b><u>Paint Booth Extinguishing Systems:</u></b>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<b><u>Paint Booth Using Combustible or Flammable Liquids:</u></b>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<b><u>Dip Tank Operations Using Combustible/Flammable Liquids Installation:</u></b>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<b><u>LPG or Natural Gas Facilities Inspection:</u></b>			

**LOVELAND FIRE & RESCUE AUTHORITY****No Changes in 2014**

Description			2014 Change
	2013 Fee	2014 Fee	Revenue Impact
Per Inspection	\$100.00	\$100.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<u>Combustible Dust-Producing Operations Inspection:</u>			
Per Inspection	\$100.00	\$100.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<u>Spray and Dipping Operations Inspection:</u>			
Per Inspection	\$100.00	\$100.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<u>Other Special Extinguishing Systems:</u>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<u>Standpipe Systems:</u>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<u>Halon Extinguishing Systems:</u>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<u>Fuel Dispensing Facilities &amp; Transfer Equipment:</u>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<u>Flammable or Combustible Tank:</u>			
Per Inspection	\$50.00	\$50.00	0
Per Re-Inspection	\$75.00	\$75.00	0
<u>After Hours Inspection (minimum 2 hours):</u>			
Per Inspection, per hour	\$75.00	\$75.00	0
Per Inspection (holiday or holiday weekend), per hour	\$150.00	\$150.00	0
<u>Special Events Fee:</u>			
Firefighter, per hour	\$40.00	\$40.00	0



## Agenda Item Cover

Item No.: 4

Meeting Date: September 12, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director

### TITLE

---

Hold a Public Hearing and Consider a Resolution to Adopt the 2014 Budget

### EXECUTIVE SUMMARY

---

A \$10.7 million operations budget is submitted for your consideration. It is \$147,611 less than the 2014 figures submitted within the Basic Services Financial Model Ten Year Financial Plan that was approved by the LFRA Board as a basis for submitting the 2014 Budget April 11, 2013.

This is the third annual budget submitted to the Board for the Loveland Fire Rescue Authority. The \$10,732,450 budget includes \$10,398,340 to continue to provide the same level of service as is being provided in 2013 and includes a supplemental request of \$334,110 to staff the Heavy Rescue Squad at the new Station 2. The Holiday Pay and Training Firefighter Supplemental requests were deferred to 2015. This budget is presented to LFRA Board for adoption now that the process of vetting the proposal through both partner organizations has been completed. It was considered by the LFRA Board July 11, 2103. It was presented to both the City on July 17, 2013 and the Rural District Board on August 7, 2013. The Fire Rescue Advisory Commission was presented the budget on August 14, 2013. It will be brought back to the LFRA Board for appropriation in November, after the partner organizations have appropriated their contributions.

### BACKGROUND

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The \$10.7 million budget submitted is intended to continue the same level of service, as well as staff the Heavy Rescue Squad at the new Station 2. The proposed budget includes 81 full time employees (including 6 new full time firefighters in 2014) and 18 part-time firefighters that equates in hours to 6 full time employees (up from 12 with a lower shift requirement resulting no change to the total number of hours) for a total of 87.0 full time equivalent employees.

This cover memorandum shall be considered the Budget Message for the Loveland Fire Rescue Authority. As such there are some items required by Colorado Revised Statute 29-1 "Local Government Budget Law of Colorado" that are will be included here.

While LFRA is required to adopt an annual budget, the budget is presented in its entirety in the Fire Authority Fund presentation of the City of Loveland, Colorado Budget and therefore a separate budget document is not required. Accounting and budgeting for this fund are on the modified accrual basis. Modified accrual basis means that "revenue and other financing sources are due and available and when obligations or liabilities are incurred for expenditures and other financing uses, except for certain stated items such as, but not limited to, prepaids, inventories of consumable goods, and interest payable in future fiscal years".



## Agenda Item Cover

Item No.: 4

Meeting Date: September 12, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director

All proposed LFRA revenues and expenditures are included in the budget; and LFRA is not a party to any lease purchase agreements. The Fire Authority Fund carries a zero fund balance because the partner contributions are based on the percentage contribution of the net expenditures. By the nature of the agreement, revenues are always equal to expenditures. However, during the year one month of partner contributions are held in the fund for cash flow management. This cash flow advance is netted out of the December contribution. Each partner organization is responsible for holding in their fund balance 15% of their contribution for the year in reserve.

A wide variety of services are provided by the Loveland Fire Rescue Authority. Fire Operations (formerly Suppression) in the budget summaries attached relate to three divisions including Station Operations and Training, Technical Response and Systems, and Equipment Maintenance and Replacement. These divisions perform all fire emergency response, life threatening medical emergency response, aircraft, hazmat, motor vehicle accidents, rope rescue, dive rescue, confined space rescue, and other related incidents that require technical expertise. Community Safety includes emergency management, disaster preparedness, public education and outreach, fire investigation, and fire code enforcement through plan review and inspections. The Administration coordinates all the business needs of the Authority including strategic planning, budget administration, financial planning, boards and commissions support, and managing the resources of the Authority.

### Revenues

The Fire Authority is projected to generate \$168,130 through permitting/inspections, fireworks stand reviews, contractor licenses, and reimbursement for incident responses outside of our response area. This revenue is subtracted from the total expenditure budget. The City contributes 82% and the Rural District contributes 18% of the remaining expenditure budget.

### Expenditures

*Compensation (Salaries and Benefits, 76% of the total budget) \$8,104,970*

This category of accounts includes base salaries, merit increases equivalent to 3.5% of the salaries budget to distribute to employees based on performance, 1.0% of the salaries budget for pay plan adjustments, and overtime. It also includes:

- \$249,260 for 6 supplemental position salaries and benefits;
- the cost of payroll taxes;
- worker's compensation (allocated to Fire by using a percentage of salaries to total salaries in the City plus an average of five years of workers compensation claims specific to the Fire personnel);



## Agenda Item Cover

Item No.: 4

Meeting Date: September 12, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director

- premiums for medical, dental, and life insurance (allocated based five years of claims experience and the number of employees);
- pension contributions (11% of salaries for firefighters and 5% for administrative staff),
- Tuition Assistance (\$10k)
- Volunteer Accident and Sickness Policy (\$6,700)
- Volunteer Pension Contribution (\$96,180)

*Supplies (4% of the total budget) \$456,190*

These accounts are used to account for supplies, equipment and furniture under \$5,000 per unit. It includes everything from office supplies to building repair supplies.

*Services (19% of the total budget) \$2,074,470*

These accounts include all utilities, property and liability insurance, training, vehicle maintenance, and other minor repair and maintenance services. (\$1,022,860, 9.5% of the total budget)

It also includes the cost of Administrative Services provided by the City: Dispatch, Facilities, Information Technology, Human Resources, Finance, City Attorney and the City Manager's Office. Each allocation is based on a reasonable assumption for the dedication of resources to the Fire Service compared to the City as a whole. (\$1,051,610, 9.8% of the total budget)

*Capital (1% of the total budget) \$96,820*

Equipment that costs \$5,000 or more per unit is included in this category of accounts. The dollars allocated for 2014 are dedicated to the replacement of basic operational equipment including: special operations equipment, training area equipment, wild land equipment, hoses, communications equipment, thermal imaging equipment, and computer equipment. This five year plan is attached.

The base budget for 2014 (\$10,398,340) increases 5.3% above the 2013 originally adopted budget. It includes full year funding for the Community Safety Division Lieutenant and the second year funding for the Community Safety Division Plans Reviewer, both supplemental requests funded after the originally adopted budget. Other base budget revisions are documented in an attachment. The 2014 supplemental budget requests (\$334,110) increase the budget an additional 3.3% for a total 8.6% increase over the 2013 originally adopted budget.



## Agenda Item Cover

Item No.: 4

Meeting Date: September 12, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director

### Supplemental Requests

Service enhancements are submitted in the budget process as “supplemental requests” and all the figures above include the proposed supplemental requests for your consideration. The following supplemental requests were included for consideration.

### Supplemental Request Priority Order Listing

1	Six New Firefighters	\$334,110
2	Holiday Pay (\$58,780, more information on impact necessary)	
3	Training Firefighter (\$80,200 deferred to 2015)	
	Total	<u>\$334,110</u>

### New Firefighters

The 2012 Loveland Fire Rescue Authority (LFRA) Strategic Plan, Phase II, includes the hiring of six additional firefighters, promoting six Engineers and three Lieutenants to staffs the new Heavy Rescue Squad for Station 2.

This budget is submitted to implement Phase II of the Basic Services Model in the Strategic Plan adopted by the Board to deliver on a governance partnership between the City of Loveland and the Loveland Rural Fire Protection District.

### Process

The 2014 proposed budget was presented for LFRA Board consideration July 11, 2013. On July 17, 2013 LFRA staff met with the City Manager and the rest of the City Budget Team to review the submittal. The City Manager made decisions in August about inclusions in the City’s proposed budget to the City Council. Staff presented the Loveland Rural Fire Protection District with the LFRA budget at their August 7, 2013 meeting. The Fire Rescue Advisory Commission was presented the LFRA budget on August 14, 2013. A study session to acquaint the City Council and the public with the City’s proposed budget was held September 10, 2013. September 12, 2013, the LFRA Board will hold a public hearing to approve fees and consider the adoption the 2014 budget. The Citizen’s Finance Advisory Commission reviews the City of Loveland budget for reasonableness from the citizen’s perspective in September. In October, the public has the opportunity ask questions about the City’s budget at the public hearing scheduled to be conducted on October 1, 2012. Then the City’s budget is scheduled for second reading and adoption on October 15, 2013. The Loveland Rural Fire Protection District Board will conduct a public hearing and appropriate the District budget at their November 6, 2013 meeting. They will be asked to approve the Loveland Rural Fire Protection Budget at that same







## Agenda Item Cover

Item No.: 4

Meeting Date: September 12, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director

meeting. Finally with the governing partner contributions appropriated, the LFRA Board will appropriate the 2014 budget at the November 14, 2013 meeting.

The City's budget process also includes the appropriation capital improvements money in the City's General Capital Replacement (Cap. Repl.) Fund and the Fire Capital Expansion Fee (CEF) Fund. The City's Capital Improvement Plan has been completed. Station 10 is included in 2018. The following table highlights the requests.

Item Requested	Amount Requested	Year Requested	City Fund
Complete New Station 2 – Three bays	\$901,970	2014	CEF
Replace 2000 Smeal Ladder Truck	\$1,458,610	2014	Cap. Repl.
Refurbish the 2000 Smeal Ladder Truck for Reserve Status	\$606,240	2015	Cap. Repl.
Replace 2004 General Spartan	\$652,300	2016	Cap. Repl.
Build Station 10	\$2,605,000	2018	CEF

The process for securing funding in 2014 and over next ten years is a complicated but achievable venture. The Loveland Rural Fire Protection District ten year plan has been updated based on this proposed budget. Consistent with the information shared with voters during the mill levy increase campaign, the Rural District will need to tap into reserves to fund contributions in 2017 and will require another increase in the mill levy in 2016 for collection in 2017. The successful implementation of this partnership has been a vision of the LFRA Board and the hard work has begun.

### STAFF RECOMMENDATION

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Approve the budget as revised and submitted.

### FINANCIAL/ECONOMIC IMPACTS

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This action sets the budgetary authorization to make requests for contributions from partner organizations enabling the Fire Chief to administer all programs and services provided by the Loveland Fire Rescue Authority.



## Agenda Item Cover

Item No.: 4

Meeting Date: September 12, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director

### ASSOCIATED STRATEGIC GOALS

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This budget is critical to delivering on the three primary goals outline in the Strategic Plan:

- Deploy an effective emergency response to minimize damage and losses;
- Minimize and mitigate the risks of an emergency occurrence in the community; and
- Deliver cost effective services.

LFRA would like to be recognized by the community of Loveland and those in the fire service community as a model of excellence in providing fire protection and emergency services in the most cost-effective manner, an organization moving from good to great and built to last.

### ATTACHMENTS

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Resolution to Adopt the 2014 Budget

Revised 2014 Budget Summary

Equipment Replacement Schedule and other City resources dedicated to Fire

Revised Four Pillars of Success Illustration of the 2014 Budget

Comparison of 2014 Proposed Operations Budget to the 2013 Originally Adopted Budget

LFRA Revised Ten Year Financial Plan

Estimated Loveland Rural Fire Protection District Ten Year Financial Plan

Presentation slides

**RESOLUTION #R- 026**

**A RESOLUTION ADOPTING  
THE LOVELAND FIRE RESCUE AUTHORITY  
2014 BUDGET**

**WHEREAS**, the Loveland Fire Rescue Authority ("Fire Authority") is authorized to adopt a budget to exercise its powers and carrying out its purposes consistent with the terms of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011 ("Formation Agreement") and the Fire Authority's bylaws; and

**WHEREAS**, the Fire Authority seeks to adopt a budget to implement the Authority's 2012 strategic plan to properly address the future fire protection and emergency services needs of the community served by the Fire Authority; and

**WHEREAS**, the Fire Authority is required by Colorado Revised Statute 29-1-103(1) to adopt an annual budget; and

**WHEREAS**, the Fire Authority Board of Directors finds that it is in the best interests of the Fire Authority and necessary for the health, safety and welfare of the community it serves to adopt the 2014 Budget.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:**

**Section 1.** That the 2014 Loveland Fire Authority Budget, attached hereto as Exhibit A and which has been filed with the Fire Authority Administrative Office in its entirety for the fiscal year beginning January 1, 2014 and ending December 31, 2014, with revenues and estimated fund balance in the amount of \$10,732,450, and expenditures of \$10,732,450 for operations, is hereby adopted.

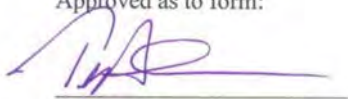
ADOPTED this 12th day of September, 2013.

\_\_\_\_\_  
Jeffrey M. Swanty, Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

Approved as to form:

  
\_\_\_\_\_  
Teresa Ablao  
Assistant City Attorney

**2014 Loveland Fire Rescue Authority Proposed Budget  
Revised August, 2013 For City Manager Recommendation**

	Fire Authority Fund						2014 % of Total	% Change	
	2012 Actual	2013 Adopted Budget	2013 Revised Budget (June)	2014 Proposed Base	2014 Proposed Supplementals	2014 Total Proposed Budget		2014 Prop to 2013 Adopted	2014 Prop to 2013 Revised
<b>Revenues:</b>									
Taxes (General Fund Revenue)									
Charges for Services (Permits)	159,741	141,380	141,380	146,130		146,130	1.4%	3%	3%
Intergovernmental:									
City	7,363,710	7,967,860	8,275,220	8,388,772	273,970	8,662,742	80.7%	9%	5%
Rural District	1,450,246	1,749,050	1,891,520	1,841,438	60,140	1,901,578	17.7%	9%	1%
Other (Grants, Other Agency Deployments, Interest)	1,008,138	20,000	33,000	22,000		22,000	0.2%	10%	-33%
Total Revenues	\$9,981,835	\$9,878,290	\$10,341,120	\$10,398,340	\$334,110	\$10,732,450	100.0%	9%	4%
<b>Expenditures by Account Class:</b>									
Personnel (Salaries and Benefits)	6,923,738	7,542,890	7,672,210	7,855,710	249,260	8,104,970	76%	7%	6%
Supplies	1,171,681	363,860	435,750	371,340	84,850	456,190	4%	25%	5%
Services (starting 2012 Indirect City Adm Services included)	1,563,318	1,802,640	1,834,290	2,074,470		2,074,470	19%	15%	13%
Capital	32,659	168,900	398,870	96,820		96,820	1%	-43%	-76%
Total Expenditures	\$9,691,396	\$9,878,290	\$10,341,120	\$10,398,340	\$334,110	\$10,732,450	100%	9%	4%
% change		24.1%							
Excess or Deficiency of Revenues Over or Under Expenditures (1)	\$290,439	0	\$0	\$0	\$0	\$0			
Fund Balance (Beginning January 1)	0	\$0							
Fund Balance (Ending December 31)	0	\$0							
<b>Expenditures Restated by Service Division:</b>									
Fire Operations (Previously Suppression)	7,842,838	7,952,960	8,278,930	8,078,920	334,110	8,413,030	78%	6%	2%
Community Safety (Previously Prevention)	751,837	727,070	851,930	926,420		926,420	9%	27%	9%
Admin Division w/o City Admin	306,093	316,640	328,640	341,390		341,390	3%	8%	4%
Administrative Services Provided by the City	790,628	881,620	881,620	1,051,610		1,051,610	10%	19%	19%
Total Expenditures	\$9,691,396	\$9,878,290	\$10,341,120	\$10,398,340	\$334,110	\$10,732,450	100%	9%	4%
<b>Full Time Equivalent Employees:</b>									
Full Time Employees- Benefited	67.0	73.0	75.0	75.0	6.0	81.0	93.1%		
Part Time Employees - Benefited	0.0	0.0	0.0	0.0	0.0	0.0	0.0%		
Part time Employees - Non-Benefited	6.1	6.1	6.1	6.0	0.0	6.0	6.9%		
Total	73.1	73.0	81.1	81.0	6.0	87.0	100.0%	19%	7%

(1) This was required for the cash flows associated with grant revenue recognition in 2012 for revenue that came in January 2013. It was netted out of the January 2013 City Contribution. At 2013 year end the contribution for the City will be less than the budget.

**RESOLUTION #R- 025**  
**A RESOLUTION APPROVING THE 2014 SCHEDULE OF RATES,**  
**CHARGES AND FEES FOR SERVICES PROVIDED BY**  
**THE LOVELAND FIRE RESCUE AUTHORITY**

**WHEREAS**, the Loveland Fire Rescue Authority (“Fire Authority”) is authorized to fix fees, rates and charges for functions, services and facilities provided by the Fire Authority by Section 1.9(f) the terms of the Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011 (“Formation Agreement”); and

**WHEREAS**, the Fire Authority seeks to adopt a revised schedule of rates, fees and charges for providing services and functions performed by the Fire Authority in 2014; and

**WHEREAS**, Fire Authority staff has presented the Fire Authority Board with a schedule of proposed rates, charges and fees, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference (“2014 Schedule of Rates, Charges and Fees”) ; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:**

**Section 1.** That the 2014 Schedule of Rates, Charges and Fees, attached hereto as Exhibit A, is hereby approved and adopted for services provided by the Loveland Fire Authority and shall apply to all services and functions provided by the Fire Authority on or after January 1, 2014.

**Section 2.** That this Resolution shall supersede in all respects all previous resolutions of the Fire Authority which set the rates , charges and fees now being set, for all services and functions provided by the Fire Authority on or after January 1, 2014.

**Section 3.** That notwithstanding the foregoing, the rates, charges and fees set in 2013 shall continue in full force and effect from the date of this Resolution until they are superseded on January 1, 2014 as provided for herein.

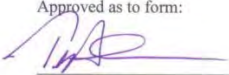
**Section 4.** That this Resolution shall take effect as of the date of its approval and adoption.

APPROVED AND ADOPTED this 12th day of September, 2013.

ATTEST:

\_\_\_\_\_  
 Jeffrey M. Swanty, Chairperson

\_\_\_\_\_  
 Secretary

Approved as to form:  
  
 Teresa Ablao  
 Assistant City Attorney

**RESOLUTION #R- 026**

**A RESOLUTION ADOPTING  
THE LOVELAND FIRE RESCUE AUTHORITY  
2014 BUDGET**

**WHEREAS**, the Loveland Fire Rescue Authority ("Fire Authority") is authorized to adopt a budget to exercise its powers and carrying out its purposes consistent with the terms of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011 ("Formation Agreement") and the Fire Authority's bylaws; and

**WHEREAS**, the Fire Authority seeks to adopt a budget to implement the Authority's 2012 strategic plan to properly address the future fire protection and emergency services needs of the community served by the Fire Authority; and

**WHEREAS**, the Fire Authority is required by Colorado Revised Statute 29-1-103(1) to adopt an annual budget; and

**WHEREAS**, the Fire Authority Board of Directors finds that it is in the best interests of the Fire Authority and necessary for the health, safety and welfare of the community it serves to adopt the 2014 Budget.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:**

**Section 1.** That the 2014 Loveland Fire Authority Budget, attached hereto as Exhibit A and which has been filed with the Fire Authority Administrative Office in its entirety for the fiscal year beginning January 1, 2014 and ending December 31, 2014, with revenues and estimated fund balance in the amount of \$10,732,450, and expenditures of \$10,732,450 for operations, is hereby adopted.

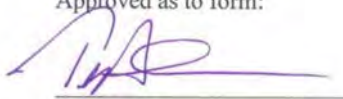
ADOPTED this 12th day of September, 2013.

\_\_\_\_\_  
Jeffrey M. Swanty, Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

Approved as to form:

  
\_\_\_\_\_  
Teresa Ablao  
Assistant City Attorney





**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:** 11  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Bill Cahill, City Manager  
**PRESENTER:** Bill Cahill

---

**TITLE:**

1. A Resolution Amending the Regularly Scheduled Meeting Date and Location for the Loveland Human Services Commission
2. A Motion to Accept the Resignation of Councilor Trenary and Appoint Councilor Farley as the Council Liaison to the Loveland Human Services Commission

**RECOMMENDED CITY COUNCIL ACTION:**

1. Adopt the resolution.
2. Approve the motion to appoint Councilor Farley as liaison to the Commission.

**OPTIONS:**

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

**SUMMARY:**

1. This is an administrative action to change the meeting date and location for the Human Services Commission from the fourth Thursday of each month at 6:00 p.m. in the City Manager's Conference Room, to the first Thursday of each month at 6:00 p.m. in the City Council Chambers.
2. This item also includes a motion to appoint Councilor Farley as Council Liaison to the Human Services Commission in lieu of Councilor Trenary, who has resigned due to a conflict with the new meeting date.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible
- 

**BACKGROUND:**

The Human Services Commission currently meets on the fourth Thursday of each month at 6:00 p.m. in the City Manager's Conference Room. On September 25, 2013, the Commission

approved a motion to recommend that City Council change the board meeting day and location to the first Thursday of each month at 6:00 p.m. in the City Council Chambers. Due to the change in date and time, Councilor Trenary has a conflict and wishes to resign. Councilor Farley is willing to fill this position.

---

**REVIEWED BY CITY MANAGER:**



---

**LIST OF ATTACHMENTS:**

1. Resolution

**RESOLUTION #R-86-2013**

**A RESOLUTION AMENDING THE REGULARLY SCHEDULED  
MEETING DATE AND LOCATION FOR THE LOVELAND HUMAN  
SERVICES COMMISSION**

**WHEREAS**, on December 18, 2012, the City Council adopted Resolution #R-87-2012, setting the 2013 meeting dates, times, and locations for the City's Boards and Commissions, including the Loveland Human Services Commission; and

**WHEREAS**, the Loveland Human Services Commission has requested that the City Council change the Commission's meeting time and location from the fourth Thursday of each month in the City Manager's Conference Room, 500 East Third Street, to the first Thursday of each month in the City Council Chambers at 500 East Third Street, in Loveland, Colorado.

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

**Section 1.** That the meeting dates and locations set forth in Resolution #R-87-2012 are hereby amended to change the Loveland Human Services Commissions' meeting date and location from the fourth Thursday of each month in the City Manager's Conference Room, 500 East Third Street, to the first Thursday of each month in the City Council Chambers, 500 East Third Street, in Loveland, Colorado.

**Section 2.** That the meeting time for the Loveland Human Services Commission shall remain unchanged, and meetings shall be held at 6:00 pm as set forth in Resolution #R-87-2012.

**Section 3.** That except as amended herein, Resolution #R-87-2012 shall remain in full force and effect.

**Section 4.** That this Resolution shall be effective as of the date and time of its adoption.

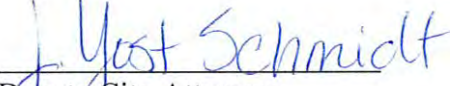
**ADOPTED** this 15<sup>th</sup> day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
Deputy City Attorney



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

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**AGENDA ITEM:** 12  
**MEETING DATE:** 10/15/2013  
**TO:** Mayor and City Council  
**FROM:** City Clerk's Office  
**PRESENTER:** Terry Andrews, City Clerk

---

**TITLE:**

A Motion Calling for a Special Meeting on November 12, 2013 at 6:30 Prior to the Regularly Scheduled Study Session of City Council

**RECOMMENDED CITY COUNCIL ACTION:**

Approve the motion and waive the required notice in City Charter 4-2(b).

**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

---

**SUMMARY:**

This is an administrative action setting a Special Meeting to consider the November 5, 2013 Regular Meeting minutes and to swear in newly appointed councilors. This meeting would be immediately followed by the Study Session.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible

---

**BACKGROUND:**

The City Charter requires that Council members take office at the first regular or special meeting of the Council following their election. Council has a Study Session scheduled for November 12, 2013. Traditionally, Council has held a Special meeting to consider the minutes from the last Council meeting and swear in incoming members. If approved, the special meeting will be held at 6:30 immediately followed by the regular Study Session.

REVIEWED BY CITY MANAGER:

A handwritten signature in black ink, appearing to read "William D. Cahill". The signature is written in a cursive, flowing style.

---

**LIST OF ATTACHMENTS:**

None



**CITY OF LOVELAND****ECONOMIC DEVELOPMENT OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

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**AGENDA ITEM:** 13  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Betsey Hale, Economic Development  
**PRESENTER:** Betsey Hale

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**TITLE:**

An Emergency Ordinance of the City Council of the City of Loveland Temporarily Waiving Building Permit Fees Owed to the City Under Loveland Municipal Code Title 15 and Use Tax Owed to the City Under Loveland Municipal Code Chapter 3.16 With Respect to Building Permits Issued for the Renovation or Repair of Residential and Nonresidential Structures Located Within Loveland City Limits That Were Damaged by the 2013 Big Thompson Flood

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the Emergency Ordinance on first and only 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
- 

**SUMMARY:**

This is a legislative action considering an emergency ordinance waiving the building permit fees and construction materials use taxes for residential and nonresidential structures which are located within Loveland city limits and were damaged by the flood. Building permit applications must be made and accepted as complete by the City's building division sixty days from the adoption of this ordinance.

**BUDGET IMPACT:**

- ☐ Positive  
☒ Negative  
☐ Neutral or negligible
-

**BACKGROUND:**

In the early morning of September 12<sup>th</sup> the Emergency Operations Center (EOC) was opened due to the flooding of the Big Thompson River. For the next seven days the focus of the City was life, property protection, and rescue. On September 18, 2013, the City entered the recovery phase of its emergency operations. This recovery phase includes three areas of focus: Community Recovery, Community Infrastructure, and Finance and Administration. Within Community Recovery, economic and business recovery is addressed. As part of this effort, City Staff in Building and Economic Development are recommending waiving building permit fees and use taxes to assist affected residents and business owners in the restoration of their property.

This waiver period will be in effective for 60 days from the date of the adoption of the ordinance by Council. City staff estimated there are 65 structures in the city limits and within the FEMA 100 year flood plain. Staff has projected that less than half a dozen structures have sustained damage requiring permitting or use taxes.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Ordinance

**FIRST AND ONLY READING:** October 15, 2013

**ORDINANCE # \_\_\_\_\_**

**AN EMERGENCY ORDINANCE OF THE LOVELAND CITY COUNCIL TEMPORARILY WAIVING BUILDING PERMIT FEES OWED TO THE CITY UNDER LOVELAND MUNICIPAL CODE TITLE 15 AND USE TAX OWED TO THE CITY UNDER LOVELAND MUNICIPAL CODE CHAPTER 3.16 WITH RESPECT TO BUILDING PERMITS ISSUED FOR THE RENOVATION OR REPAIR OF RESIDENTIAL AND NONRESIDENTIAL STRUCTURES LOCATED WITHIN LOVELAND CITY LIMITS THAT WERE DAMAGED BY THE 2013 FLOOD**

**WHEREAS**, severe flooding of the Big Thompson River in September 2013 (“2013 Flood”) damaged residential and nonresidential structures located within Loveland city limits; and

**WHEREAS**, the City of Loveland desires to assist affected citizens and business owners by waiving building permit fees owed to the City under Loveland Municipal Code Title 15 and use tax owed to the City under Loveland Municipal Code Chapter 13.16 with respect to building permits issued for the renovation or repair of residential and nonresidential structures located within Loveland city limits that were damaged by the 2013 Flood; and

**WHEREAS**, Loveland Charter Section 4-10 authorizes the City Council adopt emergency ordinances upon one reading to go into effect immediately upon an affirmative vote of at least six members of the City Council; and

**WHEREAS**, the City Council hereby finds and determines that an emergency exists requiring immediate passage of this Ordinance in order to assist and provide financial relief to citizens and business owners affected by the 2013 Flood.

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

**Section 1.** That notwithstanding the provisions of Loveland Municipal Code Title 15 and Chapter 13.16, beginning on October 15, 2013 and ending on December 13, 2013, all building permit fees due and owing under Title 15 and use tax due and owing under Chapter 13.16 shall be waived with respect to building permits issued for the renovation or repair of residential and nonresidential structures located within Loveland City limits that were damaged by the 2013 Flood.

**Section 2.** That the City Council hereby finds that the temporary waiver of building permit fees and use tax as set forth in Section 1 above will serve the public purpose of assisting affected citizens and business owners in recovering from the 2013 Flood.

**Section 3.** That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council. The City Clerk shall publish this Ordinance in full after its adoption.

ADOPTED this 15<sup>th</sup> day of October, 2013.

---

Cecil A. Gutierrez, Mayor

ATTEST:

---

City Clerk

APPROVED AS TO FORM:

  
Assistant City Attorney



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

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**AGENDA ITEM:** 14  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Troy Bliss

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**TITLE:**

1. A Resolution Concerning the Annexation to the City of Loveland, Colorado, of a Certain Area Designated as "King of Glory Addition" More Particularly Described Herein, and Setting Forth Findings of Fact and Conclusions Based Thereon as Required by the Colorado Constitution and by State Statute
2. An Ordinance on first reading Approving the Annexation of Certain Territory to the City of Loveland, Colorado, to be Known and Designated as "King of Glory Addition" to the City of Loveland
3. An Ordinance on first reading Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "King of Glory Addition" to the City of Loveland

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing:

1. Move to adopt a resolution concerning the annexation to the City of Loveland, Colorado, of a certain area designated as "King of Glory Addition" more particularly described herein, and setting forth findings of fact and conclusions based thereon as required by the Colorado Constitution and by State Statutes; and
2. Move to adopt on first reading an ordinance approving the annexation of certain territory to the City of Loveland, Colorado, to be known and designated as "King of Glory Addition" to the City of Loveland; and
3. Move to make the findings in Section VIII of the Planning Commission staff report dated July 22, 2013, and based on those findings, adopt on first reading an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for "King of Glory Addition" to 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
- 

**SUMMARY:**

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A public hearing to consider the following actions concerning the annexation of the King of Glory Lutheran Church:

1. A resolution that finds the property to be in compliance with the Colorado Revised Statutes for annexation;
2. A legislative action to adopt an ordinance on first reading annexing approximately 4.28 acres to be known as the King of Glory Addition; and
3. A quasi-judicial action to adopt an ordinance on first reading zoning the King of Glory Addition R1 – Developing Low Density Residential

**BUDGET IMPACT:**

- ☐ Positive
- ☐ Negative
- ☒ Neutral or negligible

**BACKGROUND:**

The property proposed for annexation and zoning to Low Density Residential is located at the northwest corner of N. Wilson Avenue and W. 29th Street. The property is being annexed and zoned to facilitate future development/redevelopment of the existing church facility. While the church has no immediate plans for construction or expansion of buildings, church officials anticipate the erection of a columbarium/memorial walls upon annexation.

Staff believes that all key issues have been resolved based on City codes and standards. The King of Glory Addition is a property that is becoming more and more surrounded by the City's municipal boundaries in northwest Loveland as a result of recent annexations that have included the Fire Station 2 and Mehaffey Park. The property is in the City's Growth Management Area (GMA) and is currently served by City water and sewer.

**REVIEWED BY CITY MANAGER:**



**LIST OF ATTACHMENTS:**

1. Resolution
2. Ordinance- Annexation (with Annexation Agreement)
3. Ordinance- Zoning
4. Staff Memorandum



**RESOLUTION #R-87-2013****A RESOLUTION CONCERNING THE ANNEXATION TO THE CITY OF LOVELAND, COLORADO, OF A CERTAIN AREA DESIGNATED AS "KING OF GLORY ADDITION" MORE PARTICULARLY DESCRIBED HEREIN, AND SETTING FORTH FINDINGS OF FACT AND CONCLUSIONS BASED THEREON AS REQUIRED BY THE COLORADO CONSTITUTION AND BY STATE STATUTE**

WHEREAS, on June 10, 2013, a Petition for Annexation was filed by persons comprising more than fifty percent (50%) of the landowners in the area described on **Exhibit A**, attached hereto and incorporated herein, who own more than fifty percent (50%) of said area, excluding public streets and alleys; and

WHEREAS, said petition requests the City of Loveland to annex said area to the City; and

WHEREAS, pursuant to Resolution No. R-65-2013, the City Council found that said petition substantially complies with and meets the requirements of Section 30(1)(b) of Article II of the Colorado Constitution and of §31-12-107(1), C.R.S.; and

WHEREAS, on October 15, 2013, commencing at 6:30 p.m., pursuant to the notice required by §31-12-108, C.R.S., the City Council held a public hearing to determine whether the area proposed to be annexed complies with the applicable requirements Section 30 of Article II of the Colorado Constitution and of §§31-12-104 and 31-12-105, C.R.S., and is eligible for annexation; whether or not an election is required under Section 30(1)(a) of Article II of the

Colorado Constitution and of §31-12-107(2), C.R.S.; and whether or not additional terms and conditions are to be imposed; now, therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND,  
COLORADO THAT:**

1. The City Council of the City of Loveland makes the following findings of fact:

A. The subject Petition for Annexation was signed by persons comprising more than fifty percent (50%) of the landowners in the area proposed to be annexed, who own more than fifty percent (50%) of said area, excluding public streets and alleys.

B. Pursuant to Resolution No. R-65-2013, the City Council found that said petition substantially complies with and meets the requirements of Section 30(1)(b) of Article II of the Colorado Constitution §31-12-107(1), C.R.S.

C. Pursuant to Resolution No. R-65-2013, a public hearing was held on October 15, 2013, commencing at the hour of 6:30 p.m., to determine whether the proposed annexation complies with the applicable requirements of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S.; whether an election is required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S.; and whether additional terms and conditions are to be imposed.

D. Notice of said public hearing was published in The Loveland Reporter Herald on September 7, 14, 21, and 28, 2013, in the manner prescribed by §31-12-108(2), C.R.S. The Loveland Reporter Herald is a newspaper of general circulation in the area proposed to be annexed. Copies of the published notices, together with a copy of said resolution and a copy of said petition, were sent by registered mail by the City Clerk to the Board of County Commissioners of Larimer County and to the Larimer County Attorney and to all special districts

and school districts having territory within the area proposed to be annexed at least 25 days prior to the date fixed for said hearing.

E. The land to be annexed lies entirely within the City of Loveland Growth Management Area, as depicted in the 2005 Comprehensive Plan, as amended. Therefore, pursuant to Section 3.3.1 of the Intergovernmental Agreement with Larimer County, the annexation impact report requirement of §31-12-108.5, C.R.S. has been waived.

F. The perimeter of the area proposed to be annexed is 1,742.91 linear feet, of which 1,742.91 linear feet are contiguous to the City of Loveland. Not less than one-sixth of the perimeter of said area is contiguous with the City of Loveland.

G. A community of interest exists between the area proposed to be annexed and the City of Loveland.

H. The area proposed to be annexed is urban or will be urbanized in the near future, and said area is integrated with or is capable of being integrated with the City of Loveland.

I. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, is divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

J. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising 20 acres or more and which, together with the buildings and improvements situated thereon, has a valuation for assessment in excess of \$200,000 for ad valorem tax purposes for the year next

preceding the annexation, is included within the area proposed to be annexed without the written consent of the landowner or landowners.

K. No annexation proceedings have been commenced for the annexation to another municipality of part or all of the area proposed to be annexed.

L. The annexation of the area proposed to be annexed will not result in the detachment of the area from any school district and the attachment of the same to another school district.

M. The annexation of the area proposed to be annexed would not have the effect of extending the boundary of the City of Loveland more than three miles in any direction from any point of such boundary in any one year.

N. In establishing the boundaries of the area proposed to be annexed, the entire width of any platted street or alley to be annexed is included within said area.

O. The annexation of the area proposed to be annexed will not deny reasonable access to any landowner, owner of an easement or owner of a franchise adjoining a platted street or alley which is included in said area but which is not bounded on both sides by the City of Loveland.

2. The City Council reaches the following conclusions based on the above findings of fact:

A. The proposed annexation of the area described on **Exhibit A** complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S.

B. No election is required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S.

C. No additional terms and conditions are to be imposed.

3. This Resolution shall become effective on the date and at the time of its adoption.

APPROVED the 15<sup>th</sup> day of October, 2013.


ATTEST:

CITY OF LOVELAND, COLORADO:

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

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

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

**EXHIBIT 'A'****PROPERTY DESCRIPTION – KING OF GLORY ADDITION**

That portion of the Southeast Quarter of Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 4 as bearing North 01°40'40" East (assumed) and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 4; thence along the South line of the Southeast Quarter of said Section 4 South 89°59'16" West 30.01 feet, more or less, to a point on the West line of FAIRWAY WEST FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado, said point also being a point on the East line of FIRE STATION NO. 2 ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said South line of the Southeast Quarter of said Section 4 and along said West line of FAIRWAY WEST FIRST ADDITION and along said East line of FIRE STATION NO. 2 ADDITION North 01°40'40" East 38.01 feet to a point on the South line of said FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING; thence departing said East line of FIRE STATION NO. 2 ADDITION and continuing along said West line of FAIRWAY WEST FIRST ADDITION North 01°40'40" East 379.41 feet to the Southeast corner of VANGUARD-FAMLECO EIGHTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said West line of FAIRWAY WEST FIRST ADDITION and along the Southerly line of said VANGUARD-FAMLECO EIGHTH SUBDIVISION and the Southerly line of Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION North 90°00'00" West 491.99 feet; thence along the Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION South 01°40'40" West 379.52 feet, more or less, to a point on the North line of said FIRE STATION NO. 2 ADDITION; thence departing said Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION and along said North line of said FIRE STATION NO. 2 ADDITION North 89°59'16" East 491.99 feet to a point on the West line of said FAIRWAY WEST FIRST ADDITION; said point also being a point on the East line of FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres (186,612.3 square feet), more or less, and is subject to all existing easements and/or rights of way of record.

FIRST READING: October 15, 2013

SECOND READING: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING THE ANNEXATION OF  
CERTAIN TERRITORY TO THE CITY OF LOVELAND,  
COLORADO, TO BE KNOWN AND DESIGNATED AS "KING  
OF GLORY ADDITION" TO THE CITY OF LOVELAND**

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

**Section 1.** That a Petition for Annexation, together with four (4) copies of the map of said territory as required by law, was filed with the City on June 10, 2013, by more than fifty percent (50%) of the owners who own more than fifty percent (50%) of the area of the territory hereinafter described, exclusive of public streets and alleys. The Council, by resolution at its regular meeting on October 15, 2013, found and determined that the proposed annexation complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S. and further determined that an election was not required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S. and further found that no additional terms and conditions were to be imposed upon said annexation except those set out on said Petition.

**Section 2.** That the annexation to the City of Loveland of the following described property to be designated as "**KING OF GLORY ADDITION**" to the City of Loveland, Larimer County, Colorado is hereby approved:

**That portion of the Southeast Quarter of Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:**

**Considering the East line of the Southeast Quarter of said Section 4 as bearing North 01°40'40" East (assumed) and with all bearings contained herein relative thereto:**

**Beginning at the Southeast corner of said Section 4; thence along the South line of the Southeast Quarter of said Section 4 South 89°59'16" West 30.01 feet, more or less, to a point on the West line of FAIRWAY WEST FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado, said point also being a point on the East line of FIRE STATION NO. 2 ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said South line of the Southeast Quarter of said Section 4 and along said West line of FAIRWAY WEST FIRST ADDITION and along said East line of FIRE STATION NO. 2 ADDITION North 01°40'40" East 38.01 feet to a point on the South line of said FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING;**



thence departing said East line of FIRE STATION NO. 2 ADDITION and continuing along said West line of FAIRWAY WEST FIRST ADDITION North 01°40'40" East 379.41 feet to the Southeast corner of VANGUARD-FAMLECO EIGHTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said West line of FAIRWAY WEST FIRST ADDITION and along the Southerly line of said VANGUARD-FAMLECO EIGHTH SUBDIVISION and the Southerly line of Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION North 90°00'00" West 491.99 feet; thence along the Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION South 01°40'40" West 379.52 feet, more or less, to a point on the North line of said FIRE STATION NO. 2 ADDITION; thence departing said Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION and along said North line of said FIRE STATION NO. 2 ADDITION North 89°59'16" East 491.99 feet to a point on the West line of said FAIRWAY WEST FIRST ADDITION; said point also being a point on the East line of FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres (186,612.3 square feet), more or less, and is subject to all existing easements and/or rights of way of record.

**Section 3.** That the annexation of said territory is subject to any conditions set forth in Paragraph (14) of the Petition for Annexation of said territory filed with the City of Loveland.

**Section 4.** That the Annexation Agreement, attached hereto as **Exhibit A** and incorporated herein by reference (the "Annexation Agreement") is hereby approved. The City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the Annexation Agreement provided that such changes do not impair the intended purpose of the Annexation Agreement as approved by this Ordinance. The City Manager and the City Clerk are authorized and directed to execute the Annexation Agreement on behalf of the City of Loveland.

**Section 5.** That the City Council hereby consents to the inclusion of the annexed territory in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to Section 37-45-136 (3.6), C.R.S.

**Section 6.** Should any court of competent jurisdiction determine that any portion of the land annexed in this ordinance was unlawfully annexed, then it is the intent of the City Council that the remaining land lawfully annexed to the City of Loveland should be so annexed and the City Council affirmatively states that it would have annexed the remaining land even though the court declares the annexation of other portions of the land to have been unlawfully annexed.

**Section 7.** 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).

**Section 8.** 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.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

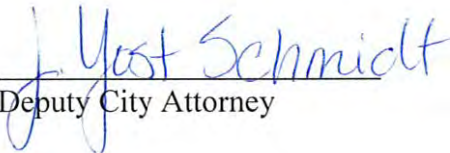
ATTEST:

CITY OF LOVELAND, COLORADO:

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

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

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

## **EXHIBIT A**

### **ANNEXATION AGREEMENT PERTAINING TO THE KING OF GLORY ADDITION TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between King of Glory Lutheran Church, (the "Developer"); and the CITY OF LOVELAND, COLORADO, a home rule municipality (the "City").

### **RECITALS**

WHEREAS, the Developer owns +/- 4.28 acres, more or less, of real property located in Larimer County, Colorado, more particularly described in Exhibit A attached hereto, but not including any existing public streets and highways which may be included in said description, which description, by this reference, is incorporated herein and designated as "the Property";

WHEREAS, the Developer is requesting that the City annex and zone said Property to allow for the coordinated development of the Property to the benefit of the parties, including the City; and

WHEREAS, the City is unable to annex the Property under the terms of this Agreement without the consent of the Developer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

### **AGREEMENT**

1. Consent to annexation. Developer has petitioned for the annexation of the Property described in the attached Exhibit A. The Developer hereby consents to the annexation of the Property subject to the terms of the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the City Council of the annexation, the parties agree that the binding effect of this Agreement and the effectiveness of the annexation and zoning of the Property in accordance with the Developer's application is expressly conditioned upon such approval by the City Council and the execution and delivery of this Agreement by all parties thereto.

## 2. Terms of annexation.

### A. CURRENT PLANNING

- i. The existing worship building has a height of sixty-five (65) feet. Upon annexation, this building will be considered legal non-conforming. Any future remodeling of the existing worship building shall not be allowed to increase height, unless a variance is permitted and approved pursuant to the City Municipal Code.
- ii. The existing building antennas located on the worship building shall be considered legal non-conforming. Additional building antennas including but not limited to panel antennas, wiring, ground cabinets, or equipment shelters shall not be permitted unless Special Review approval is issued for such uses in the R1 - Developing Low-Density Residential District. (Currently, the R1 zoning district permits wireless service facilities by special review only. If any future changes to the R1 zoning district are approved to prohibit wireless service facilities, the existing facilities could remain but no new facilities would be allowed.) No towers associated with a wireless service facility shall be permitted. Additional wireless service shall not be considered an expansion of use or a building addition with regards to paragraph A.iii below.
- iii. This property does not conform with the City of Loveland landscape standards including landscape bufferyards along both Wilson Avenue and 29th Street, street canopy trees spaced 30 to 40 feet on center along both Wilson Avenue and 29th Street, curb/gutter/sidewalk for the reconfigured right-of-way on 29th Street, internal parking lot landscaping/screening, and irrigation systems throughout all landscaped areas.

For purposes of this Section, the erection of columbarium/memorial walls in the general vicinity of the northwest corner of the site shall be permitted without providing these improvements. However, these improvements will be required in conjunction with any redevelopment/development of the property, change in use, expansion of use, building additions or on the fifth anniversary of recording this agreement, whichever comes first. Any development application (including but not limited to a Site Development Plan, Special Review, or Building Permit) shall provide a phasing plan and cost estimate associated with the required improvements to the City for approval. The phasing plan shall incrementally detail what specific improvements would be made over time.

- iv. The Developer will be responsible for the construction necessary to bring the existing parking lot adjacent to W. 29th Street into compliance with the City of Loveland landscape standards to include canopy street trees, screening, and a detached sidewalk in conjunction with any redevelopment/development of the property, change in use, expansion of use, or building additions that require the need for developing the full right-of-way. Such required construction in the

parking lot adjacent to W. 29th Street shall not be required in connection with the erection of columbarium/memorial walls described in paragraph A.iii above.

## **B. TRANSPORTATION**

- i. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS) and the 2030 Transportation Plan and any updates to either in effect at the time of a site specific development, Minor Subdivision and/or a building permit application. Any and all variances from these standards and plans require specific written approval by the City Engineer.
- ii. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the timing of the dedications shall be as follows:
  - a. Right-of-way for 29th Street shall be dedicated prior to the recording of the annexation.
  - b. Right-of-way for Wilson Avenue shall be dedicated prior to the recording of the annexation.
- iii. The Developer agrees to acquire and dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a site specific development application, Minor Subdivision and/or a building permit application within this addition, the Developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire and dedicate sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.
- iv. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layouts, street alignments, access locations, turning movements, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a site specific development application, Minor Subdivision and/or a building permit application.
- v. The existing curb cut access to Wilson Avenue shall be removed and replaced with curb, gutter, and sidewalk per the satisfaction of the City in a time period not to exceed 12 months after the recording of the annexation. The owner shall apply for and receive a Right-of-Way Work Permit from the City prior to any construction activity within the City's public right-of-way.

## **GENERAL PROVISIONS**

3. Waiver of Damages. In the future, the Developer may be granted vested property rights associated with the approval of a site specific development plan within the Property. In the event that such vested property rights are granted, and the City applies an initiated or referred measure to the property which would (a) change any

term of this Agreement, (b) impose a moratorium on development within the Property, or otherwise materially delay the development of the Property, or (c) limit the number of building or utility permits to which the Developer would otherwise be entitled, the Developer agrees to waive any right to damages against the City to which Developer may otherwise be entitled under the Vested Rights Statute.

4. Incorporation. The terms of this Agreement shall be deemed to be incorporated into the Developer's Petition for annexation of the Property.
5. Integration and Amendment. This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard to the Property. If conflicts between the Annexation Conditions listed in the Staff Report for City Council on \_\_\_\_\_, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail. This Agreement may only be amended by written agreement signed by the Developer and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.
6. Remedies. In the event that a party breaches its obligations under this Agreement, the injured party shall be entitled only to equitable relief, including specific performance, and such other equitable remedies as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to recover costs and reasonable attorneys' fees.
7. Effective Date. This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City does not annex the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.
8. Binding Effect and Recordation. The promises made in this Agreement by the Developer shall be deemed to have been made by any corporation or other business affiliated with Developer that acquires ownership or possession of all or any portion of the Property. The parties agree to execute a memorandum of this Agreement that the City shall record with the Clerk and Recorder for Larimer County, Colorado. It is the intent of the parties that their respective rights and obligations set forth in this Agreement shall constitute equitable servitudes that run with the Property and shall benefit and burden any successors to the parties. The Final Annexation Map for the Property shall be recorded by the Developer within sixty (60) days of final adoption of the ordinance annexing the Property, such Map shall contain a note that the Property is subject to this Agreement. The Developer agrees to all promises made by the Developer, which shall constitute equitable servitudes that run with the land.

9. Notices. Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, or by mailing same by certified, return receipt requested mail, to the party for whom it is intended. Notices to any of the parties shall be addressed as follows:

To City: City Clerk  
City of Loveland  
500 E. Third Street  
Loveland, CO 80537

To Developer: King of Glory Lutheran Church  
Attn: Administrative Council President  
2919 N. Wilson Avenue  
Loveland, CO 80538

A party may at any time designate a different person or address for the purposes of receiving notice by so informing the other party in writing. Notice by certified, return receipt requested mail shall be deemed effective as of the date it is deposited in the United States mail.

10. Waiver. No waiver by the City or Developer of any term of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
11. Applicable Law/Severability. This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.
12. Paragraph or Section Headings. Paragraph or Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.



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

# THE CITY OF LOVELAND, COLORADO

By: \_\_\_\_\_  
William Cahill, City Manager

**ATTEST:**

City Clerk

**APPROVED AS TO SUBSTANCE:**

Greg George, Development Services Director

**APPROVED AS TO FORM:**

Assistant City Attorney

**DEVELOPER:**King of Glory Lutheran Church

By: \_\_\_\_\_  
Darell Zimbelman

STATE OF \_\_\_\_\_ )  
 )ss  
County of \_\_\_\_\_ )

The foregoing Agreement was executed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by

(Developer)

WITNESS my hand and official seal.

My commission expires \_\_\_\_\_.

SEAL

---

Notary Public

**EXHIBIT A**  
(legal description)

PROPERTY DESCRIPTION – KING OF GLORY ADDITION

That portion of the Southeast Quarter of Section 4 and the Northeast Quarter of Section 9, all in Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 4 as assumed to bear North 01°40'40" East and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 4; thence along the South line of said Southeast Quarter South 89°59'16" West 30.01 feet to a point on the West line of Fairway West First Addition, to the City of Loveland, Colorado, said point being the TRUE POINT OF BEGINNING; thence along said West line of Fairway West First Addition North 01°40'40" East 417.43 feet to the Southeast corner of Vanguard-Famleco Eighth Subdivision, to the City of Loveland, Colorado; thence along the Southerly line of said Vanguard-Famleco Eighth Subdivision and the Southerly line of Tract A, Vanguard-Famleco Eighth Subdivision North 90°00'00" West 491.99 feet; thence along the Easterly line of said Tract A and the Southerly prolongation of said Easterly line South 01°40'40" West 447.54 feet to a point on the South line of that certain parcel of land recorded at Reception Number 2000062756, records of Larimer County; thence along the South line of said Reception Number 2000062756 North 89°59'16" East 323.26 feet to a point on the West line of that certain parcel of land recorded at Reception Number 97067379, records of Larimer County; thence along the Westerly and Southerly lines of said Reception Number 97067379 South 00°43'53" East 20.00 feet and again North 89°59'16" East 170.00 feet to a point on the Westerly line of Windemere Second Addition, to the City of Loveland, Colorado; thence along the Westerly line of said Windemere Second Addition and the East line of said Reception Number 97067379 North 00°43'53" West 50.00 feet to a point on the South line of the Southeast Quarter of said Section 4 and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres, more or less, and is subject to all existing easements and/or rights of way of record.

**FIRST READING:** October 15, 2013

**SECOND READING:** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "KING OF GLORY ADDITION" TO THE CITY OF LOVELAND**

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

**Section 1.** That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the following described property recently annexed to the City of Loveland and within the area known as "KING OF GLORY ADDITION" to the City of Loveland, Colorado, shall be included within the boundaries of the district designated as follows:

**R-1 – DEVELOPING LOW DENSITY RESIDENTIAL:**

**Considering the East line of the Southeast Quarter of said Section 4 as bearing North 01°40'40" East (assumed) and with all bearings contained herein relative thereto:**

**Beginning at the Southeast corner of said Section 4; thence along the South line of the Southeast Quarter of said Section 4 South 89°59'16" West 30.01 feet, more or less, to a point on the West line of FAIRWAY WEST FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado, said point also being a point on the East line of FIRE STATION NO. 2 ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said South line of the Southeast Quarter of said Section 4 and along said West line of FAIRWAY WEST FIRST ADDITION and along said East line of FIRE STATION NO. 2 ADDITION North 01°40'40" East 38.01 feet to a point on the South line of said FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING; thence departing said East line of FIRE STATION NO. 2 ADDITION and continuing along said West line of FAIRWAY WEST FIRST ADDITION North 01°40'40" East 379.41 feet to the Southeast corner of VANGUARD-FAMLECO EIGHTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said West line of FAIRWAY WEST FIRST ADDITION and along the Southerly line of said VANGUARD-FAMLECO EIGHTH SUBDIVISION and the Southerly line of Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION North 90°00'00" West**

**491.99 feet; thence along the Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION South 01°40'40" West 379.52 feet, more or less, to a point on the North line of said FIRE STATION NO. 2 ADDITION; thence departing said Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION and along said North line of said FIRE STATION NO. 2 ADDITION North 89°59'16" East 491.99 feet to a point on the West line of said FAIRWAY WEST FIRST ADDITION; said point also being a point on the East line of FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING.**

The above described parcel contains 4.28 acres (186,612.3 square feet), more or less, and is subject to all existing easements and/or rights of way of record.

**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 ten days after its final publication, as provided in City Charter Section 4-8(b).

**Section 3.** 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.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

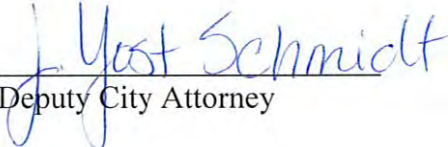
ATTEST:

CITY OF LOVELAND, COLORADO:

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

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

  
Deputy City Attorney

**Development Services  
Current Planning**

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(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620  
[www.cityofloveland.org](http://www.cityofloveland.org)

**M E M O R A N D U M**

**TO:** City Council

**FROM:** Troy Bliss, City Planner II, Current Planning Division

**DATE:** October 15, 2013

**SUBJECT:** King of Glory Addition, Annexation and Zoning

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**I. EXHIBITS**

- A. Planning Commission packet
- B. Planning Commission minutes
- C. Signed Annexation Agreement
- D. Slide presentation

**II. KEY ISSUES**

City staff believes that all key issues associated with the annexation and zoning request have been addressed. At the neighborhood meeting, there were no questions or concerns voiced about the annexation. In fact, neighbors had already thought the property was within City limits. Planning Commission also recommended unanimous approval of the annexation.

**III. BACKGROUND**

The subject property is generally located at the northwest corner of N. Wilson Avenue and W. 29<sup>th</sup> Street. It contains approximately 4.28 acres located within the City's Growth Management Area (GMA) having a land use designation of Low Density Residential (LDR) per the Comprehensive Master Plan. The property was first developed in 1978 when the original King of Glory Lutheran Church was constructed. After the two existing structures were built in 1984 and 2005, the original building was razed in 2006. The oldest building constructed in 1984, includes primarily the worship assembly and some offices. The newest building constructed in 2005 includes classrooms, a library, a fellowship room and a kitchen. The site is generally comprised of a large paved surface parking lot accessed from W. 29th Street, an outdoor

worship space, a playground, a fenced vegetable garden, and associated landscaped areas throughout.

In 1984, when the church was under construction, the City signed an agreement with the King of Glory Lutheran Church allowing out of city services (i.e. water and sewer) without requiring annexation. At the time, the Church was not capable of meeting the financial obligations associated with annexation but needed the ability to expand its facilities. The agreement stipulated that the Church would pursue application for annexation prior to December 31, 1987. This provision was never enforced.

#### **IV. ANNEXATION AND ZONING**

The King of Glory Addition has followed the proper procedures for seeking annexation into the City of Loveland. All associated State of Colorado requirements for annexation have been met in connection with this property. Adopted City findings and criteria for annexation have also been analyzed and found to be in compliance. With the annexation, a zoning designation of R1 – Developing Low Density Residential is being proposed. This is to conform with the Comprehensive Master Plan relative to the LDR land use designation and align with the surrounding land uses which predominately include single-family residential. In terms of considering annexation of a developed property, it is important to identify that there are existing non-conformities relative to City standards under an R1 zoning. This includes the height of the worship assembly building (approximately 65 feet) and an existing wireless service facility. Future development/redevelopment of the existing building would be prohibited from adding additional building height without approval of a height exception application. Additional wireless service facilities would be prohibited without approval of a special review application. Existing uses and conditions can be considered through the powers of annexation. However, it is important to identify them up front and build allowances into the annexation. Conditions are being recommended that would address these non-conformities as well as site improvements that would be required with future development/redevelopment. These conditions are reflected in an annexation agreement that would run with the property.

#### **V. PLANNING COMMISSION REVIEW**

Planning Commission held a public hearing on the King of Glory Addition, Annexation and Zoning on July 22, 2013. The associated minutes from this hearing are attached (see **Exhibit B**). Planning Commission recommended unanimous approval of the request for annexation and zoning citing that the associated findings have been met.

#### **VI. RECOMMENDATION**

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinances on first reading as recommended by the Planning Commission subject to the following conditions that have been included in the attached (see **Exhibit C**) annexation agreement and signed by the King of Glory Lutheran Church:

##### **A. CURRENT PLANNING**



i. The existing worship building has a height of sixty-five (65) feet. Upon annexation, this building will be considered legal non-conforming. Any future remodeling of the existing worship building shall not be allowed to increase height, unless a variance is permitted and approved pursuant to the City Municipal Code.

ii. The existing building antennas located on the worship building shall be considered legal non-conforming. Additional building antennas including but not limited to panel antennas, wiring, ground cabinets, or equipment shelters shall not be permitted unless Special Review approval is issued for such uses in the R1 - Developing Low-Density Residential District. (Currently, the R1 zoning district permits wireless service facilities by special review only. If any future changes to the R1 zoning district are approved to prohibit wireless service facilities, the existing facilities could remain but no new facilities would be allowed.) No towers associated with a wireless service facility shall be permitted. Additional wireless service shall not be considered an expansion of use or a building addition with regards to paragraph A.iii below.

iii. This property does not conform with the City of Loveland landscape standards including landscape bufferyards along both Wilson Avenue and 29th Street, street canopy trees spaced 30 to 40 feet on center along both Wilson Avenue and 29th Street, curb/gutter/sidewalk for the reconfigured right-of-way on 29th Street, internal parking lot landscaping/screening, and irrigation systems throughout all landscaped areas.

For purposes of this Section, the erection of columbarium/memorial walls in the general vicinity of the northwest corner of the site shall be permitted without providing these improvements. However, these improvements will be required in conjunction with any redevelopment/development of the property, change in use, expansion of use, building additions or on the fifth anniversary of recording this agreement, whichever comes first. Any development application (including but not limited to a Site Development Plan, Special Review, or Building Permit) shall provide a phasing plan and cost estimate associated with the required improvements to the City for approval. The phasing plan shall incrementally detail what specific improvements would be made over time.

iv. The Developer will be responsible for the construction necessary to bring the existing parking lot adjacent to W. 29th Street into compliance with the City of Loveland landscape standards to include canopy street trees, screening, and a detached sidewalk in conjunction with any redevelopment/development of the property, change in use, expansion of use, or building additions that require the need for developing the full right-of-way. Such required construction in the parking lot adjacent to W. 29th Street shall not be required in connection with the erection of columbarium/memorial walls described in paragraph A.iii above.

## **B. TRANSPORTATION**

i. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS) and the 2030 Transportation Plan and any updates to either in effect at the time of a site specific development, Minor Subdivision and/or a building permit application. Any and all variances from these standards and plans require specific written approval by the City Engineer.

ii. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the timing of the dedications shall be as follows:

a. Right-of-way for 29th Street shall be dedicated prior to the recording of the annexation.

- b. Right-of-way for Wilson Avenue shall be dedicated prior to the recording of the annexation.
- iii. The Developer agrees to acquire and dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a site specific development application, Minor Subdivision and/or a building permit application within this addition, the Developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire and dedicate sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.
- iv. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layouts, street alignments, access locations, turning movements, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a site specific development application, Minor Subdivision and/or a building permit application.
- v. The existing curb cut access to Wilson Avenue shall be removed and replaced with curb, gutter, and sidewalk per the satisfaction of the City in a time period not to exceed 12 months after the recording of the annexation. The owner shall apply for and receive a Right-of-Way Work Permit from the City prior to any construction activity within the City's public right-of-way.



## Development Services Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537  
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www.cityofloveland.org

### Planning Commission Staff Report

July 22, 2013

**Agenda #:** Regular Agenda - 2  
**Title:** King of Glory Addition (PZ #12-00110)  
**Applicant:** King of Glory Lutheran Church  
**Request:** **Annexation and Zoning**  
**Location:** Northwest corner of N. Wilson Avenue and W. 29<sup>th</sup> Street (2919 N. Wilson Avenue)  
**Existing Zoning:** County FA -Farming  
**Proposed Zoning:** R1 - Developing Low Density Residential  
**Staff Planner:** Troy Bliss

### Staff Recommendation

**APPROVAL** of the annexation and zoning.

#### *Recommended Motions:*

1. *Move to make the findings listed in Section VIII of the Planning Commission staff report dated July 22, 2013 and, based on those findings, recommend that City Council approve the King of Glory Addition, subject to the conditions listed in Section IX, as amended on the record, and zone the addition R1 Developing Low Density Residential.*

### *Summary of Analysis*

This is a public hearing concerning the annexation and zoning of a 4.28 acre parcel owned by the King of Glory Lutheran Church located at the northwest corner of N. Wilson Avenue and W. 29<sup>th</sup> Street. The property would be annexed and zoned to facilitate future development/redevelopment of the existing church facility. No development/redevelopment is however being proposed in conjunction with the annexation. However, there is the anticipation of erecting columbarium/memoria walls upon annexation. The hearing is to consider the following items:

- A legislative action for annexation of 4.28 acres; and
- A quasi-judicial action for zoning the property to R1- Developing Low Density Residential District.

Staff believes that all key issues have been resolved based on City Codes and standards. The King of Glory Addition is a property that is becoming more and more surrounded by the City's municipal boundaries in northwest Loveland as a result of recent annexations that have included the Fire Station 2 and Mehaffey Park. The property is in the City's Growth Management Area (GMA) and is currently served by City water and sewer.

## **I. SUMMARY**

The King of Glory Addition includes a property containing approximately 4.28 acres generally located at the northwest corner of N. Wilson Avenue and W. 29th Street. The property is occupied by the King of Glory Lutheran Church, which includes two attached structures of approximately 18,000 square feet total. The property is located within the City of Loveland Growth Management Area (GMA) per the Comprehensive Plan. As a result of being within the GMA, the property has a land use designation of LDR – Low Density Residential. This land use designation anticipates development to contain low density offering a variety of housing types but includes primarily detached single family residential. Churches are other uses considered as appropriate within the LDR land use designations. In terms of seeking annexation and applying a City zoning to the property, the R1 – Developing Low Density Residential, as proposed, is in alignment with the LDR land use designation.

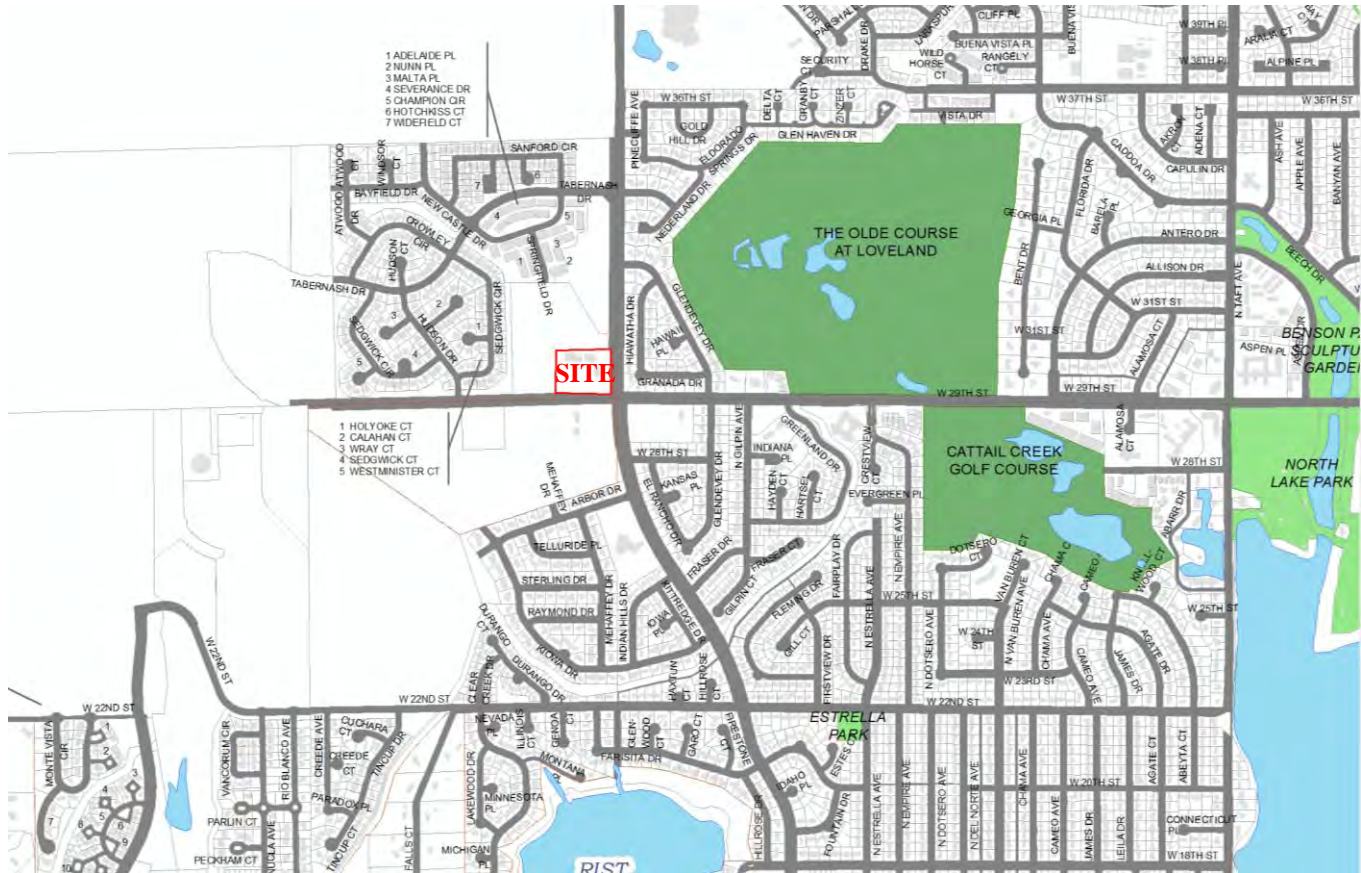
Properties directly north, east, and west of this site fall within the City's municipal boundaries. Consequently, this site is eligible for annexation per requirements of the Colorado Revised Statutes as well as being desirable, considering that it is served by City services and utilities.

In terms of considering annexation of a developed property, it is important to identify that there are existing non-conformities relative to City standards under an R1 zoning. This includes the height of the worship assembly building (approximately 65 feet) and an existing wireless service facility. Future development/redevelopment of the existing building would be prohibited from adding additional building height without approval of a height exception application. Additional wireless service facilities would be prohibited without approval of a special review application. Existing uses and conditions can be considered through the powers of annexation. However, it important to identify them up front and build allowances into the annexation. Staff is recommending conditions that would address these non-conformities as well as site improvements that would be required with future development/redevelopment.

## **II. ATTACHMENTS**

1. Chapter 18.12 R1 - Developing Low Density Residential
2. Conceptual site plan
3. Annexation Map
4. Rezoning Map

### III. VICINITY MAP



### IV. SITE DATA

#### A. ANNEXATION

ACREAGE OF SITE GROSS .....	4.28 AC
MASTER PLAN DESIGNATION .....	LOW DENSITY RESIDENTIAL
EXISTING ZONING .....	LARIMER COUNTY FA FARMING
PROPOSED ZONING .....	R1 DEVELOPING LOW DENSITY RESIDENTIAL
EXISTING USE .....	CHURCH
EXIST ADJ ZONING & USE - NORTH .....	PUD HUNTERS RUN / SF RESIDENTIAL
EXIST ADJ ZONING & USE - SOUTH .....	COUNTY FA / VACANT FARMED LAND
EXIST ADJ ZONING & USE - WEST .....	PUD HUNTERS RUN / SF RESIDENTIAL
EXIST ADJ ZONING & USE - EAST .....	R1 DEVELOPING LOW DENSITY RESIDENTIAL / SF RESIDENTIAL
UTILITY SERVICE – WATER, SEWER .....	CITY OF LOVELAND
UTILITY SERVICE – ELECTRIC .....	XCEL

## V. KEY ISSUES

City staff believes that all key issues associated with the annexation and zoning request have been addressed. At the neighborhood meeting, there were no questions or concerns voiced about the annexation. In fact, neighbors had already thought the property was within City limits.

## VI. BACKGROUND

The subject property was first developed in 1978 when the original King of Glory Lutheran Church was constructed. After the two existing structures were built in 1984 and 2005, the original building was razed in 2006. The oldest building constructed in 1984, includes primarily the worship assembly and some offices. The newest building constructed in 2005 includes classrooms, a library, a fellowship room and a kitchen. The site is generally comprised of a large paved surface parking lot accessed from W. 29<sup>th</sup> Street, an outdoor worship space, a playground, a fenced vegetable garden, and associated landscaped areas throughout.

In 1984, when the church was under construction, the City signed an agreement with the King of Glory Lutheran Church allowing out of city services (i.e. water and sewer) without requiring annexation. At the time, the Church was not capable of meeting the financial obligations associated with annexation but needed the ability to expand its facilities. The agreement stipulated that the Church would pursue application for annexation prior to December 31, 1987. This provision was never enforced.

## VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

- A. Notification:** An affidavit was received from Merlin Green with the Darell Zimbelman certifying that written notice was mailed to all property owners within 1,200 feet of the property on June 28, 2013 and notices were posted in a prominent location on the perimeter of the site at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on July 6, 2013.
- B. Neighborhood Response:** A neighborhood meeting was held at 7:00 p.m. on March 18, 2013 at the King of Glory Lutheran Church. The meeting was attended by 11 neighbors and interested parties along with City staff. At the meeting, there were no objections voiced to the annexation and zoning requests.

## VIII. FINDINGS AND ANALYSIS

The chapters and sections cited below are from the Loveland Municipal Code.

### Annexation and Zoning

#### **A. Annexation Policies and Eligibility**

##### **1. Loveland Comprehensive Master Plan, Section 4.2**

- a. Annexation ANX2.A:** *Whether the annexation encourages a compact pattern of urban development.*
- b. Annexation ANX2.B:** *Whether the annexation would result in the creation of an enclave*

- c. **Annexation ANX5.B:** *Whether the applicant has demonstrated that reasonable efforts have been made to assemble adjoining land parcels to allow for the preparation of a master plan for a larger area, rather than submit separate individual proposals.*
  - d. **Annexation ANX1.C and 6:** *Whether the annexation encourages infill development and ensures that land is immediately contiguous to other land in the City that is already receiving City services, discouraging leapfrog and scattered site development.*
  - e. **Growth Management GM7:** *Whether the land proposed for annexation is within the City of Loveland Growth Management Area.*
2. **Loveland Municipal Code, Section 17.04.020:** *The annexation complies with the laws of the State of Colorado regarding annexation and the property proposed for annexation is otherwise eligible to be annexed because there is at least one-sixth contiguity between the City and the area seeking annexation and there is no evidence that two or more of the following conditions have been met:*
- a. *Less than 50% of the adult residents of the area proposed to be annexed use some of the recreation, civic, social, religious, industrial or commercial facilities of the municipality and less than 25% of its adult residents are employed in the annexing municipality.*
  - b. *One-half or more of the land proposed to be annexed is agricultural, and the landowners of such agricultural land have expressed an intention under oath to devote the land to agricultural use for at least five years.*
  - c. *It is not physically practical to extend urban service which the municipality provides normally.*

Planning: Staff believes that the findings can be met, based on the following facts:

- A.1.a & d. With the existing developed church there is already an establishment of a compact pattern of urban development. Future development/redevelopment will not leapfrog or scatter development. The land is immediately contiguous to other land in the City that is already receiving City services.
- A.1.b. No new enclaves will be created by this annexation and there is no evidence that two or more of the conditions listed in Section 17.04.020 of the Municipal Code, cited above, have been met. The property being annexed is the only remaining property within this section that has not been annexed.
- A.2. The annexation complies with the Colorado State Statutes regarding annexation of lands and is within the City's Growth Management Area.

## **B. City Utilities/Services and Transportation**

- 1. **Loveland Comprehensive Master Plan, Section 4.2**
  - a. **Annexation ANX1.A and B:** *Whether the annexation of land minimizes the length of vehicle trips generated by development of the land and whether the annexation minimizes the short and long term costs of providing community facilities and services for the benefit of the annexed area.*
- 2. **Loveland Municipal Code**
  - a. **Section 17.04.040:**
    - (i) *Whether certain public facilities and/or community services are necessary and may be required as a part of the development of any territory annexed to the City in order that*



*the public needs may be served by such facilities and services. Such facilities include, but are not limited to, parks and recreation areas, schools, police and fire station sites, and electric, water, wastewater and storm drainage facilities. Such services include, but are not limited to, fire and police protection, provision of water, and wastewater services.*

*(ii) Whether the annexation and development pursuant to the uses permitted in the zone district will create any additional cost or burden on the existing residents of the City to provide such facilities and services in the area proposed for annexation.*

*(iii) The annexation complies with the water rights requirements set forth in Title 19 of the Loveland Municipal Code.*

- b. Section 17.04.040,:** *Whether all existing and proposed streets in the newly annexed property are, or will be, constructed in compliance with City street standards, unless the City determines that the existing streets will provide proper access during all seasons of the year to all lots and that curbs, gutters, sidewalks, bike lanes, and other structures in compliance with City standards are not necessary to protect public health, safety, and welfare.*
- c. Section 18.04.010:** *The zoning, as proposed, would: lessen congestion in the streets; secure safety from fire, panic, and other dangers; and promote health and general welfare.*

Transportation: Staff believes that this finding can be met, based on the following facts:

- Annexing and zoning property does not warrant compliance with the City's Adequate Community Facilities (ACF) ordinance. A condition is recommended to clearly ensure that all future development or land application within this proposed property shall be in compliance with the City of Loveland Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application.
- As identified in the City Municipal Code Title 16, a Traffic Impact Study will be required with all future development or other land use applications. The annexation will also be required to dedicate, free and clear, all applicable right-of-way to the City, at no cost to the City, at the time of development.
- Pending future proposed development within this property, of which review and approval by the City is required, the Transportation Engineering staff does not object to the proposed annexation and zoning.

Fire: Staff believes that this finding can be met, based on the following facts:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 2).
- The proposed annexation and any future development will not negatively impact fire protection for the subject property or surrounding properties.

Water/Wastewater: Staff believes that this finding can be met, based on the following facts:

- The subject annexation is situated within the City's current service area for both water and wastewater.
- The Department finds that the annexation and zoning is consistent with the Department's Water and Wastewater master plan by being consistent with the 2005 Comprehensive Master Plan.
- Public facilities are available to serve the development.

Power: Staff believes that this finding can be met, based on the following facts:

- 600 amp and 200 amp three phase underground power currently exists in an underground duct bank located along the north side of W. 29th Street. 200 amp three phase underground power is currently available in an underground vault located at the northeast corner of W. 29th Street and Hudson Drive and can be extended south to the proposed annexation area.
- The proposed annexation currently lies within Excel Energy Company certified territory. Upon completion of successful annexation to the City of Loveland, the City will provide electric service to any future development of the proposed annexation.
- The existing electric facilities are sufficient for the current use. The proposed development meets the criteria for level of service as outlined in the ACF ordinance.
- The existing uses as well as any future development requirements are current with the Power Division's existing infrastructure and system master plan.

Stormwater: Staff believes that this finding can be met, based on the following facts:

- With the annexation and future development, the Developer will engineer certain Stormwater facilities that will adequately collect, detain, and release Stormwater runoff in a manner that will eliminate off-site impacts.
- Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans.

## C. Land Use

### 1. Loveland Comprehensive Master Plan, Section 4.7

- a. **Land Use Plan:** *Whether the zoning is consistent with the Loveland Comprehensive Master Plan Land Use Plan or a "major plan amendment" request is being processed concurrently with the annexation and GDP application.*

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

- The Comprehensive Master Plan designates the site as Low Density Residential (LDR). The LDR category permits churches, parks, schools and civic uses as acceptable land uses.
- The proposed zoning of R1 is consistent with the zoning categories in the Comprehensive Master Plan. The R1 zone district permits churches as a use by right.

### 2. Loveland Municipal Code

#### a. Section 18.04.010:

- (i) *Whether the zoning will provide adequate light and air; prevent overcrowding of land; avoid undue concentration of population; and facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements.*
- (ii) *The character of the district and the particular uses permitted by right in the district will preserve the value of buildings and encourage the most appropriate use of land.*

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

- 2.a.(i) The proposed R1 zoning is appropriate to accommodate the existing church while at the same time providing a land use pattern that is consistent with the surrounding area in terms of adequate light and air and the provision of necessary services.

- 2.a.(ii)** Upon annexation, future development/redevelopment of the church will be governed by all applicable City codes and standards in the R1 District. The church has been a fixture of this part of Loveland since the late 1970's, seen as an appropriate use of the land.

**D. Environmental Impacts**

**1. Loveland Comprehensive Master Plan, Section 4.2**

- a. Annexation ANX3.A:** *Whether the annexation will comply with the recommendations contained in the adopted Open Lands Plan and preserves open space or natural areas.*
- b. Annexation ANX3.B:** *Annexation will be allowed for the purpose of preserving or acquiring open space or natural areas.*
- c. Annexation ANX4.A and B:** *If the planning staff and/or the City have determined that significant negative impacts on the environment may occur from development allowed under the proposed zoning, an Environmental Impact Report, including a Wetlands Reconnaissance Report, has been prepared by a qualified specialist.*
- d. Annexation ANX4.B:** *Whether the annexation application includes a Phase I Environmental Report, prepared by a qualified specialist, ensuring that the land to be annexed does not contain hazardous or toxic substances that may pose a danger to the City or that reasonable mitigation measures can be taken in the event that such contamination exists.*
- e. Annexation ANX4.D:** *All development agreements must deal satisfactorily with any environmental impacts upon the property.*

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

- D.1.a & b.** The Open Lands Plan does not identify any area of the site as a potential natural area.
- D.1.c** The site is naturally vegetated and has historically been a church use. No environmentally sensitive areas, as defined in the Municipal Code, were noted on the site.
- D.1.d** A Phase I Environmental Site Assessment (ESA) was performed by Corn & Associates in September 2012. The ESA concluded that there are no recognized environmental conditions existing on or nearby the site.

**E. Miscellaneous**

- 1. Loveland Municipal Code, Section 17.04.040.D:** *Whether the annexation is in compliance with School District requirements for dedication of school site, or payment of fees in lieu of the dedication.*

Planning: The annexation of this property does not constitute a land dedication or payment in lieu fees to the School District. The School District has no objection to the annexation.

- 2. Loveland Municipal Code, Section 17.04.040.E:** *Whether the annexation has demonstrated that the addition of land is in compliance with all pertinent intergovernmental agreement to which the City is a party.*

Planning: The annexation is in compliance with the intergovernmental agreement between the City of Loveland and Larimer County as referenced in Section 3.3 Annexation within the GMA as follows:

- Loveland will annex all property within the GMA that is eligible for annexation;
- Loveland shall annex the entire width of public roadways;
- Larimer County shall not accept applications for development of properties within the GMA without pursuing annexation to Loveland;
- An annexation agreement shall be prepared by Loveland;
- Loveland will not annex into a GMA, Cooperative Planning Area, or other comparable planning area of another municipality;
- The property is not located north of County Road 30; and
- The property being annexed is not in operation as a gravel extraction site

**3. Loveland Municipal Code, Section 17.04.040.F:** *Whether the annexation is in the best interest of the citizens of the City of Loveland.*

Planning: The annexation and existing development of the church is in the best interest of the citizens and will continue to provide its services to the community.

**4. Loveland Municipal Code, Section 17.04.040.G:** *Whether a cost/benefit analysis should be prepared in compliance with the Comprehensive Master Plan to measure and assess the fiscal impact of the proposed annexation.*

Planning: Because the property is already being served by the City through water, sewer, and emergency services, a cost/benefit analysis would not be necessary in evaluating the annexation.

**5. Loveland Municipal Code, Section 17.04.040.H:** *Whether all existing and proposed streets in the newly annexed property are constructed in compliance with all current City standards.*

Planning: All existing streets which front and are abutting this property have already been annexed into the City. The City does however require additional right-of-way to be dedicated along W. 29<sup>th</sup> Street and N. Wilson Avenue.

**6. Loveland Municipal Code, Section 17.04.040.I:** *No building permit or development plan shall be issued for the property annexed until a subdivision plat has been approved and recorded.*

Planning: With the exception to a potential columbarium/memorial walls to be erected on the property in the future, no building permit or development plan shall be issued until a subdivision plat has been approved and recorded. Reference to the columbarium/memorial walls is contained in the recommended conditions of approval.

**7. Loveland Municipal Code, Section 17.04.040.J:** *The annexation shall comply with the water rights requirements of Title 19.*

Planning: The annexation will comply with the water rights requirements of Title 19. A pre-annexation agreement signed by King of Glory in September of 1984 also stipulates that the Church agrees that it shall pay all fees assessed by the City in conjunction with annexation raw water fees.

- F. Mineral Extraction Colorado Revised Statute:** *The proposed location and the use of the land, and the conditions under which it will be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-3021 (1) as amended.*

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

- A geologic evaluation and mineral extraction assessment was prepared by Northern Colorado Geotech for the property. The assessment concluded that based on the review of geologic maps, published reports, satellite and aerial imagery, and the examination of the site, the potential for commercial mineral resources on the site is considered to have no economic quantities of mineral, aggregate or quarry rock.

Should there be a recommendation that Council find the property is eligible and that based on the factors in LMC 17.04.020 and .040, recommends annexation?

## **IX. RECOMMENDED CONDITIONS**

The following annexation conditions are recommended by city staff and would be incorporated into an annexation agreement if recommended by Planning Commission and adopted by City Council:

### **A. CURRENT PLANNING**

- The existing worship building has a height of sixty-five (65) feet. Upon annexation, this building will be considered legal non-conforming. Any future remodeling of the existing worship building shall not be allowed to increase height, unless a variance is permitted and approved pursuant to the City Municipal Code.
- The existing building antennas located on the worship building shall be considered legal non-conforming. Additional building antennas including but not limited to panel antennas, wiring, ground cabinets, or equipment shelters shall not be permitted unless Special Review approval is issued for such uses in the R1 - Developing Low-Density Residential District. (Currently, the R1 zoning district permits wireless service facilities by special review only. If any future changes to the R1 zoning district are approved to prohibit wireless service facilities, the existing facilities could remain but no new facilities would be allowed.) No towers associated with a wireless service facility shall be permitted. Additional wireless service shall not be considered an expansion of use or a building addition with regards to paragraph A.iii below.
- This property does not conform with the City of Loveland landscape standards including landscape bufferyards along both Wilson Avenue and 29th Street, street canopy trees spaced 30 to 40 feet on center along both Wilson Avenue and 29th Street, curb/gutter/sidewalk for the reconfigured right-of-way on 29th Street, internal parking lot landscaping/screening, and irrigation systems throughout all landscaped areas.

For purposes of this Section, the erection of columbarium/memorial walls in the general vicinity of the northwest corner of the site shall be permitted without providing these improvements. However, these improvements will be required in conjunction with any redevelopment/development of the property, change in use, expansion of use, building additions or on the fifth anniversary of recording this agreement, whichever comes first. Any development

application (including but not limited to a Site Development Plan, Special Review, or Building Permit) shall provide a phasing plan and cost estimate associated with the required improvements to the City for approval. The phasing plan shall incrementally detail what specific improvements would be made over time.

- iv. The Developer will be responsible for the construction necessary to bring the existing parking lot adjacent to W. 29th Street into compliance with the City of Loveland landscape standards to include canopy street trees, screening, and a detached sidewalk in conjunction with any redevelopment/development of the property, change in use, expansion of use, or building additions that require the need for developing the full right-of-way. Such required construction in the parking lot adjacent to W. 29th Street shall not be required in connection with the erection of columbarium/memorial walls described in paragraph A.iii above.

#### B. TRANSPORTATION

- i. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS) and the 2030 Transportation Plan and any updates to either in effect at the time of a site specific development, Minor Subdivision and/or a building permit application. Any and all variances from these standards and plans require specific written approval by the City Engineer.
- ii. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the timing of the dedications shall be as follows:
  - a. Right-of-way for 29th Street shall be dedicated prior to the recording of the annexation.
  - b. Right-of-way for Wilson Avenue shall be dedicated prior to the recording of the annexation.
- iii. The Developer agrees to acquire and dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a site specific development application, Minor Subdivision and/or a building permit application within this addition, the Developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire and dedicate sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.
- iv. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layouts, street alignments, access locations, turning movements, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a site specific development application, Minor Subdivision and/or a building permit application.
- v. The existing curb cut access to Wilson Avenue shall be removed and replaced with curb, gutter, and sidewalk per the satisfaction of the City in a time period not to exceed 12 months after the recording of the annexation. The owner shall apply for and receive a Right-of-Way Work Permit from the City prior to any construction activity within the City's public right-of-way.

**Chapter 18.12****R1 DISTRICT-DEVELOPING LOW-DENSITY RESIDENTIAL DISTRICT****Sections:**

<b>18.12.010</b>	<b>Uses permitted by right.</b>
<b>18.12.020</b>	<b>Uses permitted by special review.</b>
<b>18.12.030</b>	<b>Lot area.</b>
<b>18.12.040</b>	<b>Lot width.</b>
<b>18.12.050</b>	<b>Front yard.</b>
<b>18.12.060</b>	<b>Rear yard.</b>
<b>18.12.070</b>	<b>Side yard.</b>
<b>18.12.075</b>	<b>Height limitations.</b>
<b>18.12.080</b>	<b>Off-street parking.</b>
<b>18.12.090</b>	<b>Special considerations.</b>

**18.12.010 Uses permitted by right.**

The following uses are permitted by right in a R1 district:

- A. One-family dwellings;
- B. Essential aboveground pad-mount transformers, electric and gas meters, telephone and electric junction and service locations, and underground public utility and public service installations and facilities for the furnishing of gas, electric, water, sewer, telephone and other utility services for the protection and welfare of the surrounding area; provided, business offices, repair, storage and production facilities are not included;
- C. Open land for the raising of crops, plants and flowers;
- D. Accessory buildings and uses;
- E. Public schools. (Ord. 4246 § 1 (part), 1997; Ord. 3702 § 1 (part), 1990; Ord. 1276 § 4, 1973; Ord. 1004 § 5.1, 1968)
- F. Place of worship or assembly. In addition to standard buffering requirements of the Site Development Performance Standards and Guidelines, parking areas and drive aisles shall be screened from adjacent residential uses and residentially-zoned land by a six-foot high opaque wall, fence, or landscaping which achieves a similar effect, unless such screening would serve no practical purpose, as determined by the Current Planning Manager. (Ord. 5207 § 6, 2007)

**18.12.020 Uses permitted by special review.\***

The following uses are permitted by special review in a R1 district:

- A. Preschool nurseries;
- B. Parks, recreation areas and golf courses;
- C. Cemeteries;
- D. Estate areas;
- E. Two-family dwellings;
- F. Private schools;
- G. Essential aboveground public utility and public service installations and facilities for the furnishing of gas, electric, water, sewer, telephone and other utility services for the protection and welfare of the surrounding area; provided, business offices, repair, storage and production facilities are not included;
- H. Child care centers licensed according to the statutes of the state and in conformity with the minimum rules and regulations for child care centers adopted in accordance with such



statutes; such use may be conducted in conjunction with the residential use of the property;

- I. Governmental or semipublic uses;
- J. Group care facilities;
- K. Housing for elderly;
- L. Receiving foster care homes for up to eight children licensed according to the statutes of the state;
- M. Accessory dwelling units;
- N. Personal wireless service facilities, as defined in § 18.55.020(G), in compliance with Chapter 18.55 of this title. (Ord. 5207 § 6, 2007; Ord. 4246 § 1 (part), 1997; Ord. 4239 § 1 (part), 1997; Ord. 4236 § 2, 1997; Ord. 3764 § 2 (part), 1991; Ord. 3702 § 1 (part), 1990; Ord. 3537 § 1 (part), 1988; Ord. 3282 § 1, 1986; Ord. 3210 § 2, 1985; Ord. 2021 § 7 (part), 1981; Ord. 1880 § 3, 1980; Ord. 1628 §§ 1 (part) and 2 (part), 1977; Ord. 1444 § 2 (part), 1975; Ord. 1414 § 2, 1975; Ord. 1391 § 2, 1974; Ord. 1390 § 2, 1974; Ord. 1276 §§ 5, 6, 1973; Ord. 1097 § 1, 1970; Ord. 1026 § 2, 1969; Ord. 1004 § 5.2, 1968)

\*See Ch. 18.40 of this code.

#### **18.12.030 Lot area.**

The minimum area of a lot in the R1 district shall be seven thousand square feet as provided below:

- A. When a group of ten or more single-family dwellings are proposed for development as a unit, the minimum lot area may be varied in order to achieve flexibility and creativity in design. However, in no case shall the lot area be less than five thousand square feet, the average lot size for the unit be less than seven thousand square feet, and more than twenty percent of the lots be less than seven thousand square feet. When such development procedures are followed, the city-approved subdivision plat must be of record in the Larimer County clerk and recorder's office.
- B. The minimum area of the lot for a two-family dwelling shall be at least nine thousand square feet in the R1 district.
- C. The minimum lot area for a place of worship or assembly shall be three times the total floor area of the place of worship or assembly building. (Ord. 5207 § 6, 2007; Ord. 4246 § 1 (part), 1997; Ord. 1628 § 1 (part), 1977; Ord. 1004 § 5.3, 1968)

#### **18.12.040 Lot width.**

The minimum width of a lot in a R1 district shall be sixty-five feet, except that there shall be no minimum lot width requirement for cul-de-sac lots. Cul-de-sac lots shall be designed so that driveways on adjacent lots will either be contiguous or separated by a minimum of twenty-two feet as measured along the face of curb. (Ord. 4246 § 1 (part), 1997; Ord. 3467 § 2 (part), 1987; Ord. 3096 § 2, 1984; Ord. 2021 § 3, 1981; Ord. 1004 § 5.4, 1968)

#### **18.12.050 Front yard.**

The minimum front yard in a R1 district, being the minimum distance of any building from the front lot line, shall be twenty feet. (Ord. 4246 § 1 (part), 1997; Ord. 1628 § 1 (part), 1977; Ord. 1004 § 5.5, 1968)

#### **18.12.060 Rear yard.**

The minimum rear yard in a R1 district, being the minimum distance of any building from the rear lot line, shall be as follows:

Principal building, fifteen feet;  
 Detached accessory building, five feet. (Ord. 4246 § 1 (part), 1997; Ord. 1004 § 5.6, 1968)

**18.12.070 Side yard.**

The minimum side yard in a R1 district, being the minimum distance of any building from each side lot line, shall be one foot for each three feet or fraction thereof of building height; except that no side yard shall be less than five feet for a one-family dwelling or two-family dwelling, nor less than twenty-five feet for any other permitted principal building. Variations to this requirement may be approved by the chief planner for groups of three or more single-family dwellings; however, the minimum spacing between two adjacent structures shall not be less than ten feet. On corner lots the side yard setback adjacent to the street shall be no less than fifteen feet. (Ord. 4246 § 1 (part), 1997; Ord. 3574 § 2, 1989; Ord. 1628 § 1 (part), 1977; Ord. 1276 § 7, 1973; Ord. 1004 § 5.7, 1968)

**18.12.075 Height limitations.**

Buildings and structures in this zone shall comply with Chapter 18.54 of this Code. (Ord. 4246 § 1 (part), 1997; Ord. 4106 § 5, 1995)

**18.12.080 Off-street parking.**

The minimum off-street parking in the R1 district shall be provided in Chapter 18.42. (Ord. 4246 § 1 (part), 1997; Ord. 1628 § 1 (part), 1977; Ord. 1395 § 1 (part), 1974; Ord. 1004 § 5.8, 1968)

**18.12.090 Special considerations.**

The following special requirements shall apply for special review uses in the R1 district:

- A. Preschool Nurseries.
  - 1. At least fifty square feet of floor area is set aside for school purposes for each child; and,
  - 2. At least two hundred square feet of outdoor fenced play area is available for each child.
- B. Noncommercial Recreational Uses, including Swimming Pools, Community Buildings, Tennis Courts and Similar Uses as a Principal Use.
  - 1. Outside lighting must not be located in such a manner or be of such intensity to be distracting to adjacent residential areas or street traffic.
  - 2. All buildings and active play areas shall be located at least twenty-five feet from all lot lines.
- C. Cemeteries. The minimum area of any cemetery shall be at least twenty acres, and gravesites shall be located at least twenty-five feet from the boundaries of the cemetery. (Ord. 4246 § 1 (part), 1997; Ord. 2021 § 7 (part), 1981; Ord. 1628 § 2 (part), 1977)







# REZONING MAP KING OF GLORY ADDITION

**KING OF GLORY ADDITION REZONING – ENTIRE REZONING BOUNDARY PROPERTY DESCRIPTION:**

# REZONING MAP KING OF GLORY ADDITION

DATE: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 04-22-13

[illegible]

DATE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RGP 04-22-13

PREPARED BY AND ON BEHALF OF:  
INTERMILL LAND SURVEYING, INC.  
1000 North 10th Street  
Loveland, Colorado 80537  
P: (970) 669-0516  
F: (970) 635-9775  
E: [intermill@questoffice.net](mailto:intermill@questoffice.net)  
Robert George Perschille  
Colorado FLS 34174

STATE OF COLORADO )  
COUNTY OF LARIMER )  
(SS )

**NG, INC.**  
669-0516 / FAX (970)-635-9775

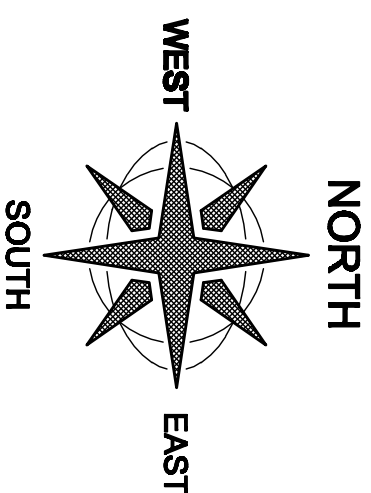
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**RY LUTHERAN CHURCH**

**BYING, INC.**  
BUS. (970)-669-0516 / FAX (970)-635-9775

---

**OF GLORY LUTHERAN CHURCH**



## LEGEND

**APPLICANT:**  
GLORY LUTHERAN CHURCH  
North Wilson Avenue  
and, Colorado 80538

Basis of Bearings for this Annexation Map are based on an assumed bearing of North 01°40'40" East corner of the Southeast Quarter of Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado. Note: Monumentation of said line as shown on Map.

Linear Units Used for this survey - U.S. Survey Feet

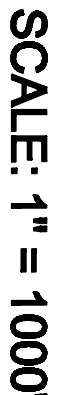
According to Colorado law you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

by Ordinance No. \_\_\_\_\_, passed on second reading on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, for filing with the Clerk and Recorder of Larimer County.

By: Mayer

Attest:

City Clerk



DRAWN BY: _____ RGP	
CHECKED BY: _____	
APPROVED BY: _____	
DATE: _____ 05/01/2012	
SCALE: _____ 1" = 50'	
PROJECT NO.: _____	
<b>P-03-5943</b>	
SHEET	OF
1	1

**INTERMILL LAND SURVEYING, INC.**

1301 NORTH CLEVELAND AVENUE

# KING OF GLORY REZONING MAP

A Portion Of The SE1/4, Sec. 4-5-69 & A Portion Of The NE1/4,  
Sec. 9-5-69, City of Loveland, Larimer County, Colorado

CLIENT: **KING OF GLORY LUTHERAN CHURCH**

REVISIONS:

### 1. Revise Rezoning Boundary



## CITY OF LOVELAND PLANNING COMMISSION MINUTES July 22, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on July 22, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Crescibene, Krenning, and Prior. Members absent: Commissioner Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

*These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.*

### **CITIZEN REPORTS**

There were no citizen reports.

### **STAFF MATTERS**

1. **Bob Paulsen, Current Planning Manager**, informed the Commission that there are items scheduled for the 08/12/13 Planning Commission meeting, including approval of the 7/22/13 meeting minutes, and a public hearing for the Giuliano PDP amendment.

### **COMMITTEE REPORTS**

1. **Chair Meyers** gave an update on the last Title 18 committee meeting and shared that the committee reviewed the Oil and Gas amendment to be presented to the Commission at tonight's meeting. Other items that were discussed include a weed control ordinance, and the development review process. **Commissioner Molloy** added that there was good discussion regarding the goals of the Title 18 committee, which included a review of the committee's mission statement, and what accomplishments have been achieved in the previous years.

### **COMMISSIONER COMMENTS**

1. **Commissioner Krenning** shared his plans to run for City Council, Ward I, in the upcoming November election. He apologized to the Commission for not notifying them of his plans earlier, and explained that the news was leaked out before he could do so. He stated that he feels that the Planning Commission is an apolitical body, and said that he planned to keep it apolitical in the future. He welcomed fellow Commissioners to approach him with any concerns should they arise during his bid for election.
2. **Commissioner Crescibene** expressed his gratitude for the work that city staff put into creating the oil and gas code amendment. He expressed that work being done by the Current Planning department has been done for the good of the community.
3. **Commissioner Dowding** stated that she is also considering a bid for City Council. She explained she wanted to do the best that she can for the community and the City of Loveland. She shared that if she did decide to pursue a City Council seat, she would avoid any conflict in Planning Commission decisions.

4. **Commissioner Crescibene** provided a brief ZBA update and explained there had only been one meeting since the last update. He explained the Zoning Board approved the reconstruction of a garage on E. 4<sup>th</sup> Street that replaced an old garage that was dilapidated. He continued that it was a cut and dry approval that allowed for a 2 foot setback to the applicant. **Mr. Paulsen** assured that materials from the meeting would be given to the Commissioners at the next Planning Commission meeting. He shared there is another ZBA meeting scheduled for 8/12/13, and results from that meeting would be shared after the appeal period expires.
5. **Chair Meyers** shared that both **Commissioners Krenning and Dowding** are dedicated public servants to the city, and didn't expect any problems, concerns, or issues, with their plans to run for City Council.

### **APPROVAL OF THE MINUTES**

**Chair Meyers** asked for a motion to approve the minutes from the 07/08/13 Planning Commission meeting. **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Dowding**, the meeting minutes were approved five to two with **Commissioners Molloy and Prior** abstaining since they were absent from the 07/08/13 Planning Commission meeting.

### **CONSENT AGENDA**

The consent agenda includes items for which no discussion is anticipated. However, any Commissioner, staff member or citizen may request removal of an item from the consent agenda for discussion. Items removed from the consent agenda will be heard at the beginning of the regular agenda.

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 by the Planning Commission and acceptance by the Applicant of the staff recommendation for those items.

#### 1. Marianna Butte 25th

**Applicant Mr. Jess Rodriguez** has submitted a written request for a two-year extension of the Preliminary Plat and Preliminary Development Plan for the Mariana Butte 25<sup>th</sup> Subdivision (Mountain Gate). **Mr. Rodriguez** is the owner and potential developer of the 34-acre property generally located at the northwest corner of W. 1<sup>st</sup> Street and Namaqua Avenue. In February of 2012, the Preliminary Plat was approved by the city for 51 lots (46 paired single-family units and 5 detached single-family units). **Chair Meyers** questioned if there were any Commissioners who wished to move this item from the consent agenda to the regular agenda. **Mr. Krenning** made a motion to approve the item on the consent agenda. Upon a second from **Mr. Middleton** the consent agenda was unanimously approved.



## **REGULAR AGENDA**

### **2. King of Glory**

This is a public hearing concerning the annexation and zoning of a 4.28 acre parcel owned by the King of Glory Lutheran Church located at the northwest corner of N. Wilson Avenue and W. 29<sup>th</sup> Street. The property would be annexed and zoned to facilitate future development/redevelopment of the existing church facility. No development/redevelopment is being proposed in conjunction with the annexation. The hearing is to consider the following items:

- A legislative action for annexation of 4.28 acres; and
- A quasi-judicial action for zoning the property to R1-Developing Low Density Residential District.

Staff believes that all key issues have been resolved on city Codes and standards. The King of Glory Addition is a property that is becoming more and more surrounded by the city's municipal boundaries in northwest Loveland as a result of recent annexations that have included the Fire Station 2, and Mehaffey Park. The property is in the city's Growth Management Area (GMA), and is currently served by city water and sewer.

**Mr. Molloy** recused himself from this agenda item discussion and left the dais.

**Troy Bliss, City Planner II**, addressed the Commission and explained that the King of Glory Church is one of the more recognizable land marks outside of city limits and was built in the 1970's. If the annexation is approved, it would be designated as R1-LDR; Low Density Residential. It should be noted that churches are permitted by right in the R1-LDR zone. Previous annexation requests were never followed through to completion; however, there were agreements to allow for city water and city sewer. **Mr. Bliss** shared that King of Glory has always had the intent and desire to follow through with annexation. City staff has conducted a thorough review and also held a neighborhood meeting to address any possible citizen concerns. The most common feedback at the neighborhood meeting was the belief by members of the community that King of Glory already resided within city limits. To date, city staff has not received any negative feedback regarding this annexation request.

**Mr. Bliss** shared that certain elements are not in compliance with code, including the King of Glory building height. The worship building is currently 65 feet in height, which is well beyond the height restrictions of the R1 zoning code. Any future proposals to increase building height on either new or existing buildings would require the applicant to follow the variance process. There is also an existing wireless communication facility on the property. Any future expansion of the facility would require a special review. Finally, there are landscaping elements on the current site that are not in compliance with city standards, including a lack of landscape buffers, and interior parking lot landscaping. These issues would be addressed as conditions if the annexation is approved. There is no development/redevelopment being proposed with the annexation request, however there is the anticipation of erecting columbarium/memoria walls upon annexation. Staff is recommending approval of the annexation and zoning, with conditions.

**Mr. Darell Zimbelman**, representative of the King of Glory Church, thanked the Commission for the opportunity to address plans for annexation. He stated that the church members felt there was a great amount of growth in the area around the property, and one of the goals of the church is to be a greater resource for the community it resides in. King of Glory currently offers several neighborhood services, including a community garden which benefits Habitat for Humanity. **Mr. Zimbleman** stated the congregations desire to become part of the Loveland community.

**Mr. Middleton** thanked **Mr. Zimbleman** for his comments. He asked if he was aware of the nine conditions included in the annexation agreement. **Mr. Zimbleman** replied that the congregation was aware of the conditions, and had voted unanimously to move forward with the annexation request. **Chair Meyers** asked that the record show that the applicant accepts all conditions.

**Chair Meyers** opened the meeting to public comment. Given that there were no public comments, the public hearing was closed.

**Mr. Middleton** stated that he was in full support of the annexation agreement and indicated he would be voting in favor of its approval. He moved to make a motion to make the findings listed in section VIII of the Planning Commission staff report, dated July 22, 2012 and, based on those findings, recommend that City Council approve the King of Glory Addition, subject to conditions, as amended on the recorded, and zone the addition R1-Developing Low Density Residential.

Prior to the vote, **Mr. Krenning** questioned why R1 zoning was chosen. **Mr. Bliss** explained that R1 was chosen to align the zoning with the land use designation of the Comprehensive Plan. **Mr. Krenning** wondered what zoning would be most appropriate if King of Glory wished to exceed allowable height standards in future expansions. **Mr. Bliss** stated that commercial zoning does allow for greater height allowance, however even in commercial zones, 65 feet exceeds city height limits.

**Chair Meyers** asked for a second to the motion. Upon a second from **Ms. Dowding** the motion is passed unanimously.

### 3. Oil and Gas Development Code Amendment

This is a public hearing to consider an ordinance amending Chapter 18.77 and 18.78 of the city of Loveland Municipal Code.

**Commissioner Massaro** addressed his fellow Commissioners and stated that his wife has been involved with "Protect our Loveland" group, and asked if anyone felt this created a conflict of interest with him participating in the discussion. **Chair Meyers** responded that given the nature of the amendment, he felt there was not a conflict of interest. **Judy Schmidt, Deputy City Attorney**, concurred and explained that this amendment does not represent a personal interest and would not create a conflict of interest.

**Greg George, Director of Development Services**, addressed the Commission and stated that he had taken the proposed amendments to the Title 18 Committee and explained there was some confusion as to the difference between Chapters 18.77 and 18.78. He wanted to clarify

that Chapter 18.77 does one thing; it regulates oil and gas development as it occurs within the city limits. Setbacks have been established, and a two-step process has been created in order for developers to get a permit from the city. Chapter 18.77 establishes regulations on new oil and gas development. By contrast, Chapter 18.78 establishes regulation on new land development, including new residential subdivisions and industrial commercial development, when that development is within close proximity to an existing oil and gas facility. The purpose of the two chapters is entirely different as they regulate two different issues.

**Mr. George** went on to explain the amendments addressed technical, procedural amendments to Chapter 18.77, regulating the location and mitigation measures required for new oil and gas facilities. He asked the Commissioners to refer to the copy of the proposed ordinance amendments and explained he would share on which pages the various changes were made. Starting on page 6, **Mr. George** explained that a definition of a high occupancy building was included. The definition was moved from section 18.77.065 to the definition section of the code, as it was a more appropriate placement; however, the definition itself was unchanged.

Turning to page 7, **Mr. George** shared that the definition of an oil and gas facility in the existing code did not provide easy means of measuring or determining the edge of an oil and gas facility. For purposes of measuring a setback, a well-defined starting point must be identified. The expanded definition is consistent with the oil and gas commission definition. This allowed for a starting point to measure from. Depending on the configuration of where the equipment is located, the shape of the oil and gas facility may change; however, it does provide a mechanism for measurement. It differs on how the oil and gas commission measures the location of an oil and gas facility; the oil and gas commission measures from the center of the facility, or the center of the wellhead itself. **Mr. George** stated he believes the new definition improves upon the oil and gas commission definition.

**Mr. George** added that also on page 7, there is a provision in the setback in the overlay zoning part of the ordinance, which does not allow outdoor assembly areas within the restricted zone. It initially indicated that backyards of residential buildings would not be included, but was later removed because it was considered to be a redundant statement. Outdoor assembly areas are not allowed in the restricted areas. Any portion of a residential lot would not be allowed in a restricted zone. The definition of a setback, located on page 8, was removed because the definition of a setback is used for enhanced standards. It is located in a different section of the code for the baseline standards of a setback. It states that the operator only needs to comply with setbacks established by the oil and gas commission, which is how the baseline standards were preempted. The current definition can be found in 18.77.065 of the proposed amendment.

**Mr. George** continued, addressing pages 13 and 14. He explained that in the section addressing the Appeal of Director's Decision, procedural clarifications were made by **John Duval, City Attorney**, who wanted to make clear who has standing to appeal the decision of the director. Any appeal to the director's decision would need to be made through Larimer County District Court. He also clarified who would get notice of any decision made by the director.

**Mr. George** went on to address setback requirements for oil and gas development in sensitive areas, found on page 23, indicating that the proposed definition of setbacks includes methods for measuring both the beginning point as part of the oil and gas facility itself and which portion of a sensitive area that is measured to. **Mr. George** explained he felt it was easier to clarify the setback requirements by using a table rather than the narrative description located in the current ordinance. The setbacks for the enhanced standards have not changed but do contain better definitions for measurement requirements.

**Mr. George** then moved onto Chapter 18.78. He referred the Commission to a diagram which illustrated the overlay zones and how they work. The diagram showed an example of an oil and gas facility. It was communicated that if an oil and gas company goes through the baseline standards, it requires a Planning Commission hearing process. The setback is measured to the nearest property line as 200 feet to the closest well head. Under city's enhanced standards; it is measured from the edge of the oil and gas facility, 200 feet to what is referred to as the critical zone.

**Mr. George** explained the overlay zones, indicating that there are three zones represented in the diagram; the critical zone, the restricted zone, and the high occupancy building zone. The goal of 18.78 is to create overlay zones that change the uses allowed by property owners. As it stands today, all three of the proposed overlay zones are absolutely restricted as open space areas, also referred to as "no build areas", and a 1000 foot radius around the oil and gas facility would create a 72 acre no build zone. As **Mr. George** explained, this area makes it very difficult to work within an urban setting during efforts to develop urban uses. To remedy the restriction, **Development Services** determined appropriate uses for these zones could include heavy industrial and certain types of industrial uses, which would be compatible with an oil and gas facility site, particularly after it's under production. It should be noted, **Mr. George** indicated that a permit can be issued by the oil and gas commission as well as the city, allowing permission to reenter the oil and gas facility; it could create additional heavy industrial activity. In Chapter 18.78, there are listed uses that would be allowed in the restricted zone that could be compatible to an oil and gas facility, but would require a Special Review. Special Review is the process used to determine if the use is compatible with the oil and gas facility and other uses in the vicinity. City reserves the right to deny the application if it is determined the use is not compatible at a site. Additional limitations for the uses listed in the proposed amendment states that no building or parking lot would be permitted within the restricted zone. High occupancy buildings, such as a hospital or library, would still be required to be outside of the 1000 foot radius.

**Mr. Duval** addressed the commission and explained that city staff discovered two changes that needed be made on page 34 to the definitions. It needed to be clarified that "critical zone" shall mean all land and water surface area less than 200 feet from and oil and gas facility, and "high occupancy building zone" shall mean all land and water surface area less than 1000 feet from an oil and gas facility. "Restricted zone" shall mean all land and water surface 500 feet or less from an oil and gas facility.

**Commissioner Krenning** questioned **Mr. Duval** as to why city staff did not use the "Rule of Seven" approved by the Supreme Court, meant for use in ease of calendaring. He asked if any consideration was given to the use this metric. **Mr. Duval** responded that it was not considered and felt that reasonable timelines were included which would work well internally for the City of Loveland.

**Commissioner Massaro** asked for clarification about the “restricted zone”. He stated that the proposed amendment would allow for uses such as an airport or helicopter port in the restricted zone, however he questioned how that could happen if a building or parking lot are not permitted. **Mr. George** responded that it could be used as a runway with open space, but stressed such a use would require Special Review approval. The goal, as **Mr. George** explained, is to allow as many buildings as appropriate to establish reasonable uses in the overlay zones. **Mr. Massaro** restated his concern about the wording in the ordinance in relation to the restricted zone. He asked if there was an existing building within the “restricted zone”, could an oil and gas well be placed within the proposed overlay zone. **Mr. George** clarified that existing setback requirements as they apply today would be enforced for existing developments and open space areas.

**Commissioner Dowding** stated she had concerns regarding the 18.77.060 section of the proposed amendment. She questioned if 18.78 complied with COG regulations. **Mr. George** stated that 18.78 does not regulate oil and gas development and, therefore, does not interfere with COG regulations.

**Commissioner Dowding** pointed out that on page one; under the sixth “Whereas”, it states that the city will not enact anything that is in “operational conflict” with state law. **Mr. Duval** explained that the “Whereas” clause regarding operational conflict is a legal clause the court has used when a city regulation is in conflict with a state regulation in terms of the location and permitting of oil and gas facilities. However, Chapter 18.78 is not a regulation imposed on the oil and gas operators; rather, Chapter 18.78 is a regulation that is imposed on developers that outlines the standard that will need to be met when they submit plans for subdivision or PUD’s, for example. **Commissioner Dowding** suggested that putting the word “existing” in the title would help clarify its intent. **Mr. Duval** agreed to the suggestion and said he would take it under consideration. **Commissioner Dowding** asked why city staff went to great trouble in 18.77 to create the beautiful table which made it very clear to understand, but in 18.78 it is all verbiage but no table. **Mr. Duval** agreed to take that recommendation under consideration as well. **Ms. Schmidt** suggested that using the phrase “permitted oil and gas facilities” for better clarification.

**Commissioner Crescibene** asked about 18.77, specifically page 20 of the proposed amendment, referring to chemical spills, water supplies, and hauling. He said that nowhere in 18.77 does it refer to the disclosure of what the chemicals being used by oil and gas operators are, nor does it refer to water testing requirements. **Mr. George** pointed out that on page 15, under paragraph I, COG requires that all operators shall provide the Loveland Fire Rescue Authority, in hard copy or electronic format, the operator’s chemical disclosure form. It was also pointed out that there is a provision for COG to test water baseline in accordance with oil and gas regulations. **Mr. George** made it clear that if the City of Loveland attempted to strengthen these provisions they would be preempted. He also stated that it was unlikely that city would create its own water sampling criteria or revisit how the COG regulations are working. The goal was to create an ordinance that would allow reasonable land uses on property in the vicinity of an existing oil and gas facility.

**Mr. Crescibene** indicated that he believes that the baseline standards should be addressed and explained, and that is one of the more pressing issues surrounding oil and gas development. He would like full disclosure of what chemicals are being used in the process of hydraulic

fracturing. **Mr. Duval** explained that when creating the enhanced standards, they avoided including strict requirements because city staff felt it increased the likelihood of oil and gas developers participating in the process. Otherwise they might elect using the baseline standards and landowners would be left without options to develop property with existing oil and gas wells. **Mr. Crescibene** added that if he owned a well within 1000 feet of a fracking distribution point, he would have the water tested very frequently. **Mr. Duval** reiterated that city staff has not gotten direction from City Council to pursue those concerns.

**Commissioner Middleton** stated that he felt the topic of discussion related to oil and gas development has been a mess, and has been since day one. He commended city staff for their efforts on the proposed amendments, but echoed concerns regarding oil and gas development. He questioned why a disinterested third party could not do air and water quality testing at fracking sites, at the expense of oil and gas developers. **Mr. George** responded that city staff has been given a statement of direction from City Council regarding the oil and gas ordinance, but if in the future city staff was directed by City Council to further explore air and water quality standards, they would be happy to do so.

**Mr. Krenning** interjected that he felt the purpose of the meeting was to discuss the minor adjustments to the existing ordinance. The policy debate that is ongoing surrounding oil and gas development should be left to the City Council. **Mr. Middleton** disagreed and stated that the Commission is being asked to approve an ordinance. **Chair Meyers** pointed out that the ordinance is already approved and the Commission is only being asked to make redline changes.

**Commissioner Molloy** asked what the permit requirements were for capped wells in the vicinity of housing developments. **Mr. George** explained that a permit could be granted by the oil and gas commission, however, if the oil developer goes through the city's enhanced standards and the proposed location of the well does not comply with the enhanced standards for setbacks, they would not get the permit because certain setbacks are absolute. The operator would have to go through the Planning Commission review process where the COGCC setback rules apply.

**Mr. Molloy** stated he had concerns about the variances and Director's decisions. He used Greeley as an example, and explained that they recently made the decision to allow oil and gas developments in neighborhoods and felt that decision was a travesty. He wanted to make a suggestion that when it came to a Director's decision, written notification should be not only sent within the notification area, but also to individuals who attend neighborhood meetings and provide in writing their desire to be notified. **Mr. Krenning** expressed doubt that participation in a neighborhood meeting would grant a non-city resident standing in any Director decision appeal, and felt it would be a burden to city staff to do so. **Mr. Molloy** clarified the burden would fall to the applicant and not city staff. **Mr. Duval** responded that as the ordinance is written today, only people within the written notification area, which is currently any resident within 2200 feet, would be notified of decisions. **Chair Meyers** commented he felt such a requirement would create a process nightmare. **Mr. Duval** clarified that "parties of interest" who wish to appeal a director decision are only those who are included in the written notification area. He pointed out that Council Members and Planning Commissioners are also able to appeal decisions.

**Mr. George** stated his desire for the Commission to recommend approval of the proposed ordinance amendment to City Council. He stated that the Commission had the option, if it felt inclined to do so, to pass a motion with majority approval, to make comments to the Council about difficulties with the existing ordinance.

**Chair Meyers** opened up the meeting to Public Hearing and invited members of the audience to make comments. He asked that comments be kept to the issue at hand, which is recommendation of approval of the proposed ordinances.

**Ms. Kim Orr, PO Box 2045, Loveland CO**, addressed the commission and asked if it would be possible that in the ordinances for the developers, a requirement could be included for them to test water and air quality for contamination in existing well sites prior to further development.

**Ms. Sue Mullins, 4785 Hahn's Peak Dr. #203, Loveland, CO** wanted to share with the Commission what she considered to be their charge. After listening to the discussion, she said she appreciated **Mr. Molloy's** comments. She feels anyone who lives in the City of Loveland should have standing in this issue. She believes the Commission takes its charge seriously. She believes the Commission is responsible for the health and welfare of city citizens. She commented that having only appeal powers to the Larimer County District Court was a very high burden to place on concerned citizens. She wanted to share that she has listened to concerned citizens of Loveland and wanted to pass that concern on to the Commission. She asked the Commission to remember who they represent.

**Ms. Carla Massaro, 4250 Tarryall Ct, Loveland, CO**, stated she wanted to reiterate her appreciation for all the Commissioners hard work and concern that they have displayed for the citizens of Loveland. She doesn't feel that the City Council has the same concern. She would like to believe experience in the field should carry more weight than just opinion. **Chair Meyers** asked if **Ms. Massaro** could please redirect the discussion to focus on the two amendments to the current ordinance. **Ms. Massaro** stressed the importance of listening to professional opinions and applauded the Commission for their concern regarding air and water quality at fracking sites and thanked them for their hard work. **Chair Meyers** closed the Public Hearing.

**Mr. George** addressed concerns raised by citizens and explained that the purpose of the proposed amendments was to lessen the burden of property owners within the vicinity of oil and gas facilities by increasing available opportunities for development. He stated the city did not feel it was reasonable to require land developers to conduct air and water quality test prior to development activities.

In response to concerns regarding citizen appeal rights only at the Larimer County District Court, **Mr. Duval** responded that this is a process that's been in place for a long time and also applies to any quasi-judicial City Council decisions.

**Chair Meyers** continued the discussion regarding who should have standing in neighborhood meetings. **Mr. Krenning** replied that he didn't support the concept of granting citizens standing who aren't directly impacted by oil and gas development. He continued that he felt that it was important to keep the focus of the meeting on the proposed amendments. He stated



that he has provided close attention on the issue of fracking because it is controversial, serious, and a hot topic item. **Mr. Krenning** noted that he recently read an article published in the Denver Post regarding a study done by the Department of Energy along with a group of private scientists. **Mr. Krenning** stated that the study concluded that there has been zero ground water contamination due to oil well drilling and fracking. He stated that he is open to any scientific data that would prove otherwise, but to date he has not seen any information that supports fracking contaminates ground water. He reiterated the importance of focusing on the proposed amendments and did not want the Commission to be bogged down in another discussion regarding the controversy surrounding fracking. He made a motion to recommend that City Council adopt the proposed amendments to Chapter 18.77 and 18.78 of the Loveland municipal code. Upon a second by **Ms. Dowding** the discussion continued.

**Mr. Molloy** stated that he felt the Planning Commissions has a responsibility to ensure that projects being developed within the city not have any negative consequences to the city or its citizens. He reiterated his suggestion to expand the requirement to notify citizens of a Director's decision not only within the current notification area, but also to individuals who attend neighborhood meetings. He pointed out that heavily industrialized projects could impact more than just the citizens in the written notification area.

**Mr. Massaro** commented that he disagreed with the statements made suggesting ground water has not been contaminated by fracking. He stated that on the COGCC website that there are over 200 incidents in Weld County alone of documented ground water contamination from the oil and gas industry. He pointed out that contaminated ground water is very difficult to clean-up. **Mr. Massaro** continued that in the entire State of Colorado there is a spill per day, and 43% of those spills contaminate ground water. In regards to expanding the mailing list, he agreed that the notification area be as wide as possible, however, he felt it would create a burden by allowing out of area citizens to be notified and wanted to take more time to consider the issue.


**Commissioner Prior** agreed with **Mr. Molloy** regarding citizen notification but felt that Director decisions should be limited to citizens within city limits, but only in cases when the impact would be city wide. He stated that he has a background in water engineering, and agreed that there is no proven evidence of water contamination from fracking. He explained that the data provided by the COGCC does not point to evidence of contaminated ground water and felt the confusion regarding the data should be resolved at a later time.

**Ms. Dowding** commented that the Commission originally addressed the issue of notification by doubling the mail notice area to 2,200 feet at a prior meeting. She concluded that the issue has been sufficiently addressed. She suggested that if the issue needed further discussion it should be hashed out at a Title 18 Committee meeting.

**Commission Middleton** asked for a vote on the motion before the Commission. The motion passed 7-1 with **Commissioner Middleton** voting nay.

**ADJOURNMENT**

**Commissioner Middleton** made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by:   
Buddy Meyers, Planning Commission Chairman

  
Kimber Kreutzer, Planning Commission Secretary

**ANNEXATION AGREEMENT  
PERTAINING TO THE  
KING OF GLORY ADDITION  
TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between King of Glory Lutheran Church, (the "Developer"); and the CITY OF LOVELAND, COLORADO, a home rule municipality (the "City").

**RECITALS**

WHEREAS, the Developer owns +/- 4.28 acres, more or less, of real property located in Larimer County, Colorado, more particularly described in Exhibit A attached hereto, but not including any existing public streets and highways which may be included in said description, which description, by this reference, is incorporated herein and designated as "the Property";

WHEREAS, the Developer is requesting that the City annex and zone said Property to allow for the coordinated development of the Property to the benefit of the parties, including the City; and

WHEREAS, the City is unable to annex the Property under the terms of this Agreement without the consent of the Developer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

**AGREEMENT**

1. Consent to annexation. Developer has petitioned for the annexation of the Property described in the attached Exhibit A. The Developer hereby consents to the annexation of the Property subject to the terms of the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the City Council of the annexation, the parties agree that the binding effect of this Agreement and the effectiveness of the annexation and zoning of the Property in accordance with the Developer's application is expressly conditioned upon such approval by the City Council and the execution and delivery of this Agreement by all parties thereto.

## 2. Terms of annexation.

### A. CURRENT PLANNING

- i. The existing worship building has a height of sixty-five (65) feet. Upon annexation, this building will be considered legal non-conforming. Any future remodeling of the existing worship building shall not be allowed to increase height, unless a variance is permitted and approved pursuant to the City Municipal Code.
- ii. The existing building antennas located on the worship building shall be considered legal non-conforming. Additional building antennas including but not limited to panel antennas, wiring, ground cabinets, or equipment shelters shall not be permitted unless Special Review approval is issued for such uses in the R1 - Developing Low-Density Residential District. (Currently, the R1 zoning district permits wireless service facilities by special review only. If any future changes to the R1 zoning district are approved to prohibit wireless service facilities, the existing facilities could remain but no new facilities would be allowed.) No towers associated with a wireless service facility shall be permitted. Additional wireless service shall not be considered an expansion of use or a building addition with regards to paragraph A.iii below.
- iii. This property does not conform with the City of Loveland landscape standards including landscape bufferyards along both Wilson Avenue and 29th Street, street canopy trees spaced 30 to 40 feet on center along both Wilson Avenue and 29th Street, curb/gutter/sidewalk for the reconfigured right-of-way on 29th Street, internal parking lot landscaping/screening, and irrigation systems throughout all landscaped areas.

For purposes of this Section, the erection of columbarium/memorial walls in the general vicinity of the northwest corner of the site shall be permitted without providing these improvements. However, these improvements will be required in conjunction with any redevelopment/development of the property, change in use, expansion of use, building additions or on the fifth anniversary of recording this agreement, whichever comes first. Any development application (including but not limited to a Site Development Plan, Special Review, or Building Permit) shall provide a phasing plan and cost estimate associated with the required improvements to the City for approval. The phasing plan shall incrementally detail what specific improvements would be made over time.

- iv. The Developer will be responsible for the construction necessary to bring the existing parking lot adjacent to W. 29th Street into compliance with the City of Loveland landscape standards to include canopy street trees, screening, and a detached sidewalk in conjunction with any redevelopment/development of the property, change in use, expansion of use, or building additions that require the need for developing the full right-of-way. Such required construction in the

parking lot adjacent to W. 29th Street shall not be required in connection with the erection of columbarium/memorial walls described in paragraph A.iii above.

## **B. TRANSPORTATION**

- i. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS) and the 2030 Transportation Plan and any updates to either in effect at the time of a site specific development, Minor Subdivision and/or a building permit application. Any and all variances from these standards and plans require specific written approval by the City Engineer.
- ii. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the timing of the dedications shall be as follows:
  - a. Right-of-way for 29th Street shall be dedicated prior to the recording of the annexation.
  - b. Right-of-way for Wilson Avenue shall be dedicated prior to the recording of the annexation.
- iii. The Developer agrees to acquire and dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a site specific development application, Minor Subdivision and/or a building permit application within this addition, the Developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire and dedicate sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.
- iv. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layouts, street alignments, access locations, turning movements, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a site specific development application, Minor Subdivision and/or a building permit application.
- v. The existing curb cut access to Wilson Avenue shall be removed and replaced with curb, gutter, and sidewalk per the satisfaction of the City in a time period not to exceed 12 months after the recording of the annexation. The owner shall apply for and receive a Right-of-Way Work Permit from the City prior to any construction activity within the City's public right-of-way.

## **GENERAL PROVISIONS**

3. Waiver of Damages. In the future, the Developer may be granted vested property rights associated with the approval of a site specific development plan within the Property. In the event that such vested property rights are granted, and the City applies an initiated or referred measure to the property which would (a) change any

term of this Agreement, (b) impose a moratorium on development within the Property, or otherwise materially delay the development of the Property, or (c) limit the number of building or utility permits to which the Developer would otherwise be entitled, the Developer agrees to waive any right to damages against the City to which Developer may otherwise be entitled under the Vested Rights Statute.

4. Incorporation. The terms of this Agreement shall be deemed to be incorporated into the Developer's Petition for annexation of the Property.
5. Integration and Amendment. This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard to the Property. If conflicts between the Annexation Conditions listed in the Staff Report for City Council on \_\_\_\_\_, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail. This Agreement may only be amended by written agreement signed by the Developer and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.
6. Remedies. In the event that a party breaches its obligations under this Agreement, the injured party shall be entitled only to equitable relief, including specific performance, and such other equitable remedies as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to recover costs and reasonable attorneys' fees.
7. Effective Date. This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City does not annex the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.
8. Binding Effect and Recordation. The promises made in this Agreement by the Developer shall be deemed to have been made by any corporation or other business affiliated with Developer that acquires ownership or possession of all or any portion of the Property. The parties agree to execute a memorandum of this Agreement that the City shall record with the Clerk and Recorder for Larimer County, Colorado. It is the intent of the parties that their respective rights and obligations set forth in this Agreement shall constitute equitable servitudes that run with the Property and shall benefit and burden any successors to the parties. The Final Annexation Map for the Property shall be recorded by the Developer within sixty (60) days of final adoption of the ordinance annexing the Property, such Map shall contain a note that the Property is subject to this Agreement. The Developer agrees to all promises made by the Developer, which shall constitute equitable servitudes that run with the land.

9. Notices. Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, or by mailing same by certified, return receipt requested mail, to the party for whom it is intended. Notices to any of the parties shall be addressed as follows:

To City: City Clerk  
City of Loveland  
500 E. Third Street  
Loveland, CO 80537

To Developer: King of Glory Lutheran Church  
Attn: Administrative Council President  
2919 N. Wilson Avenue  
Loveland, CO 80538

A party may at any time designate a different person or address for the purposes of receiving notice by so informing the other party in writing. Notice by certified, return receipt requested mail shall be deemed effective as of the date it is deposited in the United States mail.

10. Waiver. No waiver by the City or Developer of any term of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
11. Applicable Law/Severability. This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.
12. Paragraph or Section Headings. Paragraph or Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.



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

**THE CITY OF LOVELAND, COLORADO**

By: \_\_\_\_\_  
William Cahill, City Manager

**ATTEST:**

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

**APPROVED AS TO SUBSTANCE:**

\_\_\_\_\_  
Greg George, Development Services Director

**APPROVED AS TO FORM:**

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

**DEVELOPER:** King of Glory Lutheran Church

By:   
Darell Zimbelman

STATE OF Colorado )  
 )ss  
County of Larimer )

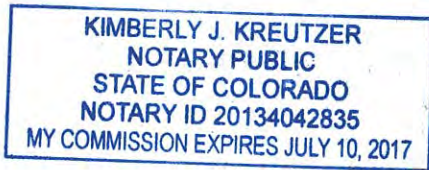
The foregoing Agreement was executed before me this 3rd day of Oct, 2013 by

King of Glory Lutheran Church  
(Developer)

WITNESS my hand and official seal.

My commission expires 7/10/2017.

SEAL



*Kimberly J. Kreutzer*  
\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
(legal description)

PROPERTY DESCRIPTION – KING OF GLORY ADDITION

That portion of the Southeast Quarter of Section 4 and the Northeast Quarter of Section 9, all in Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 4 as assumed to bear North 01°40'40" East and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 4; thence along the South line of said Southeast Quarter South 89°59'16" West 30.01 feet to a point on the West line of Fairway West First Addition, to the City of Loveland, Colorado, said point being the TRUE POINT OF BEGINNING; thence along said West line of Fairway West First Addition North 01°40'40" East 417.43 feet to the Southeast corner of Vanguard-Famleco Eighth Subdivision, to the City of Loveland, Colorado; thence along the Southerly line of said Vanguard-Famleco Eighth Subdivision and the Southerly line of Tract A, Vanguard-Famleco Eighth Subdivision North 90°00'00" West 491.99 feet; thence along the Easterly line of said Tract A and the Southerly prolongation of said Easterly line South 01°40'40" West 447.54 feet to a point on the South line of that certain parcel of land recorded at Reception Number 2000062756, records of Larimer County; thence along the South line of said Reception Number 2000062756 North 89°59'16" East 323.26 feet to a point on the West line of that certain parcel of land recorded at Reception Number 97067379, records of Larimer County; thence along the Westerly and Southerly lines of said Reception Number 97067379 South 00°43'53" East 20.00 feet and again North 89°59'16" East 170.00 feet to a point on the Westerly line of Windemere Second Addition, to the City of Loveland, Colorado; thence along the Westerly line of said Windemere Second Addition and the East line of said Reception Number 97067379 North 00°43'53" West 50.00 feet to a point on the South line of the Southeast Quarter of said Section 4 and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres, more or less, and is subject to all existing easements and/or rights of way of record.

# King of Glory Addition

P. 250



Annexation of 4.28 acres  
Zoning: R1 – Developing Low Density Residential  
Existing Church Facility



# King of Glory Addition

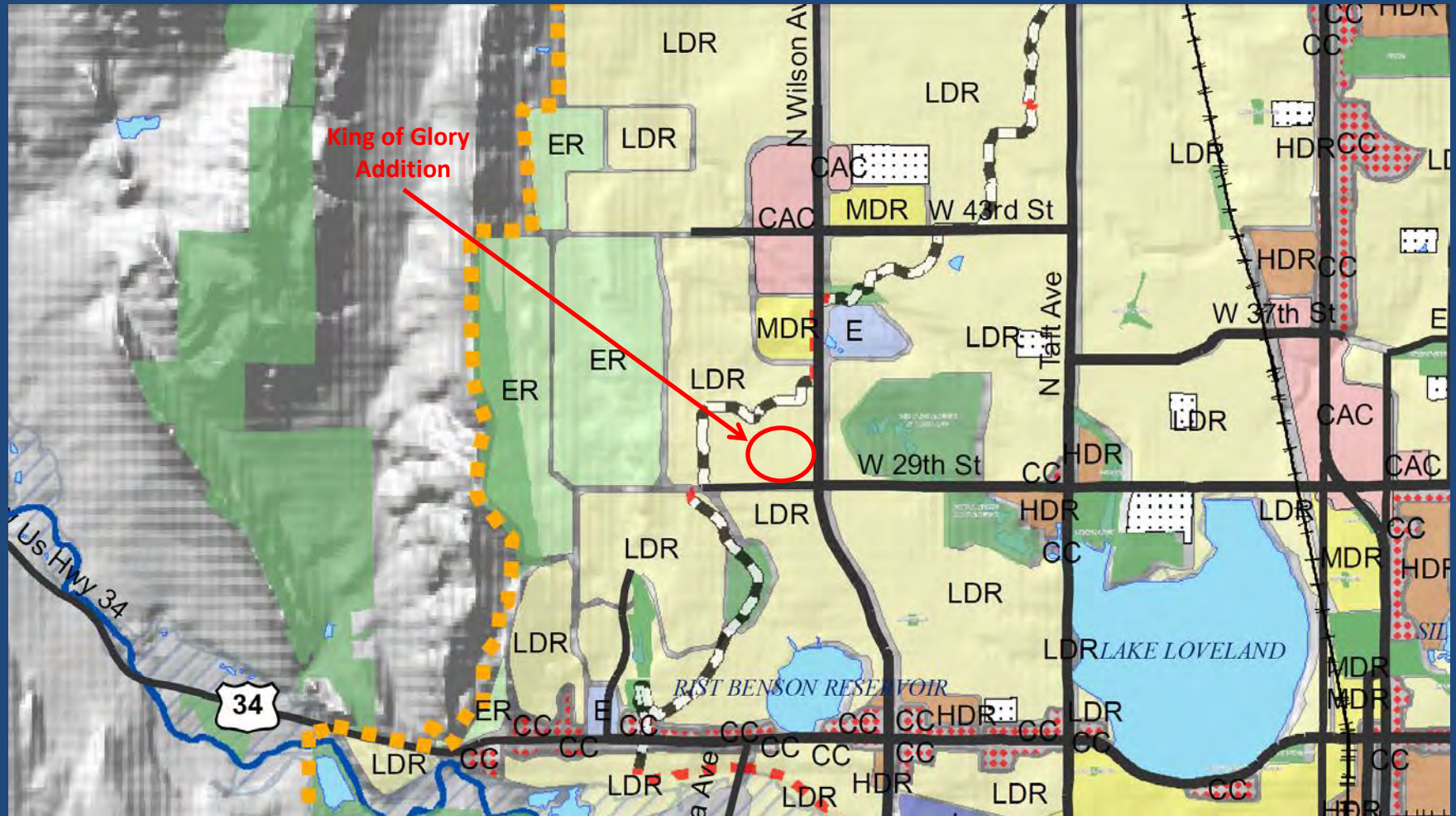
P. 251



Annexation of 4.28 acres  
Zoning: R1 – Developing Low Density Residential  
Existing Church Facility



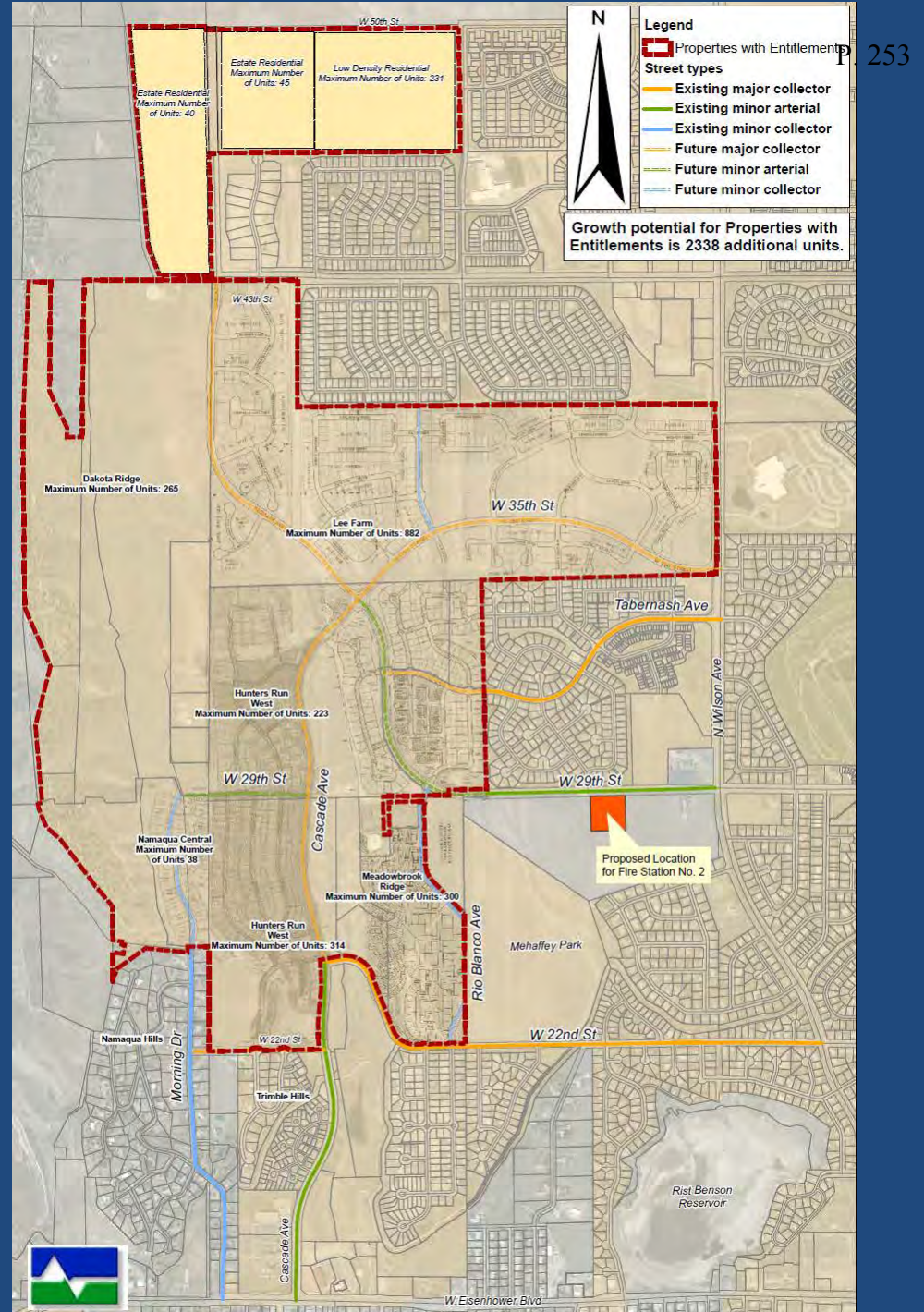
# King of Glory Addition



**Comprehensive Plan Land Use Designation: LDR – Low Density Residential**



# Future development map of northwest Loveland







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

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**AGENDA ITEM:** 15  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Troy Bliss

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**TITLE:**

An Ordinance on first reading Vacating a Portion of a Public Right-Of-Way Located in the St. John Addition to the City of Loveland, City of Loveland, Larimer County, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and move to adopt on first reading an ordinance vacating a portion of a public right-of-way located in the St. John Addition to the City of Loveland, City of Loveland, Colorado.

**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
- 

**SUMMARY:**

This is a legislative action to adopt of an ordinance on first reading to vacate the public right-of-way for a portion of Truman Avenue located within the St. John Addition and Hill Top Addition. The applicants for the request are the St. John Church and the Thompson School District.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible
- 

**BACKGROUND:**

The right-of-way to be vacated includes a remnant portion of Truman Avenue that is no longer in use as a public street. The right-of-way contains underground public utilities; therefore a utility easement will be established to accommodate those utilities. The utility easement will be

established through a separate administrative action. The purpose for vacating this portion of Truman Avenue is so that the area can be utilized as part of their respective properties.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Staff Memorandum

**FIRST READING:** October 15, 2013

**SECOND READING:** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT OF WAY  
LOCATED IN THE ST. JOHN ADDITION TO THE CITY OF LOVELAND, CITY OF  
LOVELAND, LARIMER COUNTY, COLORADO**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of that portion of a public right of way described below, located in the City of Loveland, Larimer County, Colorado; and

**WHEREAS**, it is necessary that the portion of right of way to be vacated be preserved as a public utility easement; and

**WHEREAS**, it is further necessary, that the owners of all real property adjoining the portion of the right of way to be vacated submit to the City a fully executed public utility easement, in a form acceptable to the City, for the land described below; and

**WHEREAS**, to assure ongoing provision of public and private utility services, and as permitted by Loveland Municipal Code Section 16.36.060, this ordinance is conditioned up receipt of the fully executed public utility easement described above, which shall be recorded concurrently with this ordinance; and

**WHEREAS**, the City Council finds and determines that no land adjoining any portion of the 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; and

**WHEREAS**, the City Council finds and determines that the portion of the right of way to be vacated is no longer necessary for the public use and convenience, subject to the condition that the public utility easement described above be received by the City; and

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

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

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

**Section 2.** Subject to the condition set forth in Section 3, the following described portion of a public right of way access easement be and the same is hereby vacated:

Two parcels of land lying in the Northeast Quarter of Section 15, Township 5 North, Range 69 West of the Sixth Principal Meridian, City of Loveland, Larimer County Colorado;

The First parcel being a that portion of Truman Street as shown on Final Plat of St. John Addition as recorded January 1, 1956 in Book 6 at Page 118 as Instrument Number 713087, in the records of said Larimer County, not previously Vacated by City of Loveland Ordinance number 575 as recorded in Book 1039 at page 731 in the records of said Larimer County, more particularly described as follows;

Considering the Eastern most boundary line of said St. John Addition as Bearing South 90°00'00" West, according to the Final Plat of St. John Addition;  
Commencing at the Northeast corner of St. John Addition to the City of Loveland, thence South 90°00'00" West 37.54 feet to a point on the Southerly right-of-way of West 12th Street; thence South 89°41' West 60 feet, thence South 00°00'00 West 585.90 feet to the Point of Beginning; thence continuing South 00°00'00 West 85.00 feet, to the beginning of a tangent curve to the right; thence along the arc of said curve to the right, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet; thence departing said curve along a non-tangent line North 90°00'00" East 51.95 feet; thence South 86°00'00" East 28.12 feet; thence North 00°00'00" East 106.95 feet more or less; to a point on the Southerly Boundary line of that portion of Truman Avenue as Vacated by City of Loveland Ordinance 575; thence along said Southerly boundary line North 90°00'00" West 60.00 feet to the Point of Beginning, containing 6,413 square feet more or less.

The second parcel being described as a portion of West Hilltop Drive lying adjacent to the Southwest Corner of Block One as shown on the Final Plat of Hill Top Addition to the City of Loveland, Colorado according to the Final Plat as recorded January 1, 1955 in Book 6 at Page 107 as Instrument number 703803, in the records of said Larimer County, being more Particularly Described by Metes and Bounds as follows;

Considering the Western most Boundary line as Bearing South 90°00'00" East according to the recorded Final Plat of said Hill Top Addition;  
Commencing at the Northeast corner of St. John Addition to the City of Loveland, thence South 90°00'00" West 37.54 feet to a point on the Southerly right-of-way of West 12th Street; thence South 00°00'00 West along the Western most boundary line of said Hill Top Addition, a distance of 674.51 feet to the Point of Beginning; thence South 00°00'00" West along the Westerly Boundary line of said Hill Top Addition, a distance of 18.65 feet, thence South 86°00'00" East a distance of 18.65 feet to a point on a non-tangent curve; The Northwesterly along the arc of said non-tangent curve, the center of which bears North 04°00'00" East, and having a central angle of 86°00'00 and a radius of 20.00 feet, an arc distance of 30.02 feet, the chord of said curve bears North 43°00'00" West a distance of 27.28 feet, to the point of Beginning, containing 0.73 square feet more or less.

said parcel of land contains 6,417 sq. ft., more or less (+-), and may be subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

**Section 3.** To assure ongoing provision of public and private utilities, the foregoing vacation is subject to the express condition that the vacated portion of the public right of way shall be preserved as a public utility easement, which condition shall be deemed satisfied upon receipt by the City of a fully executed public utility easement, in a form acceptable to the City, for the land described above, from the owners of all real property adjoining the portion of the right of way to be vacated.

**Section 4.** 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).

**Section 5.** The City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes, and after receipt of the fully executed public utility easement described above. The fully executed public utility easement for the above-described property shall be recorded concurrently.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2013.

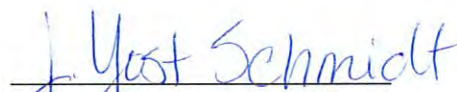
ATTEST:

CITY OF LOVELAND, COLORADO:

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

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

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

**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

**M E M O R A N D U M**

**TO:** City Council

**FROM:** Troy Bliss, City Planner II, Current Planning Division

**DATE:** October 15, 2013

**SUBJECT:** St John Addition and Hill Top Addition Vacation of Public Right-of-Way

---

**I. EXHIBITS**

- A. Planning Commission packet
- B. Slide presentation

**II. KEY ISSUES**

Staff believes that all key issues regarding the vacation have been resolved through the staff review process. The Planning Commission unanimously recommends approval of the vacation as proposed.

**III. BACKGROUND**

The attached ordinance concerns a request for vacating public right-of-way within the St. John Addition and Hill Top Addition. The right-of-way to be vacated includes a remnant portion of Truman Avenue that is no longer in use as a public street. The subject portion of right-of-way contains underground public utilities; therefore, the utilities must be accommodated in a utility easement. The associated easement will be established through a separate administrative action. Both the St. John Church and the Thompson School District are serving as joint applicants for vacating the right-of-way. The purpose for vacating this portion of Truman Avenue is so that the area can be utilized as part of their respective properties.

The subject property was annexed in 1956 as the St. John Addition. Truman Avenue originally existed as a local street connecting between 12th Street and W. Hilltop Drive. However, most of Truman Avenue was previously vacated due to the expansions of the St. John Church. This 6,500 square foot remnant portion was left off.

#### **IV. VACATION**

The applicants propose to vacate a portion of Truman Avenue within the St. John Addition and Hill Top Addition. This street to be vacated is illustrated in **Attachment 1 of Exhibit A** to this memorandum. This is the corresponding legal description and exhibit to the vacation request. Further, please refer to **Attachment 2 of Exhibit A** that places these streets into context of the currently platted subdivision.

With this portion of street no longer serving a public need, the St. John Church and Thompson School District are requesting it be vacated. There are some existing utilities within the right-of-way that will need to be retained and kept in a public utility easement. Agencies outside of the City which provide utility services including Century Link, Comcast, and Xcel Energy have all provided responses to this vacation request, indicating that there are no concerns.

#### **V. PLANNING COMMISSION REVIEW**

The vacation was reviewed by the Planning Commission at a public hearing on September 9, 2013. The item was placed on the consent agenda. No discussion was held on the matter and the Planning Commission unanimously recommended approval of the vacation subject to the portion of Truman Avenue right-of-way being dedicated as a public utility easement in conjunction with the vacation request. The vacation ordinance has been prepared to reflect this condition. The easement to be dedicated in place of the vacated right-of-way would be through a separate instrument, reviewed by the City as an administrative action.

#### **VI. RECOMMENDATION**

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinance on first reading subject to the Planning Commission recommended condition:

1. The portion of Truman Avenue right-of-way shall be dedicated as a public utility easement in conjunction with the vacation request.





## 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

### Planning Commission Staff Report

September 9, 2013

**Agenda #:** Consent Agenda - 1

**Title:** St. John Church (St. John Addition and Hill Top Addition) Vacation (PZ #13-00067)

**Applicant:** St. John Church and Thompson School District R2-J

**Request:** **Vacation of public right-of-way**

**Location:** North side of Hilltop Drive between N. Tyler Avenue and N. Taft Avenue

**Existing Zoning:** R1e – Established Low Density Residential

**Proposed Use:** N/A

**Staff Planner:** Troy Bliss

#### **Staff Recommendation**

Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

#### **Recommended Motions:**

1. *Move to make the findings listed in Section VIII of the Planning Commission staff report dated September 9, 2013 and, based on those findings, recommend that City Council approve the requested vacation of public rights-of-way subject to the condition listed in Section IX, as amended on the record;*
2. *Further move to recommend to the City Council the form of vacation ordinance attached to the staff report dated September 9, 2013.*

#### **Summary of Analysis**

This is a legislative matter and public hearing to consider a request to vacate a public right-of-way within the St. John Addition and Hill Top Addition. The right-of-way to be vacated consists of a remnant portion of Truman Avenue that is no longer in use as a public street. The subject portion of right-of-way does have public utilities within it and will need to be retained as a public utility easement. If the Commission recommends granting the request for vacation, Loveland Municipal Code Section 16.36.010.C.3 also call for the Commission to recommend a form of ordinance to Council. The proposed ordinance is attached to this staff report as Attachment 3.

City development review offices have reviewed this application and support approval with the recommended condition.

# EXHIBIT A

# EXHIBIT A

2

Portion of Truman Avenue right-of-way to be vacated.

# EXHIBIT A

- 2

# EXHIBIT A



#### IV. SITE DATA

ACREAGE OF SITE: ..... APPROXIMATELY 6,500 SQUARE FEET (AREA OF RIGHT-OF-WAY ..... TO BE VACATED)

PROPERTY ZONING / USE ..... R1E – ESTABLISHED LOW DENSITY  
..... RESIDENTIAL/CHURCH AND SCHOOL

EXISTING ZONING / USE - NORTH ..... R1E – ESTABLISHED LOW DENSITY  
..... RESIDENTIAL/CHURCH/SCHOOL

EXISTING ZONING / USE - SOUTH ..... R1E – ESTABLISHED LOW DENSITY  
..... RESIDENTIAL/SINGLE FAMILY RESIDENCES

EXISTING ZONING / USE - EAST ..... R1E – ESTABLISHED LOW DENSITY  
..... RESIDENTIAL/CHURCH/SCHOOL

EXISTING ZONING / USE - WEST ..... R1E – ESTABLISHED LOW DENSITY  
..... RESIDENTIAL/CHURCH/SCHOOL

#### V. KEY ISSUES

There are no key issues regarding this vacation request. All City Divisions and all applicable outside City utility providers have no objection to the vacation of Truman Avenue. The City is requiring that the right-of-way be retained as a public utility easement.

#### VI. BACKGROUND

The subject property was annexed in 1956 as a portion of the St. John Addition. Truman Avenue originally existed as a local street connecting 12<sup>th</sup> Street and W. Hilltop Drive. However, most of Truman Avenue was previously vacated due to the expansions of the church. This 6,500 square foot remnant portion was retained as public right-of-way.

#### VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

**A. Notification:** An affidavit was received from Chris Messersmith, on behalf of the applicant, certifying that written notice was mailed to all surface owners abutting the right-of-way to be vacated and notices were posted in a prominent location on the perimeter on May 16, 2013. In addition, a notice was published in the Reporter Herald on May 25, 2013.

**B. Neighborhood Response:** A neighborhood meeting is not required with an application to vacate public right-of-way. However, all surface owners and all owners of easements or right-of-way abutting the right-of-way to be vacated are notified of the application. Further, at least 50% of such owners must be party to the application. Given these requirements and the configuration of the property, only 1 owner was notified of the application beyond the applicant. No neighborhood response has been received at the time this staff report was prepared.

#### VIII. FINDINGS AND ANALYSIS

The following two Findings contained in Chapter 16.36, Section 16.36.010.B of the Subdivision Code must be met for a vacation of right-of-way to be approved:

**EXHIBIT A**

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 reestablished public or private right-of-way:*

In order to comply with this provision of the Municipal Code, the City must require that a public utility easement be established in conjunction with the vacation of right-of-way.

2. *That the right-of-way or easement to be vacated is no longer necessary for the public use and convenience.*

The right-of-way is no longer necessary for public use as a street. However, it is needed as a public utility easement due to existing utilities being located within the right-of-way to be vacated.

## **Development Review Team Analysis**

### Current Planning

The right-of-way to be vacated currently serves no purpose for vehicle and pedestrian accessibility since the remainder of Truman Avenue was already vacated. Beyond some limited utilities that exist within the right-of-way, which will be retained in an easement, there is no public benefit in retaining Truman Avenue as a street.

### Transportation Development Review

TDR (Transportation Development Review) Division understands this application is proposed to vacate an existing street ROW (right-of-way) of Truman Avenue, which is a dead end ROW stub north of Hilltop Drive, and of which street improvements exist for vehicular travel only to the St Johns property from Hilltop Drive. (TDR Division understands the northerly portion of Truman right-of-way to 12th St was previously vacated in 1957 via City Council ordinance # 575).

From review of the plats found on file, the TDR Division understands the ROW proposed to be vacated was originally created via the St. John Addition and the Hilltop Addition to the City. (The majority of the ROW was created via the St John Addition in 1956 (signed by the Archbishop of Denver), and a small portion of the ROW was created via the Hill Top Addition in 1955 (signed by the Colorado District Lutheran Church).

The street improvements located within this remaining ROW stub serve for access to an existing parking lot at the rear of the church and for the structure at 1515 Hilltop Drive used by the church, all of which is within the St Johns Church facility property/lot. TDR Division understands that direct vehicular access for the property to the east (school) exists from Hilltop Drive separately (not from this Truman Avenue ROW stub proposed to be vacated).

Since the existing street improvements within the Truman Avenue dead end ROW stub north of Hilltop Drive to be vacated serve vehicular access only to the existing St John property/lot, the TDR Division understands that the ROW stub is no longer needed for the general public. TDR Division understands that once this ROW stub is vacated, state statutes govern how the vacated property is divided to adjacent owner(s), (it is understood that in this case, the ROW property originally created via the St Johns Addition would revert to the adjacent St Johns property owner, and the ROW property originally created via the Hilltop Addition would revert to the adjacent Hilltop Addition property owner).

**EXHIBIT A**

TDR Division understands that no land adjoining the proposed vacation is being 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, and this dead end ROW stub is no longer necessary for public use and convenience.

Therefore in light of all of the above, TDR Division has no objection to the proposed ROW vacation at this time.

#### Fire

The proposed right-of-way vacation will not create a negative impact upon the City's ability provide emergency service.

#### Water/Wastewater

The subject area to be vacated is the City's current service area for both water and wastewater. There is an existing 4" water main within the existing right-of-way to be vacated. The Department finds that as long as the area to be vacated is retained as a Public Utility Easement the following findings can be made:

\*The existing right of way to be vacated does not impact the existing water and wastewater utility configuration within and adjacent to this development.

\*The existing right of way to be vacated is no longer necessary for public use and convenience.

#### Stormwater

The existing right-of-way of Truman Avenue to be vacated is no longer used to convey stormwater and thus is not necessary for the public use and conveyance of Stormwater.

#### Power

The city has an overhead three-phase power line that begins in the old Arkins right-of-way to the south and extends north along the east side of Truman Avenue. This line serves more than the church property and cannot be removed. The portion of Truman Avenue that is to be vacated must be designated as a blanket utility easement in conjunction with the vacation of this portion of Truman Avenue.

The right-of-way to be vacated is no longer necessary for the public use and convenience providing that a blanket utility easement is granted for the whole sixty foot width of the right-of-way.

### **IX. RECOMMENDED CONDITION**

The following conditions are recommended by City Staff.

1. The portion of Truman Avenue right-of-way shall be dedicated as a public utility easement in conjunction with the vacation request.

# WEST 12th STREET

## EXHIBIT MAP FOR VACATION OF A PORTION OF THE RIGHT-OF-WAY OF TRUMAN AVE AND HILLTOP DRIVE LYING ADJACENT TO THE RECTORY OF THE ST. JOHN'S CATHOLIC CHURCH AT 1515 HILLTOP DRIVE IN LOVELAND, COLORADO

**LOT 1 BLOCK 1**  
**AMENDED PLAT OF LOTS 1 through 5 ST. JOHN**  
**ADDITION AND THE VACATED PORTION OF TRUMAN**  
**AVENUE BEING A MERGER OF LOTS 1 through 5 ST.**  
**JOHN ADDITION AND THE VACATED PORTION OF**  
**TRUMAN AVENUE**

**BLOCK 1**  
**HILLTOP**  
**ADDITION**

Two parcels of land lying in the Northeast Quarter of Section 15, Township 5 North, Range 69 West of the Sixth Principal Meridian, City of Loveland, Larimer County Colorado;  
The First parcel being a that portion of Truman Street as shown on Final Plat of St. John Addition as recorded January 1, 1956 in Book 6 at Page 118 as Instrument Number 713087, in the records of said Larimer County, not previously Vacated by City of Loveland Ordinance number 575 as recorded in Book 1039 at page 731 in the records of said Larimer County, more particularly described as follows;  
Considering the Eastern most boundary line of said St. John Addition as Bearing South 90°00'00" West, according to the Final Plat of St. John Addition;  
Commencing at the Northeast corner of St. John Addition to the City of Loveland, thence South 90°00'00" West 37.54 feet to a point on the Southerly right-of-way of West 12th Street; thence South 89°41' West 60 feet, thence South 00°00'00 West 585.90 feet to the Point of Beginning; thence continuing South 00°00'00 West 85.00 feet, to the beginning of a tangent curve to the right; thence along the arc of said curve to the right, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet; thence departing said curve along a non-tangent line North 90°00'00" East 51.95 feet; thence South 86°00'00" East 28.12 feet; thence North 00°00'00" East 106.96 feet more or less; to a point on the Southerly Boundary line of that portion of Truman Avenue as Vacated by City of Loveland Ordinance 575; thence along said Southerly boundary line North 90°00'00" West 60.00 feet to the Point of Beginning, containing 6,413 square feet more or less.

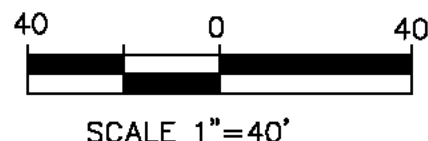
The second parcel being described as a portion of West Hilltop Drive lying adjacent to the Southwest Corner of Block One as shown on the Final Plat of Hill Top Addition to the City of Loveland, Colorado according to the Final Plat as recorded January 1, 1955 in Book 6 at Page 107 as Instrument number 703803, in the records of said Larimer County, being more Particularly Described by Metes and Bounds as follows;  
Considering the Western most Boundary line as Bearing South 90°00'00" East according to the recorded Final Plat of said Hill Top Addition;  
Commencing at the Northeast corner of St. John Addition to the City of Loveland, thence South 90°00'00" West 37.54 feet to a point on the Southerly right-of-way of West 12th Street; thence South 00°00'00 West along the Western most boundary line of said Hill Top Addition, a distance of 674.51 feet to the Point of Beginning; thence South 00°00'00" West along the Westerly Boundary line of said Hill Top Addition, a distance of 18.65 feet, thence South 86°00'00" East a distance of 18.65 feet to a point on a non-tangent curve; The Northwesterly along the arc of said non-tangent curve, the center of which bears North 04°00'00" East, and having a central angle of 86°00'00 and a radius of 20.00 feet, an arc distance of 30.02 feet, the chord of said curve bears North 43°00'00" West a distance of 27.28 feet, to the point of Beginning, containing 0.73 square feet more or less.

tpB

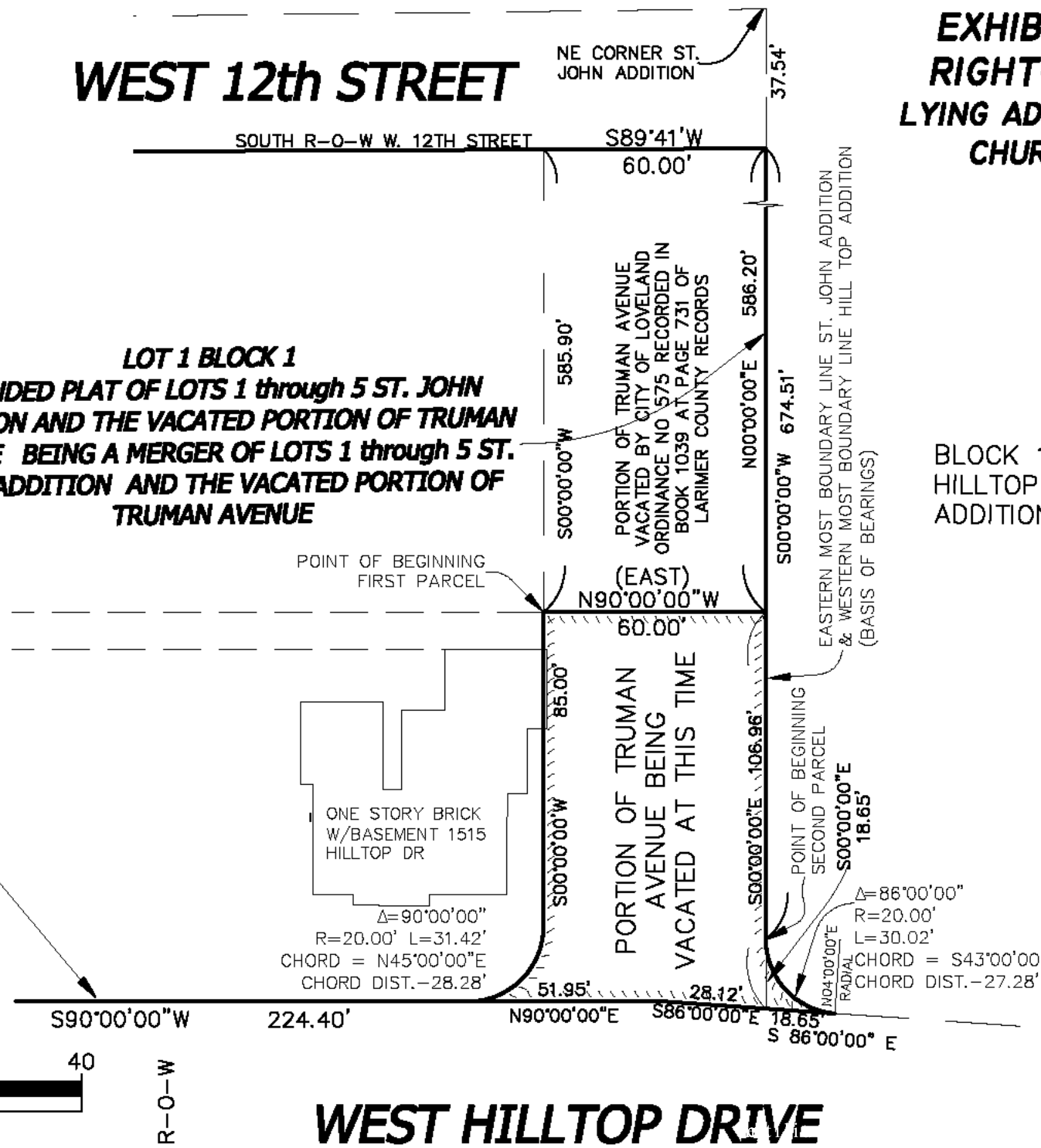
**OWNER- FIRST PARCEL &**  
**APPLICANT**  
**ST. JOHNS CATHOLIC CHURCH**  
**1515 HILLTOP DRIVE**  
**LOVELAND, COLORADO. 80537**

**OWNER- SECOND PARCEL**  
**THOMPSON SCHOOL**  
**DISTRICT R2-J**  
**2890 N. MONROE AVE.**  
**LOVELAND, COLORADO. 80538**

**EXHIBIT A**



PREPARED MARCH 18, 2013  
BY CDS ENGINEERING CORP.  
165 2ND ST. SW  
LOVELAND, COLORADO 80537  
PROJECT NO. 12-5494  
REVISED 07-30-2013



LOT 11 BLOCK 1 ST JOHN ADDITION

LOT 12 BLOCK 2 HILLTOP ADDITION

WEST 12th STREET

N89°42'53"E      510.06' (CALC.)

NORTH TYLER AVENUE

WEST 11  
STREET

WEST 10th  
STREET

**LOT 1**  
396,145 sq.ft.  
9.09 acres

**BLOCK 1**

**NOTE**

- MOTION**
1. Unless otherwise approved by the City, all unclassified conditions of approval for the original subdivision(s) or addition shall continue to apply to this property.
  2. This plot is subject to all conditions, covenants, restrictions and easements set forth by the St. John Addition to the City of Cleveland.
  3. Recorded easement, and rights of way within the subject property, if shown on this site, are according to the Recorder's Plat of St. Johns Addition Addition.
  4. Goals of Searles Avenue between the Western End of Lot 1 of St. Johns Addition, beginning North 00°00'00" East, according to the recorded plat of St. John Addition with all bearings contained herein relative thereto.
  5. The third part of St. John Addition appears to have some problems causing lots to mathematically close. Dimensions shown herein are offered as a solution to the closure problem.

NOTICE: According to Colorado law, you **MUST** commence any legal action based on any defect in this survey within **THREE** years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than **TEN** years from the date of the certification shown herein.

Total area in square feet of easements dedicated to the public or the city by this plat = 4,418 Square Feet  
Total area in square feet of easements dedicated to the public or city that is being vacated by this plat = 0 Square Feet



SCALE 1" = 50'

OWNERS AND LIENHOLDERS STATEMENT

KNOW ALL PERSONS BY THESE PRESENTS that the undersigned, being all the owners and Senholders of the following described property, except any adiating public streets, roads, or highways, being All of Lots 1, THREE (3) OF ST. JOHN ADDITION

Containing 386,143 square feet or 0.0942 acres, more or less, and is subject to all easements and rights-of-way on record or existing and he hereby designates the same as AMENDED PLAT OF LOTS 1 through 5 ST. JOHN ADDITION AND THE VACATED PORTION OF TRUMAN AVENUE, 7 BEING A MEMBER OF LOTS 1 through 5 ST. JOHN ADDITION AND THE VACATED PORTION OF TRUMAN AVENUE to the City of Nederland, Colorado.

JOHN ADDITION AND THE VACATED PORTION OF HOGAN AVENUE, TO THE City of Loveland, Colorado


*Manuel J. Hernandez*  
By *Manuel J. Hernandez*  
As Representative Agent, of *7576494 IN F&S*  
of ARCHBISHOP OF DENVER,  
a Colorado Corporation and  
STATE OF COLORADO }  
COUNTY OF *Weld*

The foregoing instrument was acknowledged before me this *25th* day of *October*, 20*11*, by  
Man, Jose Manuel Hernandez, a Single, the Representative Agent of the Archbishop of Denver, a Colorado corporation and  
the County of *Weld*, the *Manuel J. Hernandez* Catholic Parish - Loveland, a Colorado corporation and

Witness my hand and official seal

My commission expires 12-17-13 Henry Public

## PLANNING DIRECTORS STATEMENT

**PLANNING DIRECTORS STATEMENT**  
This plot is hereby approved by the Director of Development Services of the City of  
Loveland, Larimer County, Colorado, this 16<sup>th</sup> day of December 2011 for  
filing with the Clerk and Recorders of Larimer County.  
  
Director, Development Services

Witness my hand and seal of the City of Loveland  
ATTEST:

James M. Weaver  
Mayor City Clerk

### SURVEYORS STATEMENT

I, Michael J DeDecker, being a registered Professional Land Surveyor in the State of Colorado, do hereby certify that the survey of AMENDED PLAT OF LOTS 1 through 5 ST. JOHN ADDITION and the VACATED PORTION OF TRUMAN AVENUE / BEING A MERGER OF LOTS 1 through 5 ST. JOHN ADDITION and the VACATED PORTION OF TRUMAN AVENUE to the City of Loveland 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.

Dated this 17th day of March 1983  
Michael J. DeBecker  
 for and behalf of  
 CDS Engineering Corp.

**CDS** Engineering Corporation

165 SW 2ND ST  
LOVELAND, COLORADO 80537  
(970) 867-8010

CLIENT:

**ARCHDIOCESE OF DENVER**

CDS ENGINEERING CORPORATION

COS ENGINEERING CORPORATION  
"Consulting Engineers and Professional Construction Managers"  
CIVIL / STRUCTURAL ENGINEERING, GEOTECHNICAL, AND FOUNDATION ENGINEERS,  
DAMS AND RESERVOIRS, LAND AND MUNICIPAL PLANNING, LAND AND CONSTRUCTION SURVEYS

PROJECT TITLE:

**LOTS 1 through 5 ST. JOHN ADDITION AND THE  
VACATED PORTION OF TRUMAN AVENUE**

SHEET TITLE:

**AMENDED PLAT FOR LOT MERGER**

11-5494

11-5404  
Drawing No.  
5404 ST

REVISION 440

9-027



FIRST READING: \_\_\_\_\_

SECOND READING: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE VACATING A PORTION OF A PUBLIC RIGHT OF WAY  
LOCATED IN THE ST. JOHN ADDITION TO THE CITY OF LOVELAND, CITY OF  
LOVELAND, LARIMER COUNTY, COLORADO**

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the vacation of that portion of a public right of way described below, located in the City of Loveland, Larimer County, Colorado; and

**WHEREAS**, it is necessary that the portion of right of way to be vacated be preserved as a public utility easement; and

**WHEREAS**, it is further necessary, that the owners of all real property adjoining the portion of the right of way to be vacated submit to the City a fully executed public utility easement, in a form acceptable to the City, for the land described below; and

**WHEREAS**, to assure ongoing provision of public and private utility services, and as permitted by Loveland Municipal Code Section 16.36.060, this ordinance is conditioned up receipt of the fully executed public utility easement described above, which shall be recorded concurrently with this ordinance; and

**WHEREAS**, the City Council finds and determines that no land adjoining any portion of the 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; and

**WHEREAS**, the City Council finds and determines that the portion of the right of way to be vacated is no longer necessary for the public use and convenience, subject to the condition that the public utility easement described above be received by the City; and

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

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

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

**Section 2.** Subject to the condition set forth in Section 3, the following described portion of a public right of way access easement be and the same is hereby vacated:

Two parcels of land lying in the Northeast Quarter of Section 15, Township 5 North, Range 69 West of the Sixth Principal Meridian, City of Loveland, Larimer County Colorado;

The First parcel being a that portion of Truman Street as shown on Final Plat of St. John Addition as recorded January 1, 1956 in Book 6 at Page 118 as Instrument Number 713087, in the records of said Larimer County, not previously Vacated by City of Loveland Ordinance number 575 as recorded in Book 1039 at page 731 in the records of said Larimer County, more particularly described as follows;

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said parcel of land contains 6,417 sq. ft., more or less (+/-), and may be subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

**Section 3.** To assure ongoing provision of public and private utilities, the foregoing vacation is subject to the express condition that the vacated portion of the public right of way shall be preserved as a public utility easement, which condition shall be deemed satisfied upon receipt by the City of a fully executed public utility easement, in a form acceptable to the City, for the land described above, from the owners of all real property adjoining the portion of the right of way to be vacated.

**Section 3.** 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).

**Section 5.** The City Clerk is hereby directed to record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes, and after receipt of the fully executed public utility easement described above. The fully executed public utility easement for the above-described property shall be recorded concurrently.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

CITY OF LOVELAND, COLORADO:

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

\_\_\_\_\_  
Mayor

# ST. JOHN AND HILL TOP ADDITION VACATION OF RIGHT-OF- WAY (TRUMAN AVENUE)

P. 271



Proposed Truman Avenue to be  
vacated and reserved as a  
utility easement



**CITY OF LOVELAND****ECONOMIC DEVELOPMENT OFFICE**

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 16  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Economic Development Department  
**PRESENTER:** Mike Scholl, Economic Development Manager

**TITLE:**

1. A Resolution Approving a Grant and Fee Waiver Agreement with the House of Neighborly Service for the Community Life Center
2. An Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget to Provide Incentives to House of Neighborly Service for the Community Life Center

**RECOMMENDED CITY COUNCIL ACTION:**

1. Adopt the resolution.
2. Conduct a public hearing and 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

**SUMMARY:**

1. The resolution is an administrative action and would authorize the City Manager to sign a Grant and Fee Waiver agreement with the House of Neighborly Services (HNS) for the construction of the "*Community Life Center*" at 1511 E. 11<sup>th</sup> Street. The agreement would provide a total package valued at \$756,709.40 that includes reimbursements for public improvements, a matching grant, and fee waivers. The item was considered by Council at the August 13, 2013, Council Study Session.
2. The Ordinance is on first reading. It would budget and appropriate \$500,000 from Council reserve for the Incentive agreement.

**BUDGET IMPACT:**

- ☐ Positive  
☒ Negative  
☐ Neutral or negligible

(The City would fund \$500,000 from Council reserves and forgo \$280,516.14 in waived fees.)

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**BACKGROUND:**

HNS, a local non-profit which provides a range of social services to low income individuals and families, is expanding their operations at 1511 E. 11<sup>th</sup> Street, creating the Community Life Center. Multiple non-profits have agreed to co-locate at the Center. The facility is estimated to cost \$5,000,000 on completion. HNS is actively raising funds for the project and the request to the City is part of the overall campaign.

The agreement provides \$250,000 in 2013, for public improvement and an additional \$250,000 in 2014, as a challenge grant to be matched by other contributions. In addition, the agreement provides a fee waiver of \$280,516.14.

As part of the agreement, the City agrees to release the existing lien on 565 N. Cleveland in exchange for a promissory note and deed of trust on 1511 E. 11<sup>th</sup> Street for \$780,516 subordinate to the current financing. The note would be payable to the City if HNS were to sell or transfer the property within the next 20 years.

At the August 13, 2013 Study Session, Council directed staff to complete the agreement and return to Council for formal consideration.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Resolution
2. House of Neighborly Service Grant and Fee Waiver Agreement
3. Supplemental Appropriation Ordinance

**RESOLUTION #R-88-2013****A RESOLUTION APPROVING A GRANT AND FEE WAIVER  
AGREEMENT WITH THE HOUSE OF NEIGHBORLY SERVICE FOR  
THE COMMUNITY LIFE CENTER**

**WHEREAS**, the House of Neighborly Service, a Colorado nonprofit corporation (“HNS”) is a leading provider of essential comprehensive basic needs assistance to citizens of Loveland who are homeless and/or otherwise in need of assistance, playing a significant and essential role in meeting the social service needs of the community; and

**WHEREAS**, the community services provided by HNS (“**Community Services**”) include food assistance, utility assistance, prescription and special medical assistance, emergency shelter for homeless families and individuals, inclement weather shelter for homeless families and individuals, assistance with basic clothing and household goods, special programs for families and children (such as adopt-a-family for Christmas, back to school, birthday closet for children, screening for eyeglasses programs, screening for City of Loveland low income discount programs (Paratransit, COLT and Chilson passes, and scholarships) and administration of the City sales tax rebate program, and partnership and referral programs in cooperation with other assistance agencies (such as the Center for Adult Learning, Neighbor to Neighbor rent and housing assistance, and the Hand Up Cooperative job search assistance program); and

**WHEREAS**, HNS is the owner of the real property and improvements located at 1151 E. 11<sup>th</sup> Street, Loveland, Colorado and legally described as **Lot 1, Ward Industrial Park First Subdivision, City of Loveland, Larimer County, Colorado** (the “**Property**”); and

**WHEREAS**, HNS is redeveloping the Property (the “**Project**”) to house the Community Life Center (the “**Center**”), for co-location of Community Services offered by HNS and other nonprofits, in order to improve delivery and provide an integrated source of such services for low-income individuals and families in the greater Loveland area; and

**WHEREAS**, the Center will increase community access to services, improve efficiency and reduce cost of providing services, enhance the quality of service and address generational poverty in Loveland and the surrounding area; and

**WHEREAS**, the first phase of the Project includes an initial \$1.1 million renovation of the Building (“**Phase I**”); and

**WHEREAS**, in connection with Phase I of the Project, HNS will be required to pay to the City certain capital expansion fees, excluding utility related fees and charges, in the estimated amount of two hundred fifty six thousand seven hundred and nine dollars and forty cents (\$256,709.40) (the “**CEFs**”) and building permit fees, inspection fees, and other fees imposed on new development in the City, excluding CEFs, which are estimated not to exceed twenty three thousand eight hundred and six dollars and seventy four cents (\$23,806.74) (the “**Development Fees**”) as a precondition to receiving from the City a building permit and/or final certificate of occupancy for Phase I; and



**WHEREAS**, HNS has asked the City to provide economic assistance for Phase I to facilitate redevelopment of the Property to house the Center and to enable HNS to attract additional investment in the Center from foundations, residents, and other public sources; and

**WHEREAS**, the economic assistance requested by HNS for Phase I include a waiver of the CEF's and the Development Fees, cash assistance to fund certain the site improvements to enhance safety and accessibility in the Building and a cash matching grant; and

**WHEREAS**, the House of Neighborly Service Grant and Fee Waiver Agreement attached hereto as **Exhibit A** and incorporated herein by reference (the "**Agreement**") include the requested assistance; and

**WHEREAS**, the waiver of CEFs and Development Fees is authorized under City Code Section 16.38.075, if the City Council finds 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, and that such facilities relieve the pressures of growth on City facilities; and

**WHEREAS**, the waiver of capital related fees under Section 16.38.075 requires no reimbursement by the City's general fund, unless the waived fee is a utility fee or charge; and

**WHEREAS**, provision of cash assistance is authorized under City Code Section 3.04.090 for all public purposes to the full extent authorized by the Colorado Constitution, which includes the public purposes of producing significant economic, cultural and social benefits to the citizens of Loveland; and

**WHEREAS**, the City Council finds that the terms of the Agreement and the economic assistance for Phase I set forth in the Agreement (a) are in the best interests of the City and the public, serve the public purposes of producing significant economic and social benefits to the citizens of Loveland, primarily in the form of economic development, high-quality jobs, and access to social services including but not limited to food support, limited medical, job training, housing assistance and family support services to low-income individuals and families in the greater Loveland area; and (b) will fund a project that will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City as taxpayer expense, and that such facilities relieve the pressures of growth on City facilities.

**NOW, THEREFORE, BE IT RESOLVED 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 City Council hereby approves the Agreement.

**Section 3.** That the City Manager is authorized, following consultation with the City Attorney, to modify the Agreement in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

**Section 4.** That after an ordinance appropriating the funds sufficient to reimburse HNS for the Site Improvements and to pay to HNS the Matching Grant, as defined in the Agreement, is approved on second reading and such ordinance becomes effective, the City Manager and the City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Loveland.

**Section 5.** That after execution of the Agreement and following consultation with the City Attorney, the City Manager is hereby authorized to make the determinations and grant or deny approvals as set forth in the Agreement and the City Manager and City Clerk are hereby authorized and directed to execute and deliver such documentation as may be necessary or appropriate to make the payments and otherwise implement the transactions set forth in the Agreement.

**Section 6.** That this Resolution shall be effective as of the date and time of its adoption.

ADOPTED this 15<sup>th</sup> day of October, 2012.

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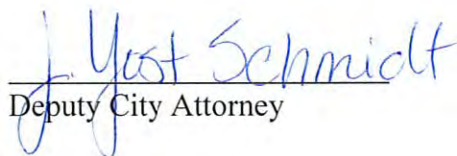
Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney

**EXHIBIT A****HOUSE OF NEIGHBORLY SERVICE GRANT AND FEE WAIVER AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_, 2013, by and between **THE CITY OF LOVELAND, COLORADO**, a home rule municipality (“**City**”) and **HOUSE OF NEIGHBORLY SERVICE**, a Colorado nonprofit corporation (“**HNS**”). The City and HNS are referred to herein individually as a “**Party**” or jointly, as the “**Parties**”.

**RECITALS**

**WHEREAS**, HNS owns that real property consisting of approximately 2.18 acres located in the City of Loveland, Colorado described as follows:

**LOT 1, WARD INDUSTRIAL PARK FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

and known as 1151 E. 11<sup>th</sup> Street, Loveland, Colorado (the “**Property**”); and

**WHEREAS**, before HNS’ acquisition of the Property, the 36,986 square foot building located on the Property (the “**Building**”) was vacant and underutilized for an extended period of time; and

**WHEREAS**, HNS is redeveloping the Property (the “**Project**”) to house the Community Life Center (the “**Center**”), in which HNS will offer community services, along with social and community services offered by other nonprofits, in order to improve delivery and provide an integrated source of such services to low-income individuals and families in the greater Loveland area; and

**WHEREAS**, the Center will increase community access to services, improve efficiency and reduce cost of providing services, enhance the quality of service and address generational poverty in Loveland and the surrounding area; and

**WHEREAS**, the first phase of the Project includes acquisition of the Property and an initial \$1.1 million renovation of the Building (“**Phase I**”) to allow occupancy by HNS, as well as occupancy or programs offered by other social service agencies such as the Boys and Girls Club of Larimer County, Catholic Charities, Disabled Resource Services, Hand Up Cooperative, Neighbor to Neighbor, Department of Human Services, Angel House, St. Matthew’s Medical Clinic and the Center for Adult Learning (Front Range Community College); and

**WHEREAS**, in connection with Phase I of the Project, HNS will be required to pay to the City certain capital expansion fees, excluding utility related fees and charges, in the estimated amount of two hundred fifty six thousand seven hundred and nine dollars and forty cents (\$256,709.40) (the “**CEFs**”) and building permit fees, inspection fees, and other fees imposed on new development in the City, excluding CEFs, which are estimated not to exceed twenty three

thousand eight hundred and six dollars and seventy four cents (\$23,806.74) (the “**Development Fees**”) as a precondition to receiving from the City a building permit and/or final certificate of occupancy for Phase I; and

**WHEREAS**, HNS has asked the City to provide economic assistance for Phase I to facilitate redevelopment of the Property to house the Center and to enable HNS to attract additional investment in the Center from foundations, residents, and other public sources; and

**WHEREAS**, the economic assistance requested by HNS for Phase I include a waiver of the CEF’s and the Development Fees, cash assistance to fund certain the Site Improvements (as defined below), to enhance safety and accessibility in the Building and a cash matching grant; and

**WHEREAS**, the waiver of CEFs and Development Fees is authorized under City Code Section 16.38.075, if the City Council finds 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, and that such facilities relieve the pressures of growth on City facilities; and

**WHEREAS**, the waiver of capital related fees under Section 16.38.075 requires no reimbursement by the City’s general fund, unless the fee is a utility fee or charge; and

**WHEREAS**, provision of cash assistance is authorized under City Code Section 3.04.090 for all public purposes to the full extent authorized by the Colorado Constitution, which includes the public purposes of producing significant economic, cultural and social benefits to the citizens of Loveland; and

**WHEREAS**, by the adoption of Resolution #R-\_\_\_\_-2013, the City Council has made findings that the terms of the this Agreement and the economic assistance for Phase I hereinafter set forth in this Agreement (a) are in the best interests of the City and the public, serve the public purposes of producing significant economic and social benefits to the citizens of Loveland, primarily in the form of economic development, high-quality jobs, and access to social services including but not limited to food support, limited medical, job training, housing assistance and family support services to low-income individuals and families in the greater Loveland area; and (b) will fund a project that will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the City as taxpayer expense, and that such facilities relieve the pressures of growth on City facilities.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**1. Waived Fees.** On the express condition that HNS obtains a building permit for construction of Phase I of the Project or before December 31, 2014, the CEF’s due for Phase I in an amount not to exceed two hundred fifty six thousand seven hundred nine dollars and forty cents (\$256,709.40) and the Development Fees due for Phase I in an amount not to exceed

twenty three thousand eight hundred six dollars and seventy four cents (\$23,806.74) shall be waived (collectively, the "Waived CEFs and Fees"). The Waived CEFs and Fees shall not, in any event, exceed the total sum of two hundred eighty thousand five hundred sixteen dollars and fourteen cents (\$280,516.14) and HNS shall pay any amounts in excess of two hundred eighty thousand five hundred sixteen dollars and fourteen cents (\$280,516.14). If HNS fails to obtain a building permit for Phase I of the Project on or before such date, then this waiver of the Waived CEFs and Fees shall expire and the City shall have no obligation to waive any CEFs or Development Fees due with respect to Phase I of the Project.

The Waived CEFs and Fees shall not include any amounts for City utility-related fees or charges or for taxes or fees payable to Larimer County or other governmental entities in connection with Phase I of the Project, which shall be paid by HNS as required by law.

**2. Deed Restriction/Encumbrance In Connection with Fee Waiver.** In accordance with City Code Section 16.38.080.B, HNS shall execute a deed restriction or encumbrance ("**Encumbrance**"), in a form approved by the City Attorney, prohibiting the sale of the Property to any person or entity for a use that does not meet the requirements of Code Section 16.38.080.A, for a period of 20 years from the date on which a temporary or permanent certificate of occupancy (or letter of completion) is issued for Phase I of the Project. The Encumbrance shall be signed and delivered by HNS to the City prior to issuance of a temporary or permanent certificate of occupancy (or letter of completion) for Phase I of the Project, and the City shall have the right to withhold the certificate of occupancy (or letter of completion) until receipt of the Encumbrance. The Encumbrance shall constitute a covenant, equitable servitude and/or lien that runs with the Property and binds HNS, its successors and assigns. The Encumbrance shall expire upon the earlier of: (a) transfer of title to the Property to an institutional lender holding a mortgage or deed of trust on the Property, or to such institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or (b) twenty (20) years after the date of a certificate of occupancy (or letter of completion) is first issued for the Phase I of the Project, provided there is no existing default under the Encumbrance.

**3. Transfer of Existing Lien on Cleveland Property.** HNS is the owner of real property and improvements located at 565 N. Cleveland Ave., Loveland, Colorado, legally described as **the North 70 feet of Lots 108, inclusive, Block 11, Original Plat of the City of Loveland, Larimer County, Colorado** (the "**Cleveland Property**"). HNS desires to sell the Cleveland Property to defray a part of its cost to acquire the new Property. The Cleveland Property is subject to a Lien Agreement between the City and HNS dated February 1, 1990 and recorded February 6, 1990 in the Larimer County real property records at Reception #90005418 (the "**Cleveland Lien Agreement**"). The Cleveland Lien Agreement secures Community Development Block Grant ("**CDBG**") funds provided by the City to HNS to fund a portion of the purchase price paid by HNS for the Cleveland Property. Pursuant to the Cleveland Lien Agreement, the City is entitled to forty two percent (42%) of the "then-current fair market value" of the property at such time as HNS fails to operate the program for which the CDBG funds were provided. The City hereby agrees to release the Cleveland Lien Agreement on the Cleveland Property in return for a promissory note and deed of trust on the Property ("**Note and Deed of Trust**") to secure an amount equal to seven hundred eighty thousand five hundred sixteen \$780,516.00 (the "**Principal Amount**"), which is the total of all funding provided to HNS by the

City for the Property under this Agreement, provided that the Principal Amount is subject to reduction in the event that less than the full amount of \$250,000 is paid by the City to HNS under the terms of the Matching Grant under paragraph 5 below. The Note and Deed of Trust shall be in a form reasonably satisfactory to the City, shall be subordinate to existing or future financing for acquisition or improvement of the Property in an amount not to exceed \$2,312,000, and the Principal Amount shall be due and payable upon the sale or transfer of the Property by HNS. If the Principal Amount does not become due as a result of a sale or transfer of the Property by HNS, it shall be deemed paid and shall expire on that date which is twenty (20) years from the date of the Note.

**4. Cash Assistance; Reimbursement for Site Improvements.** On the express condition that HNS obtains a building permit for construction of Phase I of the Project or before December 31, 2014, the City shall reimburse HNS for the costs of the following improvements (the “**Site Improvements**”) in amount not to exceed a total of two hundred fifty thousand dollars (\$250,000):

a. Elevator	\$133,000
b. Fire Alarm	22,500
c. Sprinkler System	55,000
d. Fire hydrant	7,500
e. Front Entrance and Vestibule	<u>32,000</u>
	\$250,000

The City shall reimburse HNS for the cost of each of the listed Site Improvements as they are completed, from time to time, within thirty (30) days after receipt of written request therefor from HNS, which request shall include invoices and lien waivers from the contractors performing such work. The City shall have the right, prior to any reimbursement, to enter onto the Property on reasonable notice to HNS to inspect the Site Improvements to determine whether they have been completed to the reasonable satisfaction of the City, and may withhold the requested reimbursement until such completion by HNS. In no event shall the City be responsible for reimbursement of any costs in excess of a total cumulative amount of two hundred fifty thousand dollars (\$250,000). Any costs in excess of a total cumulative amount of two hundred fifty thousand dollars (\$250,000) incurred by HNS in completion of the Site Improvements shall be borne by HNS. If HNS fails to obtain a building permit for Phase I of the Project on or before December 31, 2014, the City shall have no obligation to reimburse HNS for the cost of the listed Site Improvements as set forth above.

**5. Matching Grant.** The City shall provide grant funds for Phase I of the Project in an amount equal to the donations, excluding the City’s assistance under this Agreement or other funding from the City (including but not limited to CDBG funding), raised by HNS for Phase I of the Project from sources other than the City on or before December 31, 2014, up to a maximum grant amount of two hundred fifty thousand dollars (\$250,000) (the “**Matching Grant**”). The Matching Grant shall be paid by the City to HNS within thirty (30) days after receipt by the City of HNS’s written request for payment of the Matching Grant accompanied by

such documentation as may be requested by the City Manager evidencing that HNS has obtained donations for Phase I of the Project equal to the amount requested for the Matching Grant; provided that the City shall not be obligated to match total donations in excess of two hundred fifty thousand dollars (\$250,000).

**6. Applicable Law and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the Parties hereto acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the City by its Charter and Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall any of the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall only be in the District Court for Larimer County, Colorado.

**7. Time is of the Essence.** Time shall be of the essence for the performance of all obligations under this Agreement. Notwithstanding the foregoing, the deadlines set forth in Paragraphs 1, 2, and 3 shall be subject to extension by the City Manager for good cause shown, provided that any such extension shall be set forth in writing and signed by the City Manager.

**8. Assignment.** HNS shall not assign or transfer any or all interest, right or obligation under this Agreement without the prior written consent of the City Council. Any such assignment or transfer without the prior written consent of the City Council shall be void and of no effect.

**9. Entire Agreement.** This Agreement contains the entire agreement between the parties relating to the subject matter hereof and may not be modified or amended except by written agreement signed by both parties.

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

**11. Notices.** Any written notice given under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested, to the following addresses:

If to the City:	William D. Cahill, City Manager City of Loveland 500 East Third Street Loveland, CO 80537 FAX: 970-962-2900
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With Copy to: John R. Duval, City Attorney  
City of Loveland  
500 East Third Street  
Loveland, CO 80537  
FAX: 970-962-2900

If to HNS: Glorie Magrum, Executive Director  
House of Neighborly Service  
1151 E. 11<sup>th</sup> Street  
Loveland, CO 80537  
FAX: 970-667-1597

**12. Binding Effect.** Subject to the provisions of Paragraph 8 above, this Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of successors and assigns of the respective parties hereto.

**13. Severability.** If any provision of this Agreement, or the application of such provision to any person, entity, or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those in which it was held invalid, shall not be affected.

**14. No Waiver.** In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

**15. Right of Offset.** HNS agrees that the City shall have the right to withhold and set off any amounts which may become payable to HNS by the City under this Agreement against any amounts which HNS may owe to the City, whether arising under this Agreement or otherwise. For example, but not by way of limitation, if HNS fails to pay any amounts due to the City for services not related to this Agreement, such as utility or other services, the City shall have the right to withhold payment of and set off any amounts that may be due by the City to HNS against any amounts that may due to the City by HNS.

**16. City Council Appropriation.** This Agreement is made expressly contingent upon the City Council of the City of Loveland (the "Council") appropriating by ordinance funds and amounts sufficient to fulfill the City's obligations under this Agreement. If the Council does not pass such an ordinance on second reading on or before November 30, 2013, or if for any reason it does not become law on or before that date, then this Agreement shall be automatically terminated and both parties shall be released from all further obligations under this Agreement.

**17. Multi-Year Fiscal Obligations.** To the extent any of the City's financial obligations under this Agreement extend beyond the end of the current fiscal year (December 31, 2013), such amounts may be considered a multi-year fiscal obligation under Article X, Section 20 of the Colorado Constitution and the City's Charter Section 11-6. All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent

upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City, in its discretion.

**IN WITNESS WHEREOF**, the parties have signed this Agreement to be effective as of the date set forth above.

## HOUSE OF NEIGHBORLY SERVICE

a Colorado nonprofit corporation

By: \_\_\_\_\_  
Glorie Magrum, Executive Director

ATTEST:

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

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by Glorie Magrum as Executive Director \_\_\_\_\_ of the House of Neighborly Service, a Colorado nonprofit corporation.

Witness my hand and official seal. My commission expires: \_\_\_\_\_.

(S E A L)

Notary Public

**CITY OF LOVELAND, COLORADO**

By: \_\_\_\_\_  
William D. Cahill, City Manager

ATTEST:

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

APPROVED AS TO FORM:

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

**STATE OF COLORADO )**  
**) ss.**  
**County of Larimer )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of June, 2013, by William D. Cahill, as City Manager of the City of Loveland, Colorado, a home rule municipality and by Teresa Andrews as City Clerk of the City of Loveland, Colorado, a home rule municipality.

Witness my hand and official seal. My commission expires: \_\_\_\_\_.

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

(S E A L)

FIRST READING October 15, 2013

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET TO PROVIDE INCENTIVES TO HOUSE OF NEIGHBORLY SERVICE FOR THE COMMUNITY LIFE CENTER**

**WHEREAS**, the City has reserved funds not 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 reserves in the amount of \$500,000 from the Council Capital Reserve in the General Fund 100 are available for appropriation. Revenues in the total amount of \$500,000) are hereby appropriated for to provide a cash incentive and matching grant pursuant to the House of Neighborly Service Incentive and Fee Waiver Agreement for the Community Life Center. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100**

<b>Revenues</b>		
Fund Balance		500,000
<b>Total Revenue</b>		<b>500,000</b>
<b>Appropriations</b>		
100-18-180-0000-43714	Payment to Outside Agencies	500,000
<b>Total Appropriations</b>		<b>500,000</b>

**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 upon final adoption, as provided in City Charter Section 11-5(d).


ADOPTED this \_\_\_\_ day of November, 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 3<sup>rd</sup> Street • Loveland, Colorado 80537  
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

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**AGENDA ITEM:** 17  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Greg George, Director of Development Services  
**PRESENTER:** Bob Paulsen, Current Planning Manager

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**TITLE:**

An Ordinance on first reading Repealing and Re-Enacting Chapter 7.18 of the Loveland Municipal Code Regarding Weed Control

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and 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
- 

**SUMMARY:**

This is a legislative action to adopt an ordinance on first reading that modifies the weed control provisions of the Loveland Municipal Code, aligning the provisions with State and County regulations; clarifying requirements and allowances for native and ornamental grasses.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible
- 

**BACKGROUND:**

This is a staff-initiated update to the City's weed control provisions. Staff from Current Planning, Open Lands, Code Enforcement, and the City Attorney's office have participated in the process. The purpose of the ordinance is to align the weed control requirements with the State Noxious Weed Act and with the Larimer County Weed District Regulations regarding noxious weeds. This update also clarifies weed control requirements for native and ornamental grasses.

Specifically, the update allows these grasses to exceed the standard eight (8) inch height limitation when included in an approved landscape plan or located in a designated public or private natural area. This change provides the City, private property owners, and homeowner associations greater clarity in the establishment and maintenance of natural areas. Finally, the ordinance also includes modifications pertaining to growing marijuana consistent with the provisions of the Colorado Constitution, as amended.

At a noticed public hearing on September 23, 2013, the Planning Commission recommended, as an item on their Consent Agenda, that City Council adopt the ordinance. Consequently, there are no accompanying minutes provided from the Planning Commission hearing.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Staff Memorandum



FIRST READING October 15, 2013

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 7.18 OF  
THE LOVELAND MUNICIPAL CODE REGARDING WEED CONTROL**

**WHEREAS**, Chapter 7.18 of the Loveland Municipal Code governs weed control; and

**WHEREAS**, the provisions of Chapter 7.18 require updating to align with the Colorado Noxious Weed Act (C.R.S. §35-5.5-101 et seq.) and the Larimer County Weed District regulations regarding noxious weeds and to include provisions regarding growth of marijuana to the extent permitted by Amendment 64 to the Colorado Constitution; and

**WHEREAS**, the provisions of Chapter 7.18 also require modification to clarify provisions applicable to clarify the provisions applicable to native and ornamental grasses, particularly as they are included in landscape plans for public or private natural areas, including common areas maintained by homeowners' associations in residential neighborhoods.

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

**Section 1.** That Chapter 7.18 of the Loveland Municipal Code is hereby repealed and is reenacted to read as follows:

**Chapter 7.18**

**WEED CONTROL**

**Sections:**

- |                     |  |
|---------------------|--|
| <b>7.18.010</b>     | <b>Intent.</b>   |
| <b>7.18.020</b>     | <b>Definitions.</b>  |
| <b>7.18.030</b>     | <b>Weeds and Grasses, Cutting and Removal.</b>             |
| <b>7.18.040</b>     | <b>Notice and Order of Abatement.</b>                      |
| <b>7.18.42</b>      | <b>City Removal and Assessment.</b>                        |
| <b>7.18.050</b>     | <b>Administrative Review of Assessment.</b>                |
| <b>7.18.060</b>     | <b>Owners Have Ultimate Responsibility for Violations.</b> |
| <br><b>7.18.010</b> | <br><b>Intent.</b>   |

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

#### **7.18.020 Definitions.**

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1. "Approved plan" shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.
2. "Grasses" shall mean native grasses, ornamental grasses, and turf grasses, collectively.
3. "Native grasses" shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtipendule*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium*-syn. *andropogon scoparius*); alkali sacaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides* – syn. *oryzopisi hymenoides*); Arizona fescue (*festuca arizonica*); June grass (*koeleria macrantha*); and Western wheatgrass (*pascopyrum smithii* – syn. *agropyron smithii*)..
4. "Ornamental grasses" shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides* -syn. *oryzopsis hymenoides*); big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea*- *festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prairie dropseed (*sporobolus heterolepis*).
5. "Natural area" shall mean any areas, whether public or private, that are designated:
  - a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or
  - b) by the director of development services as a natural area; or
  - c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
6. "Noxious weed" shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the "weed act") from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*);

Mediterranean sage (*salvia aethiopis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvense*); puncture vine (*tribulus terrestris*).

7. "Owner" shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the property.
8. "Property" shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
9. "Turf grasses" shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
10. "Weed" shall mean an aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: dandelion (*leontodore tavaxacum*), silverleaf povertyweed (*franseria descolor*), mouse-ear poverty weed (*iva axillaris*), fanweed (*thlaspi arvense*), mustards (*brassiea*), purpose-flowered groundcherry (*quincula lobata*), Russian thistle (*salsola pestifer*), fireweed (*kochia scoparia*), redroot pigweed (*amaranthus retroflexus*), sandbur (*cenchrus tribuloides*), hairy stickweed (*lappula occidentalis*), Buffaloburs (*Solanum rostratum*), common ragweed (*ambrosia elatior*), cockleburs (*xanthium commurie*), marijuana (*cannabis sativa*). This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered a nuisance and a detriment to the public health and safety. "Weeds" shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops, corn crops, small-grain plots (wheat, barley, oats, and rye), turf grasses, ornamental grasses or native grasses.
11. "Weed district" shall mean the Larimer County Weed District.

#### **7.18.030 Weeds and grasses, cutting and removal.**

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit:

1. the growth of noxious weeds which are required to be eradicated under the weed act, regardless of height; or
2. the growth of noxious weeds which are not required to be eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. the growth of weeds (other than noxious weeds) or grasses to a height of more than eight inches (8"), except as permitted in subsections B and C below.

B. The eight inch (8") height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:

1. shown on an approved plan and are being maintained in accordance with that plan; or
2. used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or
3. growing in a private or public natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any conflict between the eight inch (8") height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, or grasses shall be disposed of so that the property is clean and orderly, and the spread of weeds is prevented.

E. It shall be an affirmative defense to a violation of this section that the property upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife corridor, or wetlands, or that the property upon which the vegetation is growing is dedicated public or private natural area as determined by the City's Director of Development Services Division.

F. The growth of six (6) marijuana (*cannabis sativa*) plants, with three (3) or fewer of the six (6) plants being mature and flowering plants, by a person twenty-one (21) years of age or older for personal use on his or her property in an enclosed, locked space and not conducted openly or publicly in accordance with Section 16, Article XVIII or Section 14, Article XVIII of the Colorado Constitution shall not constitute a violation of this Chapter 7.18.

**7.18.040 Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property as set forth in this Section 7.18.040. Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the property is not occupied by the owner, requiring the weeds or grasses to be cut or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

**7.18.042 City removal and assessment.**

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds or grasses are not cut or abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds or grasses to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting or other abatement of weeds or grasses shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the owner or agent fails to pay the charges associated with abatement within the described 30- day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

**7.18.050 Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

**7.18.060 Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the property and even though the owner has by agreement imposed on the occupant the duty of maintaining the property.

**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).

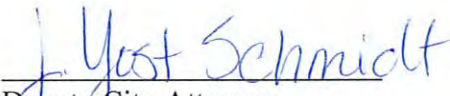
ADOPTED this \_\_\_\_\_ day of November, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

**Development Services  
Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537  
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620  
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## MEMORANDUM

**TO:** City Council  
**FROM:** Bob Paulsen, Current Planning Manager  
**DATE:** October 15, 2013  
**SUBJECT:** **Municipal Code Text Amendment Concerning Weed Control**

### I. EXHIBITS

- A. Planning Commission packet
- B. Redline version of the Code changes
- C. Presentation slides

### II. AMENDMENT SUMMARY

This amendment to the Municipal Code repeals and re-enacts Chapter 7.18 (Weed Control). While the proposed additions to the text of this Chapter are fairly extensive, the changes are mostly clarifying in nature.

The primary purposes of the Weed Control amendments are as follows:

- Update and clarify the regulations
- Specify that noxious weeds must be eradicated (thereby aligning Chapter 7.18 with County and State regulations)
- Allow ornamental and native grasses to exceed the 8-inch height limit when included in an approved landscape plan or when growing within a designated “natural area.”

More specifically, the amended text aligns City Code provisions with the State Noxious Weed Act and with the Larimer County Weed District regulations regarding noxious weeds. This would require property owners to eradicate noxious weeds—a requirement already being

## EXHIBIT 2



enforced by the City's weed control administrator. In addition, the amendment allows native and ornamental grasses to exceed the standard eight (8) inch height limitation for weeds when such grasses are part of an approved landscaped plan or are located within a designated natural area. This latter provision is designed to give homeowner associations greater flexibility in establishing natural areas that are require low-water and low-maintenance treatment.

### **III. KEY ISSUES**

Staff is not aware of any issues or objections associated with the text amendment.

### **IV. TITLE 18 COMMITTEE**

On Thursday, July 18, 2013, the City's *ad hoc* Title 18 Committee evaluated the proposed amendment to Chapter 7.18 that specifies revisions to the City's weed control regulations. The Committee had no objections to the revisions as presented. The Committee instructed staff to inform HOAs and other interested parties of the revisions and then to schedule the amendment for public hearing.

### **V. PLANNING COMMISSION**

On Monday, September 9, 2013, the proposed amendments to Chapter 7.18 of the Municipal Code addressing Weed Control were scheduled for public hearing by the Planning Commission. At the beginning of the meeting, a motion was passed to place the Weed Control amendments on the Consent Agenda. The Consent Agenda was approved, therefore the Weed Control amendments were recommended for approval to the City Council. Consequently, no meeting minutes from the Planning Commission are included in the City Council packet of materials.

### **VI. BACKGROUND**

Over the last several years there has been increasing interest in the maintenance practices for the common lands and open space areas within residential subdivisions. With the build-out of homes, maintenance responsibilities for common areas are transferred from developers to homeowners associations (HOAs). The HOAs (and property maintenance companies that they employ) may have different priorities or objectives than the original developer had. Some HOAs have become interested in reducing the irrigation and maintenance requirements for portions of their open space, amending plans to allow grasses and other plantings to go without irrigation or cutting. In other instances, the reverse is the case, and HOAs have requested permission to install a more planned or domesticated landscape within specified areas.

The Current Planning Division has been working with several HOAs in regards to the maintenance of their park spaces and open lands. The most notable instance has been the Garden Gate neighborhood where some neighbors objected to the HOA's interest in employing minimal maintenance practices for designated open space areas. In 2011, this issue came to the forefront upon appeal of an administrative decision concerning open space maintenance practices. Current Planning staff has also worked with other neighborhoods to clarify or adjust their open space plans, including the Mineral Addition (Quarry Lake), 7 Lakes, Waterfront, Boyd Lake North and Sierra Valley. While each neighborhood situation is unique, all of the neighborhoods have sought clarity as to the rules for weed control, and the allowances for native grasses.

In addition to the maintenance issues with HOAs, an update of the City's weed control provisions is timely and appropriate. Weed control is a community priority. Each year, the City's weed control administrator processes over 1,000 cases. The proposed amendment brings the City's noxious weed provisions in-line with the County weed district provisions and with the state weed act. Moreover, the revisions provide expanded definitions and related adjustments needed to clarify the City code.

## **VII. DESCRIPTION OF THE PROPOSED CHANGES TO CHAPTER 7.18**

The following is a description of amendments to Chapter 7.18 as identified in **Exhibit B**:

### **7.18.020 Definitions**

Several new definitions have been added and some definitions have been adjusted. The definitions tie into the regulatory portions of the chapter that follow the definitions. Note that many of the new definitions, including "Approved plan", "Native grasses", "Ornamental grasses", "Natural area", and "Turf grasses", relate to distinctions and allowances for native and ornamental grasses that are built into subsequent sections of this chapter.

### **7.18.030 Weeds and grasses, cutting and removal.**

This section has been significantly revised to specify requirements for the eradication of noxious weeds and cutting of other weeds to an 8 inch height maximum. The noxious weed provisions would now align with the County weed district provisions and with the state weed act. While the 8 inch height limitation exists in the current code provisions, the revisions specify that the 8 inch height limit shall not apply to ornamental and native grasses when such grasses are shown on an approved plan (as defined) or when growing in a designated natural area—either public or private. Also note in subsection F. that the provisions address the growing of a limited number of Marijuana (cannabis sativa) plants; this allowance provides alignment with the Colorado Constitution.

**7.18.040 Notice and order of abatement.**

The adjusted text provides additional clarity the serving of a Notice and Order (violation).

**7.18.042 City removal and assessment.**

The adjusted text provides clarifications relating to the City's authority to take action to abate weed violations following the issuance of a Notice and Order.

**7.18.050 Administrative review of assessment.**

A minor formatting adjustment was made to this section.

**7.18.060 Owners have ultimate responsibility for violations.**

In this section, the term "premises" has been replaced with "property" as premises may include multiple properties and multiple owners. Violations, by definition, are assigned to a specific property and a specific owner.



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**ITEM NO:** **1 - Regular Agenda**

**PLANNING COMMISSION MEETING:** September 23, 2013

**TITLE:** Amendment to Chapter 7.18 of the Municipal Code regarding Weed Control

**APPLICANT:** City of Loveland, Current Planning Division

**STAFF CONTACTS:** Bob Paulsen, Current Planning Manager

**APPLICATION TYPE:** Amendments to the Municipal Code

**ACTION:** Legislative Action: Recommend Amendments to the Municipal Code for adoption by City Council

**STAFF RECOMMENDATION:** Subject to additional evidence at the public hearing, City Staff recommends the following motion:

*Move to recommend that City Council approve the amendments to Chapter 7.18 of the Municipal Code as specified in the September 23, 2013 Planning Commission staff report, as amended on the record.*

**I. ATTACHMENTS**

**1. Proposed Amendment to Chapter 7.18, Weed Control (REDLINE VERSION)**

This document includes incorporates proposed adjustments to the weed control provisions. Proposed revisions are specified with a redline/strike-through format.

**2. Proposed Amendment (CLEAN VERSION) to Chapter 7.18, Weed Control**

This version indicates how Chapter 7.18 would read with incorporation of the proposed revisions.

### **3. Existing Chapter 7.18**

This version of Chapter 7.18, which includes the table of contents page from Title 7, is taken directly from the Municipal Code. Title 7 encompasses Health, Safety and Welfare; weed control is a portion of this title.

## **II. SUMMARY**

Over the last several years, Planning and Code Enforcement staff have become more deeply involved in addressing weed control and open space management issues raised by local neighborhoods and property owners. In effort to provide greater clarity and make the code more responsive to ongoing citizen concerns, staff from several offices, including Planning, Open Lands, Code Enforcement and the City Attorney's Office, have worked to revise the City's weed control requirements that are contained in Chapter 7.18 of the Municipal Code. The primary purposes of the amendment to the weed control provisions are as follows:

- Update and clarify the weed control requirements
- Specify that noxious weeds must be eradicated (aligning the code with County and State provisions)
- Allow ornamental and native grasses to exceed the 8-inch height limit when part of an approved plan or when growing within a designated "Natural Area."

## **III. BACKGROUND**

As Loveland's neighborhoods mature, there has been increasing interest in the maintenance practices for the common lands and open space areas within residential subdivisions. With the build-out of homes, maintenance responsibilities for common areas are transferred from developers to homeowners associations (HOAs). The HOAs (and property maintenance companies that they employ) may have different priorities or expectations than the original developer had. Some HOAs have become interested in reducing the irrigation and maintenance requirements for portions of their open space, going as far as allowing grasses and other plantings to go without irrigation or cutting. In other instances, the reverse is the case and HOAs have requested to install a more planned or domesticated landscape within specified areas.

The Current Planning Division has been working with several HOAs in regards to the maintenance of their park spaces and open lands. The most notable instance has been the Garden Gate neighborhood where some neighbors objected to the HOA's interest in employing minimal maintenance practices for designated open space areas. This issue came to the forefront upon appeal of administrative decision concerning open space maintenance practices. Current Planning staff has also worked with other neighborhoods to clarify or adjust their open space plans, including the Mineral Addition (Quarry Lake), 7 Lakes, Waterfront, Boyd Lake North and Sierra Valley. While each neighborhood situation is unique, all of the neighborhoods have sought clarity as to the rules for weed control, and the allowances for native grasses.

In addition to the maintenance issues with HOAs, an updating of the City's weed control provisions is timely and appropriate. Weed control is a community priority. Each year, the City's weed code administrator processes over 1,000 cases. The proposed amendment brings the City's noxious weed provisions in line with the County weed district provisions and with the state weed act. Moreover, the revisions provide expanded definitions and related adjustments needed to clarify the City code.

#### **IV. TITLE 18 COMMITTEE REVIEW & RECOMMENDATION**

On Thursday, July 18, 2013, the City's *ad hoc* Title 18 Committee evaluated the proposed amendment to Chapter 7.18 that specifies revisions to the City's weed control regulations. The Committee had no objections to the revisions as presented. The Committee instructed staff to inform HOAs and other interested parties of the revisions and then to schedule the amendment for public hearing.

#### **V. OUTREACH**

Public outreach regarding the proposed amendment has consisted of the following:

1. The revised weed control provisions have been posted on the Current Planning web page since mid August. The posting has included a redline version of the revisions along with a summary statement highlighting the purpose of the amendments.
2. Notification of the Planning Commission hearing was provided in the Reporter Herald on Saturday, September 7, 2013. The notification explained the purpose of the revisions and provided contact information for anyone with questions.
3. Email notice was sent out to over two dozen HOA, property management and professional contacts. The notice indicated the Planning Commission hearing date, time and place and provided an explanation of the purpose of the amendments. Recipients were given a link to the Current Planning web site and were encouraged to contact staff for further details.

Staff had prepared information to be published as part of a Reporter Herald feature article prior to the Planning Commission meeting in order to reach out more broadly to the public. Given the recent flooding disaster and related events, the newspaper article did not get published. As of filing of this staff report, no inquiries from the public have been received.

#### **VI. DESCRIPTION OF THE PROPOSED CHANGES TO CHAPTER 7.18**

The following is a description of amendments to Chapter 7.18 as identified in **Attachment 1**:

##### **7.18.020 Definitions**

Several new definitions have been added and some definitions have been adjusted. The definitions tie into the regulatory portions of the chapter that follow the definitions. Note that many of the new definitions, including "Approved plan", "Native grasses", "Ornamental grasses", "Natural area", and "Turf grasses", relate to distinctions and allowances for native and ornamental grasses that are built into subsequent sections of this chapter.

**7.18.030 Weeds and grasses, cutting and removal.**

This section has been significantly revised to specify requirements for the eradication of noxious weeds and cutting of other weeds to an 8 inch height maximum. The noxious weed provisions would now align with the County weed district provisions and with the state weed act. While the 8 inch height limitation exists in the current code provisions, the revisions specify that the 8 inch height limit shall not apply to ornamental and native grasses when such grasses are shown on an approved plan (as defined) or when growing in a designated natural area—either public or private. Also note in subsection F. that the provisions address the growing of a limited number of Marijuana (cannabis sativa) plants; this allowance provides alignment with the Colorado Constitution.

**7.18.040 Notice and order of abatement.**

The adjusted text provides additional clarity the serving of a Notice and Order (violation).

**7.18.042 City removal and assessment.**

The adjusted text provides clarifications relating to the City's authority to take action to abate weed violations following the issuance of a Notice and Order.

**7.18.050 Administrative review of assessment.**

A minor formatting adjustment was made to this section.

**7.18.060 Owners have ultimate responsibility for violations.**

In this section, the term "premises" has been replaced with "property" as premises may include multiple properties and multiple owners. Violations, by definition, are assigned to a specific property and a specific owner.

**VII. CONCLUSION**

The amendment to Chapter 7.18 is a staff-initiated effort that included participation from staff from several departments. Staff believes that the revisions provide important clarifications relating to weed control and its enforcement. Staff also believes that the allowances provided for native grasses will avert complications and controversies relating to open space maintenance.

**VIII. ACTION TO BE TAKEN BY THE PLANNING COMMISSION**

Conduct a public hearing on the proposed amendment to Chapter 7.18, taking comments from the public if requested. Following deliberation, the Commission shall vote to determine a recommendation to the City Council on the amendment. The Commission's recommendation may include modifications to the proposed amendment. If the Commission acts on this matter on September 23<sup>rd</sup>, it is anticipated that this amendment will be scheduled for a public hearing by City Council on October 15, 2013.



## Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code

*This document indicates proposed text in underlined, red font. Proposed deletions are in ~~red, strikethrough font~~.*

*Original Chapter – Redlined to Show Changes per 8.16.13 CLEAN Version*

### Chapter 7.18

#### WEED CONTROL

##### Sections:

- 7.18.010        Intent.
- 7.18.020        Definitions.
- 7.18.030        Weeds, ~~cutting~~ and ~~removal~~ Grasses, Cutting and Removal.
- 7.18.040        Notice and Order of Abatement.
- 7.18.042-42        City Removal and Assessment.
- 7.18.050        Administrative ~~review~~ Review of ~~assessment~~ Assessment.
- 7.18.060        Owners ~~have ultimate responsibility~~ Have Ultimate Responsibility for ~~violations~~ Violations.

##### 7.18.010-        Intent.

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

##### 7.18.020        Definitions.

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

~~1.~~

1. “Approved plan” shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.
2. “Grasses” shall mean native grasses, ornamental grasses, and turf grasses, collectively.
3. “Native grasses” shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtipendule*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium-syn. andropogon scoparius*); alkali sacaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides – syn. oryzopisi*



## Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code

- hymenoides); Arizona fescue (*festuca arizonica*); June grass (*koeleria macrantha*); and Western wheatgrass (*pascopyrum smithii* – syn. *agropyron smithii*)..
4. “Ornamental grasses” shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides* -syn. *oryzopsis hymenoides*); big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea*- *festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prairie dropseed (*sporobolus heterolepis*).
  5. “Natural area” shall mean any areas, whether public or private, that are designated:
    - a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or
    - b) by the director of development services as a natural area; or
    - c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
  6. “Noxious weed” shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the “weed act”) from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*); Mediterranean sage (*salvia aethiopis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvense*); puncture vine (*tribulus terrestris*).
  7. “Owner” shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the premisesproperty.
  8. 2. “Property” shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
  9. 3. “Turf grasses” shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
  10. “Weed” shall mean ~~Bindweed (convulvus), Dandelion (Leontodorean~~ aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: dandelion (*leontodore tavaxacum*) and all weeds, grass, brush, or other rank or noxious vegetation which is in excess of eight (8) inches in height, and shall specifically include: Leafy Spurge (*Euphorbia esula*), Canada Thistle (*Cirsium Arvense*), Russian Knapweed (*Centaurea pieris*), Perennial Sowthistle (*Sonchus Arvense*), Puncture Vine (*Tribulus terrestris*), Silverleaf, silverleaf povertyweed (~~Franseria~~*franseria descolor*), ~~Mouse~~mouse-ear poverty weed (*Iva Axillaris*), Fanweed (*Thlaspi Arvense*), Mustards (*Brassiea*), ~~Purposiva~~ *axillaris*), fanweed (*thlaspi arvense*), mustards (*brassiea*), purpose-flowered groundcherry (~~Quineula~~ *quincula lobata*), Russian ~~Thistle~~ (~~Salsolathistle~~ *salsola pestifer*), ~~Fireweed~~ (*Koehia Scoparia*), ~~Redroot Pigweed~~ (~~Amaranthus~~*fireweed (kochia scoparia)*, redroot pigweed (*amaranthus*



## Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code

~~retroflexus), Sandbur (Cenchrussandbur (cenchrus tribuloides), Hairy Stickweed (Lappula Occidentalishairy stickweed (lappula occidentalis), Buffaloburs (Solanum rostratum), Common Ragweed (Ambrosiacommon ragweed (ambrosia elatior), Cockleburs (Xanthium Commurie), Common Sunflower (Helianthus Centricularis), Marihuana (Cannabis Sativa), or other plants or offending vegetation which is regarded as a common nuisance-cockleburs (xanthium commurie), marijuana (cannabis sativa).~~ This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered ~~noxiousa nuisance~~ and a detriment to the public health and safety, ~~but, “Weeds” shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops-and, corn crops, small-grain plots (wheat, barley, oats, and rye-), turf grasses, ornamental grasses or native grasses.~~

11. “Weed district” shall mean the Larimer County Weed District.

### 7.18.030 Weeds and grasses, cutting and removal.

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit:

1. the growth of noxious weeds to grow uncontrolledwhich are required to be eradicated under the weed act, regardless of height; or
2. the growth of noxious weeds which are not required to remain when grown upon the eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. the growth of weeds (other than noxious weeds) or grasses to a height of more than eight inches (8”), except as permitted in subsections B and C below.

B. The eight inch (8”) height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:

1. shown on an approved plan and are being maintained in accordance with that plan; or
2. used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or-on
3. growing in a private or alongpublic natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any alleys or sidewalk areas abutting the same-conflict between the eight inch (8”) height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, or grasses shall be disposed of so that the premises areproperty is clean and orderly, and the spread of such-weeds is prevented.

E. It shall be an affirmative defense to a violation of this section that the landproperty upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife



## Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code

corridor, or wetlands, or that the ~~land~~property upon which the vegetation is growing is dedicated public or private ~~open lands~~natural area as determined by the ~~manager of the City's Long Range Planning and Natural Resources~~Director of Development Services Division.

F. The growth of six (6) marijuana (cannabis sativa) plants, with three (3) or fewer of the six (6) plants being mature and flowering plants, by a person twenty-one (21) years of age or older for personal use on his or her property in an enclosed, locked space and not conducted openly or publicly in accordance with Section 16, Article XVIII or Section 14, Article XVIII of the Colorado Constitution shall not constitute a violation of this Chapter 7.18.

### **7.18.040 \_\_\_\_ Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property ~~as set forth in this Section 7.18.040.~~ Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the property is not occupied by the owner, requiring the weeds or grasses to be cut or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

### **7.18.042 \_\_\_\_ City removal and assessment.**

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds or grasses are not cut or abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and ~~certified~~regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds or grasses to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting or other abatement of weeds or grasses shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the customer fails to pay the charges associated with ~~weed~~ abatement within the described 30- day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for ~~weed~~ abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

### **7.18.050 \_\_\_\_ Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under

## **Proposed Amendments to the Weed Control provisions Chapter 7.18 of the Municipal Code**

Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

### **7.18.060 \_\_\_\_ Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the ~~premisesproperty~~ and even though the owner has by agreement imposed on the occupant the duty of maintaining the ~~premisesproperty~~.



**Weed Control Amendments: CLEAN VERSION with amendments integrated.**

***This version (8.16.13) of the proposed Weed Control provisions shows how the text of Chapter 7.18 would appear if the proposed amendments are adopted.***

## **Chapter 7.18**

### **WEED CONTROL**

#### **Sections:**

<b>7.18.010</b>	<b>Intent.</b>
<b>7.18.020</b>	<b>Definitions.</b>
<b>7.18.030</b>	<b>Weeds and Grasses, Cutting and Removal.</b>
<b>7.18.040</b>	<b>Notice and Order of Abatement.</b>
<b>7.18.42</b>	<b>City Removal and Assessment.</b>
<b>7.18.050</b>	<b>Administrative Review of Assessment.</b>
<b>7.18.060</b>	<b>Owners Have Ultimate Responsibility for Violations.</b>

#### **7.18.010 Intent.**

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

#### **7.18.020 Definitions.**

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1. "Approved plan" shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.
2. "Grasses" shall mean native grasses, ornamental grasses, and turf grasses, collectively.
3. "Native grasses" shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtispendule*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium*-syn. *andropogon scoparius*); alkali sacaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides* – syn. *oryzopisi hymenoides*); Arizona fescue (*festuca arizonica*); June grass (*koeleria macrantha*); and Western wheatgrass (*pascopyrum smithii* – syn. *agropyron smithii*).
4. "Ornamental grasses" shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides* -syn. *oryzopsis hymenoides*);



**Weed Control Amendments: CLEAN VERSION with amendments integrated.**

- big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea-festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prairie dropseed (*sporobolus heterolepis*).
5. "Natural area" shall mean any areas, whether public or private, that are designated:
    - a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or
    - b) by the director of development services as a natural area; or
    - c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
  6. "Noxious weed" shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the "weed act") from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*); Mediterranean sage (*salvia aethiopis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvense*); puncture vine (*tribulus terrestris*).
  7. "Owner" shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the property.
  8. "Property" shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
  9. "Turf grasses" shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
  10. "Weed" shall mean an aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: dandelion (*leontodore tavaxacum*), silverleaf povertyweed (*franseria descolor*), mouse-ear poverty weed (*iva axillaris*), fanweed (*thlaspi arvense*), mustards (*brassiea*), purpose-flowered groundcherry (*quincula lobata*), Russian thistle (*salsola pestifer*), fireweed (*kochia scoparia*), redroot pigweed (*amaranthus retroflexus*), sandbur (*cenchrus tribuloides*), hairy stickweed (*lappula occidentalis*), Buffaloburs (*Solanum rostratum*), common ragweed (*ambrosia elatior*), cocklebur (*xanthium commurie*), marijuana (*cannabis sativa*). This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered a nuisance and a detriment to the public health and safety. "Weeds" shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops, corn crops, small-grain plots (wheat, barley, oats, and rye), turf grasses, ornamental grasses or native grasses.
  11. "Weed district" shall mean the Larimer County Weed District.

**7.18.030 Weeds and grasses, cutting and removal.**

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit:



*Weed Control Amendments: CLEAN VERSION with amendments integrated.*

1. the growth of noxious weeds which are required to be eradicated under the weed act, regardless of height; or
2. the growth of noxious weeds which are not required to be eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. the growth of weeds (other than noxious weeds) or grasses to a height of more than eight inches (8"), except as permitted in subsections B and C below.

B. The eight inch (8") height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:

1. shown on an approved plan and are being maintained in accordance with that plan; or
2. used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or
3. growing in a private or public natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any conflict between the eight inch (8") height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, or grasses shall be disposed of so that the property is clean and orderly, and the spread of weeds is prevented.

E. It shall be an affirmative defense to a violation of this section that the property upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife corridor, or wetlands, or that the property upon which the vegetation is growing is dedicated public or private natural area as determined by the City's Director of Development Services Division.

F. The growth of six (6) marijuana (*cannabis sativa*) plants, with three (3) or fewer of the six (6) plants being mature and flowering plants, by a person twenty-one (21) years of age or older for personal use on his or her property in an enclosed, locked space and not conducted openly or publicly in accordance with Section 16, Article XVIII or Section 14, Article XVIII of the Colorado Constitution shall not constitute a violation of this Chapter 7.18.

**7.18.040 Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property as set forth in this Section 7.18.040. Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the



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property is not occupied by the owner, requiring the weeds or grasses to be cut or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

**7.18.042 City removal and assessment.**

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds or grasses are not cut or abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds or grasses to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting or other abatement of weeds or grasses shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the customer fails to pay the charges associated with abatement within the described 30-day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

**7.18.050 Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

**7.18.060 Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the property and even though the owner has by agreement imposed on the occupant the duty of maintaining the property.

**Title 7**

**HEALTH, SAFETY AND WELFARE**

**Chapters:**

- 7.04 Health Department.**
- 7.08 Food Regulations.**
- 7.12 Nuisances-Unsanitary Conditions.**
- 7.16 Solid Waste Collection and Recycling.**
- 7.18 Weed Control.**
- 7.26 Accumulations of Waste Material.**
- 7.28 Removal and Disposal of Abandoned Property Other Than Motor Vehicles.**
- 7.29 Unclaimed Intangible Property.**
- 7.30 Graffiti.**
- 7.32 Sound Limitations.**
- 7.36 Fire Protection.**
- 7.40 Smoking in Public Places.**
- 7.50 Possession and Use of Tobacco Products By Minors.**
- 7.60 Medical Marijuana.**
- 7.65 Marijuana Establishments Prohibited.**
- 7.70 Administrative Appeals Procedure.**

**Chapter 7.18****WEED CONTROL****Sections:**

<b>7.18.010</b>	<b>Intent.</b>
<b>7.18.020</b>	<b>Definitions.</b>
<b>7.18.030</b>	<b>Weeds, cutting and removal.</b>
<b>7.18.040</b>	<b>Notice and Order of Abatement.</b>
<b>7.18.042</b>	<b>City Removal and Assessment.</b>
<b>7.18.050</b>	<b>Administrative review of assessment.</b>
<b>7.18.060</b>	<b>Owners have ultimate responsibility for violations.</b>

**7.18.010 Intent.**

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

**7.18.020 Definitions.**

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1. "Owner" shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the premises.
2. "Property" shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
3. "Weed" shall mean Bindweed (*convulvus*), Dandelion (*Leontodore tavaxacum*) and all weeds, grass, brush, or other rank or noxious vegetation which is in excess of eight (8) inches in height, and shall specifically include: Leafy Spurge (*Euphorbia esula*), Canada Thistle (*Cirsium Arvense*), Russian Knapweed (*Centaurea pieris*), Perennial Sowthistle (*Sonchus Arvense*), Puncture Vine (*Tribulus terrestris*), Silverleaf povertyweed (*Franseria descolor*), Mouse-ear poverty weed (*Iva Axillaris*), Fanweed (*Thlaspi Arvense*), Mustards (*Brassiea*), Purpos-flowered groundcherry (*Quincula lobata*), Russian Thistle (*Salsola pestifer*), Fireweed (*Kochia Scoparia*), Redroot Pigweed (*Amaranthus retroflexus*), Sandbur (*Cenchrus tribuloides*), Hairy Stickweed (*Lappula Occidentalis*), Buffaloburs (*Solanum rostvatum*), Common Ragweed (*Ambrosia elatiov*), Cockleburs (*Xanthium Commurie*), Common Sunflower (*Helianthus Centicularis*), Marihuana (*Cannabis Sativa*), or other plants or offending vegetation which is regarded as a common nuisance. This list is not exclusive, but rather is intended to be indicative of those types of plants which are considered noxious and a detriment to the public health and safety, but shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops and small grain plots (wheat, barley, oats, and rye).

**7.18.030 Weeds, cutting and removal.**

It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit weeds to grow uncontrolled or to remain when grown upon the property or on or along any alleys or sidewalk areas abutting the same. Any waste from all destroyed or cut weeds shall be disposed of so that the premises are clean and orderly, and the spread of such weeds is prevented. It shall be an

affirmative defense to a violation of this section that the land upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, wildlife corridor, or wetlands, or that the land upon which the vegetation is growing is dedicated public or private open lands as determined by the manager of the City's Long Range Planning and Natural Resources Division.

**7.18.040 Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property. Such notice and order shall be served by personal service, by regular mail, or by posting on the property, requiring the weeds to be cut within seven days after mailing or delivery of such notice.

**7.18.042 City removal and assessment.**

- A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds are not cut within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and certified mail, which notice shall allow the City to cut the weeds and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting of weeds shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.
- B. If the customer fails to pay the charges associated with weed abatement within the described 30-day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.
- C. Failure to pay the amount assessed for weed abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code. (Ord. 5683 § 2, 2012)

**7.18.050 Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

**7.18.060 Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the premises and even though the owner has by agreement imposed on the occupant the duty of maintaining the premises. (Ord. 5305 § 1, 2008; Ord. 4649 § 9, 2001; Ord. 4274 § 1 (part), 1997)

*Original Chapter – Redlined to Show Changes*

**Chapter 7.18**

**WEED CONTROL**

**Sections:**

- 7.18.010        Intent.
- 7.18.020        Definitions.
- 7.18.030        Weeds, ~~cutting~~ and ~~removal~~ Grasses, Cutting and Removal.
- 7.18.040        Notice and Order of Abatement.
- 7.18.042-42        City Removal and Assessment.
- 7.18.050        Administrative ~~review~~ Review of ~~assessment~~ Assessment.
- 7.18.060        Owners ~~have ultimate responsibility~~ Have Ultimate Responsibility for ~~violations~~ Violations.

**7.18.010-        Intent.**

It is the intent of this Chapter to protect the health, safety and welfare of the public by reducing the occurrence of weeds, grass, brush, or other rank or noxious vegetation which is regarded as a common nuisance.

**7.18.020        Definitions.**

A. The following words, terms and phrases, when used in this Chapter 7.18, shall have the following meanings:

1.

1. “Approved plan” shall mean a landscape or other plan approved by the city in connection with the annexation, zoning, development or redevelopment of a property, whether separately or by inclusion in a general development plan, preliminary development plan, final development plan, site development plan, development agreement or public improvement construction plan.
2. “Grasses” shall mean native grasses, ornamental grasses, and turf grasses, collectively.
3. “Native grasses” shall mean perennial grasses native to the local ecosystem or suitable for Colorado landscapes, including but not limited to big bluestem (*andropogon gerardi*); silver beard grass (*andropogon saccharoides*); Sideoats grama (*boutelous curtipendula*); buffalo grass (*buchloe dactyloides*); blue grama eyelash grass (*bouteloua gracilis*); sand lovegrass (*eragrostis trichodes*); switchgrass (*panicum virgatum*); little bluestem (*schizachyrium scoparium*-syn. *andropogon scoparius*); alkali sacaaton (*sporobolus airoides*); Indian grass (*sorghastrum nutans*); Indian rice grass (*achnatherum hymenoides* – syn. *oryzopisi hymenoides*); Arizona fescue (*festuca arizonica*); June grass (*koeleria macrantha*); and Western wheatgrass (*pascopyrum smithii* – syn. *agropyron smithii*)..
4. “Ornamental grasses” shall mean annual or perennial grasses suitable for Colorado landscapes and grown as ornamental plants as a part of an overall landscaped area, including but not limited to Indian rice grass (*schnatherum hymenoides* -syn. *oryzopsis hymenoides*); big bluestem (*andropogon gerardii*); side oats grama (*bouteloua curtipendula*); blue grama



- (*bouteloua gracilis*); sandlove grass (*eragrostis trichodes*); Arizona fescue (*festuca arizonica*); blue fescue (*festuca cinerea-festuca glauca*); Idaho fescue (*festuca idahoensis*); blue oat grass (*helictotrichon sempervirens*); June grass (*koeleria macrantha*); silky threadgrass (*nassella tenuissima*); little bluestem (*schizachyrium scoparium*); Indian grass (*sorghastrum nutans*); prairie dropseed (*sporobolus heterolepis*).
5. “Natural area” shall mean any areas, whether public or private, that are designated:  
a) by the director of the parks and recreation department as a natural area, wildlife corridor, open lands or wetlands; or  
b) by the director of development services as a natural area; or  
c) as natural areas, wildlife corridors, wetlands or other areas intended to be maintained in a relatively natural, undeveloped state, on an approved plan.
6. “Noxious weed” shall mean any noxious weeds designated by the Colorado Noxious Weed Act (C.R.S 35-5.5-101, et seq.) (the “weed act”) from time to time, including but not limited to yellow starthistle (*centaurea solstitialis*); Mediterranean sage (*salvia aethiopis*); myrtle spurge (*euphorbia myrsinites*); Cypress spurge (*euphorbia cyparissias*); orange hawkweed (*hieracium aurantiacum*); purple loosestrife (*lythrum salicaria*); bindweed (*convulvus*); leafy spurge (*Euphorbia esula*); Canada thistle (*cirsium rvense*); Russian knapweed (*centaurea pieris*); perennial sowthistle (*sonchus arvense*); puncture vine (*tribulus terrestris*).
7. “Owner” shall mean the owner as shown upon the tax rolls, whether person, firm or corporation; any agent or representative of the owner; and any occupant of the premisesproperty.
8. 2-“Property” shall mean and includes, in addition to the owner's lot or tract of land, whether improved or vacant, the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the sidewalk, curb, gutter and parking areas of any street abutting such lot or tract of land.
9. 3-“Turf grasses” shall mean any species of grasses commonly bred and designated for use in Colorado landscapes as an irrigated residential lawn or an irrigated open space or common area.
10. “Weed” shall mean ~~Bindweed (convulvus), Dandelion (Leontodore)~~an aggressive, non-native herbaceous plant detrimental to native plant communities or agricultural lands that is not classified as a noxious weed under the weed act, including but not limited to: ~~dandelion (leontodore tavaxacum) and all weeds, grass, brush, or other rank or noxious vegetation which is in excess of eight (8) inches in height, and shall specifically include: Leafy Spurge (Euphorbia esula), Canada Thistle (Cirsium Arvense), Russian Knapweed (Centaurea pieris), Perennial Sowthistle (Sonchus Arvense), Puncture Vine (Tribulus terrestris), Silverleaf, silverleaf povertyweed (Franseriafranseria descolor), Mousemouse-ear poverty weed (Iva Axillaris), Fanweed (Thlaspi Arvense), Mustards (Brassica), Purposiva axillaris), fanweed (thlaspi arvense), mustards (brassiea), purpose-flowered groundcherry (Quincula quincula lobata), Russian Thistle (Salsolathistle (salsola pestifer), Fireweed (Kochia Scoparia), Redroot Pigweed (Amaranthusfireweed (kochia scoparia), redroot pigweed (amaranthus retroflexus), Sandbur (Cenchrussandbur (cenchrus tribuloides), Hairy Stickweed (Lappula Occidentalishairy stickweed (lappula occidentalis), Buffaloburs (Solanum rostvatum), Common Ragweed (Ambrosiacommon ragweed (ambrosia elatiov), Cockleburs (Xanthium Commurie), Common Sunflower (Helianthus Centicularis), Marihuana (Cannabis Sativa), or other plants or offending vegetation which is regarded as a common nuisance-cockleburs (xanthium commurie), marijuana (cannabis sativa).~~ This list is not exclusive, but rather is



intended to be indicative of those types of plants which are considered ~~noxious~~ a nuisance and a detriment to the public health and safety; ~~but, "Weeds"~~ shall not include flower gardens, plots of shrubbery, vegetable gardens, hay crops ~~and, corn crops,~~ small-grain plots (wheat, barley, oats, and rye), turf grasses, ornamental grasses or native grasses.

11. "Weed district" shall mean the Larimer County Weed District.

**7.18.030 Weeds and grasses, cutting and removal.**

A. It is unlawful for the owner of any property, lot, block or parcel of land within the City to allow or permit:

1. the growth of noxious weeds ~~to grow uncontrolled~~ which are required to be eradicated under the weed act, regardless of height; or
2. the growth of noxious weeds which are not required to remain when grown upon the eradicated under the weed act, except to the extent that such noxious weeds are managed in accordance with the published recommendations of the weed district; or
3. the growth of weeds (other than noxious weeds) or grasses to a height of more than eight inches (8"), except as permitted in subsections B and C below.

B. The eight inch (8") height limitation set forth subsection A.3 above shall not apply to ornamental or native grasses so long as such grasses are:

1. shown on an approved plan and are being maintained in accordance with that plan; or
2. used solely, or in combination with other ornamental, native or turf grasses, as a supplement to or component of the overall landscaped area located on a property; or ~~on~~
3. growing in a private or ~~along~~ public natural area in a manner consistent with the maintenance of the health of such grasses (including permitting them to grow to a mature height and reseed) and are not a threat to public health or safety.

C. If there is any ~~alleys or sidewalk areas abutting the same~~ conflict between the eight inch (8") height limitation set forth in subsection A.3 above and the published recommendations of the weed district for management of noxious weeds that are not required to be eradicated under the weed act, the published recommendations of the weed district shall control.

D. Any waste from all destroyed or cut noxious weeds, weeds, or grasses shall be disposed of so that the ~~premises are~~ property is clean and orderly, and the spread of ~~such~~ weeds is prevented.

E. It shall be an affirmative defense to a violation of this section that the ~~land~~ property upon which the vegetation is growing is City owned property and has been designated by the Director of the Parks and Recreation Department of the City as a natural area, open lands, wildlife corridor, or wetlands, or that the ~~land~~ property upon which the vegetation is growing is dedicated public or private open lands natural area as determined by the ~~manager of the City's Long Range Planning and Natural Resources~~ Director of Development Services Division.

F. The growth of six (6) marijuana (cannabis sativa) plants, with three (3) or fewer of the six (6) plants being mature and flowering plants, by a person twenty-one (21) years of age or older for

personal use on his or her property in an enclosed, locked space and not conducted openly or publicly in accordance with Section 16, Article XVIII or Section 14, Article XVIII of the Colorado Constitution shall not constitute a violation of this Chapter 7.18.

**7.18.040 \_\_\_\_\_ Notice and Order of Abatement.**

If any person fails to comply with Section 7.18.030, a written notice and order of abatement may be served upon the owner or agent in charge of such property- as set forth in this Section 7.18.040. Such notice and order may specify the extent of the abatement required as reasonably necessary to protect public health and safety and shall be served by personal service, by regular mail, or by posting on the property with a copy mailed to the owner of the property if the property is not occupied by the owner, requiring the weeds or grasses to be cut or otherwise abated within seven (7) days after mailing, posting, or delivery of such notice.

**7.18.042 \_\_\_\_\_ City removal and assessment.**

A. If a notice and order to abate is served pursuant to Section 7.18.040, and if the weeds or grasses are not cut or abated as required in the order within the stated time and maintained in compliance for the remainder of the calendar year, the City may cause a notice of abatement to be served upon the owner or agent in charge of such property, either by personal service or by posting and certified regular mail, which notice shall allow the City to cut or otherwise abate or make a reasonable attempt to abate the weeds or grasses to the extent specified in the order and assess the whole cost thereof, including ten percent for inspection and other incidental costs in connection therewith, upon the land. The costs and any charges assessed by the City pursuant to this Chapter associated with cutting or other abatement of weeds or grasses shall be paid by the owner of the property or agent for such owner within thirty (30) days after mailing of the bill or assessment of such cost by the City to said owner or agent.

B. If the owner or agent~~customer~~ fails to pay the charges associated with ~~weed~~ abatement within the described 30- day period, a notice of the assessment shall be mailed via certified mail by the City to the owner of the property, notifying the owner that failure to pay the assessed amount within ten (10) days of the date of the letter shall cause the assessment to become a lien against the property.

C. Failure to pay the amount assessed for ~~weed~~ abatement services including inspection and incidental costs within the ten-day period specified in the notice of assessment shall cause the owner of the property to be subject to the lien and collection provisions of Chapter 3.50 of this code.

**7.18.050 \_\_\_\_\_ Administrative review of assessment.**

Any owner who disputes the amount of assessment made against such owner's property under Section 7.18.042, may, within twenty (20) days of receipt of notice of such assessment, petition the City Manager for a revision or modification of such assessment in accordance with Chapter 7.70 of this code.

**7.18.060 \_\_\_\_\_ Owners have ultimate responsibility for violations.**

Every owner remains liable for violations of responsibilities imposed upon an owner by this chapter even though an obligation is also imposed on the occupant of the premises~~property~~ and

even though the owner has by agreement imposed on the occupant the duty of maintaining the premises property.



# *Weed Control Amendments*

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City Council Public Hearing  
October 15, 2013



# *Weed Control Amendments*

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## Amendments to Chapter 7.18 of Municipal Code

- Legislative matter
- Planning Commission recommends approval
- Title 18 Committee recommends approval
- Staff initiated effort involving multiple departments:

City Legal, Open Lands, Weed Enforcement & Planning



# *Weed Control Amendments*

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## Purpose:

- Code enforcement: Over 1,000 weed enforcement cases annually
- Align standards with County Weed District & State Weed Act
- Need for clarity and updating
- Growing interest among HOAs in clarifying and revising their maintenance duties
- Staff working with numerous HOAs



# *Weed Control Amendments*

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## Revisions:

- New Definitions
- Eradication of noxious weeds required
- 8" height limit for all other weeds—existing standard
- Allowance for native grasses to exceed 8" height when within a designated natural area
- Allowance for ornamental grasses to exceed 8" height when part of an approved plan
- Recognition of the legality of growing a limited number of cannabis sativa plants (state Constitution)





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

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**AGENDA ITEM:** 18  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Greg George, Development Services  
**PRESENTER:** Bethany Clark, Community & Strategic Planning

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**TITLE:**

An Ordinance on first reading Amending Ordinance #4971 Designating as a Historic Landmark the Loveland Feed & Grain Building Located at 130 West 3<sup>rd</sup> Street in Loveland, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and 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
- 

**SUMMARY:**

This is a legislative action to adopt an ordinance on first reading amending Ordinance #4971, which in 2005, designated as a Historic Landmark the Loveland Feed & Grain building located at 130 West 3<sup>rd</sup> Street. The proposed ordinance modifies the legal description of the historic designation to eliminate from that legal description, property west of the Loveland Feed and Grain building, on which Artspace LP proposes to construct a new multifamily affordable housing project.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible
-

**BACKGROUND:**

On April 5, 2005, City Council adopted Ordinance #4971 on second reading, designating the Feed & Grain Building located at 130 W 3<sup>rd</sup> Street as a historic landmark. The property owner has filed an application for a boundary line adjustment and lot merger, to subdivide the property into two separate parcels, to be known as Lot 1 and Lot 2, Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition. Lot 1 would be the land included in the amended historic landmark designation and on which the existing Loveland Feed and Grain building is located. Lot 2 would be sold to Artspace LP for construction of a new multifamily affordable housing project. The affordable housing project would be financed primarily by Low Income Housing Tax Credits (LIHTC) provided by the Colorado Housing and Finance Authority (CHFA). CHFA and federal tax regulations require that no LIHTC funds be spent on non-residential uses. A separate lot for the Loveland Feed and Grain is being created through the subdivision process to meet this requirement.

On September 19, 2013, the Historic Preservation Commission made a finding that the proposed Lot 2 will no longer meet the criteria for designation as a Loveland Historic Landmark and are forwarding their recommendation that Council amend Ordinance #4971 to modify the boundaries of the Landmark Designation to include only the property to be known as Lot 1 on the Amended Plat.

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**REVIEWED BY CITY MANAGER:**

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**LIST OF ATTACHMENTS:**

1. Ordinance
2. Staff Report
3. Draft 9/19/13 Historic Preservation Commission Meeting Minutes

**FIRST READING:** October 15, 2013

**SECOND READING:** \_\_\_\_\_

**ORDINANCE NO.**

**AN ORDINANCE AMENDING ORDINANCE #4971 DESIGNATING AS A HISTORIC LANDMARK THE LOVELAND FEED & GRAIN BUILDING LOCATED AT 130 WEST 3<sup>RD</sup> STREET IN LOVELAND, COLORADO**

**WHEREAS**, on April 5, 2005, the Loveland City Council (“Council”) adopted Ordinance #4971 on second reading, designating the Feed & Grain Building located on that real property (“Property”) known as 130 West 3<sup>rd</sup> Street, Loveland, Colorado, as a historic landmark pursuant to Chapter 15.56 of the Loveland Municipal Code (“Code”) and Ordinance #4971 was recorded in the real property records of the Larimer County, Colorado, Clerk and Recorder on May 2, 2006 at Reception #2006-0032442 (the Original Designation Ordinance”); and

**WHEREAS**, Barry J. Floyd, as owner of the Property (“Owner”), has filed an application for a boundary line adjustment and lot merger, to result in the subdivision of the Property into two (2) separate parcels, to be known as Lot 1 and Lot 2, Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition, City of Loveland, Larimer County, Colorado (the “Amended Plat”); and

**WHEREAS**, the Owner intends to sell the Property, Lot 2 of which is to be acquired by Artspace Loveland, LP, a Colorado limited partnership (“Artspace LP”) and Lot 1 of which is to be acquired by a wholly-owned affiliate of Artspace Projects, Inc., a Minnesota nonprofit corporation (“API Affiliate”); and

**WHEREAS**, Lot 1 of the Amended Plat will contain the Feed & Grain Building, which is a historic landmark designated under the Original Designation Ordinance; and

**WHEREAS**, Artspace LP intends to construct a new multifamily affordable housing project containing thirty (30) affordable live/work units for income-eligible artists and their families, along with parking and common amenities (the “Affordable Housing Project”) on Lot 2; and

**WHEREAS**, The primary funding source for the Affordable Housing Project is low income housing tax credits (LIHTC) provided by the Colorado Housing and Finance Authority (CHFA); and

**WHEREAS**, CHFA and federal tax regulations require that no LIHTC funds be spent on non-residential uses; and

**WHEREAS**, by completing the Amended Plat to create Lots 1 and 2 and by amending the Original Designation Ordinance, to modify the boundaries of the Property covered by the

Original Designation Ordinance to be limited to Lot 1, Artspace LP and API Affiliate seek to ensure that no LIHTC funds are spent on non-residential uses; and

**WHEREAS**, Loveland Municipal Code Section 15.56.040 provides a mechanism to amend or rescind the designation of a landmark if the property is found to no longer meet the criteria for designation; and

**WHEREAS**, the Historic Preservation Commission has made a finding that the proposed Lot 2 will no longer meet the criteria for designation as a Loveland Historic Landmark; and

**WHEREAS**, the Historic Preservation Commission has recommended that the Council amend the Original Designation Ordinance to modify the boundaries to include only that real property to be designated as Lot 1 on the Amended Plat, which is described on **Exhibit A** attached hereto and incorporated herein by reference (the “Amended Property Description:); and

**WHEREAS**, the Council desires to amend the Original Designation Ordinance as herein after set forth, to be effective upon the Amended Plat being finalized, fully executed and recorded by the City in the real property records of the Larimer County Clerk and Recorder.

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

**Section 1.** The Council hereby finds that the proposed Lot 2 will, upon recording of the Amended Plat, no longer meet the criteria for designation as a Loveland Historic Landmark for the following reasons:

- a. No structures or features on the proposed Lot 2 are at least 50 years old, and
- b. The proposed Lot 2 does not meet at least one criterion in Code Section 15.56.100 for Architectural, Social/Cultural, or Geographic/Environmental significance.

**Section 2.** The Original Designation Ordinance (Ordinance#4971) is hereby amended to reduce the boundaries of the historic landmark designation to Lot 1 of the Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition, City of Loveland, Larimer County, Colorado, which real property is described in **Exhibit A** attached hereto and incorporated herein by reference; which amendment is expressly conditioned and shall be effective upon recording of the Amended Plat.

**Section 3.** Ordinance #4971 shall remain in full force and effect in accordance with its terms, as amended by this Ordinance.

**Section 4.** 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 5.** 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 6.** That the City Clerk, in accordance with Loveland Municipal Code Section 15.15.56.030.E.3, is hereby directed to promptly notify the Owner of the adoption of this Ordinance and shall record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

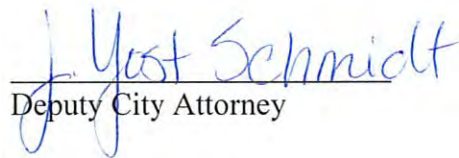
Signed this \_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

Attest:

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

APPROVED AS TO FORM:

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

## Exhibit A

### **Legal Description – To be designated as Lot 1, Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition, City of Loveland, Larimer County, Colorado**

A PARCEL OF LAND BEING A PORTION OF BLOCK 21 AND A PORTION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY THE COLORADO & SOUTHERN RAILWAY COMPANY) 100.00 FOOT WIDE RIGHT OF WAY, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO:

**BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE EAST LINE OF LOT 1 BLOCK 21, WHICH BEARS S 00°20'26" W.

**BEGINNING** AT THE INTERSECTION OF THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID BLOCK 21 AND THE EAST LINE OF THE WESTERLY 25.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY THE COLORADO & SOUTHERN RAILWAY COMPANY) 100.00 FOOT WIDE RIGHT OF WAY BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE;

THENCE S 00°20'26" W, ON THE EAST LINE OF THE WESTERLY 25.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY THE COLORADO & SOUTHERN RAILWAY COMPANY) 100.00 FOOT WIDE RIGHT OF WAY BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, A DISTANCE OF 192.01 FEET, TO A POINT ON A LINE DRAWN PARALLEL WITH AND DISTANT 192.0 FEET SOUTHERLY, AS MEASURED AT RIGHT ANGLES FROM SAID EASTERLY EXTENSION OF THE SOUTH LINE OF SAID BLOCK 21;

THENCE S 89°47'03" W, ON SAID LINE, A DISTANCE OF 23.66 FEET, TO A POINT ON THE EAST LINE OF LOT 30 OF SAID BLOCK 21;

THENCE S 00°13'55" E, ON SAID EAST LINE, A DISTANCE OF 38.16 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH ½ OF LOTS 26 THROUGH 30, INCLUSIVE, OF SAID BLOCK 21;

THENCE S 89°47'11" W, ON SAID SOUTH LINE, A DISTANCE OF 66.05 FEET;

THENCE N 00°13'51" W, A DISTANCE OF 181.82 FEET;

S 89°46'09" W, A DISTANCE OF 12.50 FEET;

N 00°13'51" W, A DISTANCE OF 9.00 FEET;

S 89°46'09" W, A DISTANCE OF 9.42 FEET;

N 00°24'09" W, A DISTANCE OF 39.31 FEET, TO THE NORTH LINE OF SAID BLOCK 21;

N 89°45'58" E, ON SAID NORTH LINE AND THE EASTERLY EXTENSION THEREOF, A DISTANCE OF 113.67 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 20,903 SQUARE FEET, OR 0.4799 ACRES.



## Community & Strategic Planning

500 East Third Street, Suite 310 • Loveland, CO 80537  
 (970) 962-2745 • Fax (970) 962-2945 • TDD (970) 962-2620  
[www.cityofloveland.org](http://www.cityofloveland.org)

**To:** Loveland City Council  
**From:** Bethany Clark, Community and Strategic Planning  
**Meeting Date:** October 15, 2013  
**Re:** Amended Landmark Nomination at 130 W 3<sup>rd</sup> Street

### ***SITE DATA***

**Address:** 130 W 3<sup>rd</sup> Street  
 Loveland, CO 80537

**Request:** Application for Alteration Certificate

**Historic Name:** Loveland Farmers Milling & Elevator Company Building  
 Loveland Feed & Grain

**Architectural Style:** Industrial-Grain Elevator/Mill

**Construction Date:** Original Structure: 1891-92  
 Accessory Warehouse: 1971

**Owner(s):** Barry J Floyd

**Applicant(s):** Felicia Harmon – KRH Group

**Attachments:**

1. Application

### **I. BACKGROUND:**

On August 20, 2013 City staff met with representatives of the Feed & Grain building and the future Artspace project to discuss the designation of the Feed & Grain. The primary funding source for the Artspace project is low income housing tax credits (LIHTC) provided by the Colorado Housing and Finance Authority (CHFA). CHFA has a requirement that no LIHTC be spent on non-residential uses. To ensure this, the intent is to legally separate the Feed & Grain property from the new Artspace



loft project through a lot merger and boundary line adjustment. An application for the Lot Merger and Boundary Line Adjustment has been submitted to the City's Current Planning Division. A Site Development Plan has also been submitted for the Artspace Lofts and is in the approval process. The proposed Lot 1 and Lot 2 configurations will not be legal lots until a final plat is recorded with Larimer County.

The purpose of this application is to amend the original designation of the Feed & Grain building by City Ordinance #4971, to include only the proposed Lot 1 (encompassing the Feed & Grain building) and to exclude Lot 2 (encompassing the new affordable live/work units). On September 16, 2013 the Historic Preservation Commission reviewed the application and adopted the findings detailed in this report and found that the proposed Lot 2 will no longer meet the criteria for historic landmark designation and recommend that City Council amend the original Ordinance #4971 to revise the legal description to match the proposed Lot 1.

## **II. PROCEDURE TO AMEND OR RESCIND DESIGNATION OF A LANDMARK:**

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The historic preservation ordinance provides a mechanism to amend or rescind the designation of a landmark. This is provided for in Section 15.56.040 of the Loveland Municipal Code. It states that "a landmark or historic district designation may be amended or rescinded in the same manner as the original designation was made using the following criteria:

- The property or historic district no longer meets the criteria for designation set forth in section 15.56.100 of this Chapter."

The applicant proposes to amend the original designation and reduce the designation boundaries to include only the Lot 1 with the Feed & Grain building. Therefore, the Historic Preservation Commission must find that Lot 2, in its essence, no longer meets the criteria for designation.

## **III. ANALYSIS AND FINDINGS**

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### ***Determination of Eligibility:***

To be considered eligible for designation as a historic landmark on the Loveland Historic Register, a property must be at least fifty (50) years old and must meet one (1) or more of the following criteria:

- a) Architectural.
  1. Exemplifies specific elements of an architectural style or period;
  2. Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, regionally, or locally;
  3. Demonstrates superior craftsmanship or high artistic value;
  4. Represents an innovation in construction, materials, or design;
  5. Represents a built environment of a group of people in an era of history;

6. Exhibits a pattern or grouping of elements representing at least one of the above criteria; or
  7. Is a significant historic remodel.
- b) Social/cultural.
1. Is a site of an historic event that had an effect upon society;
  2. Exemplifies the cultural, political, economic, or social heritage of the community; or
  3. Is associated with a notable person(s) or the work of a notable person(s).
- c) Geographic/environmental.
1. Enhances sense of identity of the community; or
  2. Is an established and familiar natural setting or visual feature of the community.

The proposed Lot 2 contains a non-historic 1970s metal storage building. There is no evidence to suggest that there are any other historic buildings or remnants of historic buildings on the site. The structure on Lot 2 is not at least 50 years old and does not meet any of the criteria for designation. Therefore, it is staff's opinion that the proposed Lot 2 does not meet the criteria for eligibility.

Lot 1 contains the historic Feed & Grain complex, which has undergone some stabilization work since its designation as a historic landmark on the Loveland Historic Register in 2005. The Feed & Grain on Lot 1 satisfies the age requirement and meets the following significant criteria for designation as a landmark to the Loveland Historic Register:

- a) Architectural
  1. Exemplifies specific elements of an architectural style or period.
- b) Social/Cultural
  2. Exemplifies the cultural, political, economic or social heritage of the community.

The Feed & Grain also retains its original design features, materials, and/or character and retains its original location. Therefore, it is staff's opinion that the proposed Lot 1 retains its eligibility for the Loveland Historic Register.

#### **IV. STAFF RECOMMENDATION:**

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Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

*Move to adopt on first reading an Ordinance amending Ordinance #4971 Designating as a Historic Landmark the Loveland Feed & Grain Building Located at 130 West 3<sup>rd</sup> Street in Loveland, CO.*

Artspace Projects, Inc.

**TABLE OF CONTENTS**

TABLE OF CONTENTS

**LOVELAND HISTORIC LANDMARK DESIGNATION AMENDMENT APPLICATION**

LOVELAND FEED & GRAIN BUILDING LOT LINE ADJUSTMENT

ARTSPACE LOVELAND

- Nomination Form (Amendment)
- North Elevation Drawing (Feed & Grain, Lot 1 and Loveland Lofts, Lot 2)
- Adjusted Survey plat
- Legal Descriptions for Lot 1 (Feed & Grain) and Lot 2 (vacant land)
- Photos



City of Loveland

Page 1- Applicant and General Property Information

**FORM A****Application for Designation of a Historic Landmark**

Please Type or Print Legibly

*One property only per Application Form.**If more than one Applicant, please attach additional sheet.*

<b>APPLICANT(S) INFORMATION</b>	
<b>Owner of Proposed Landmark Property:</b>	Barry J. Floyd
<b>Applicant:</b>	<input checked="" type="checkbox"/> Property Owner <input type="checkbox"/> City Council (attach meeting minutes initiating action) <input type="checkbox"/> Commission Designees (pursuant to 15.56.169) <input type="checkbox"/> Historic Preservation Commission (attach meeting minutes initiating action) <i>Please check one.</i>
<b>Address:</b>	PO Box 7125, Loveland, CO 80537
<b>Telephone:</b>	970.988.3120

<b>PROPOSED LANDMARK INFORMATION</b>	
<b>Property Name:</b>	Loveland Feed & Grain Building
<b>Address:</b>	130 and 140 W. Third St., Loveland, CO 80538
<b>Historic Use:</b>	Granary and storage
<b>Current and Proposed Use</b>	Lot 1, Feed & Grain: community arts center; vacant Lot 2: affordable live/work artists' housing
<b>Legal Description</b>	<i>Please attach copy of officially recorded document containing a legal description.</i> see attached
<b>Brief Description of Historical Qualities relating to Property</b>	<i>Please attach additional sheets if necessary.</i> This application is to amend the legal description of the original historic designation of the Loveland Feed & Grain Building in the City of Loveland's Ordinance # 4971, signed April 5, 2005.



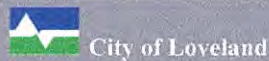


City of Loveland

Page 2- Historic Property Inventory

**FORM A****Application for Designation of a Historic Landmark**

<b>DETAILED PROPERTY INFORMATION</b>	
<b>Historic Property Name:</b>	Loveland Feed & Grain Building (designation)
<b>Current Property Name:</b>	Loveland Feed & Grain
<b>Address:</b>	130 and 140 W. Third St., Loveland, CO 80538
<b>Legal Description</b>	<i>Please attach copy of officially recorded document containing a legal description.</i> see attached
<b>Owner Name &amp; Address:</b>	Barry J. Floyd
<b>Style:</b>	Lot 1: agricultural mill building. Lot 2: non-historic storage
<b>Building Materials:</b>	Lot 2: metal structure and metal siding
<b>Additions to main structure(s), and year(s) built.</b>	Non-historic storage building constructed in 1980's
<b>Is the structure(s) on its original site?</b>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, Date Moved _____
<b>What is the historic use of the property?</b>	Granary and storage
<b>What is the present use of the property?</b>	non-historic shed is used for storage and hobby auto repair
<b>What is the date of construction?</b>	Estimated: 1981 Actual: _____ Original: _____ Source: Barry J. Floyd, owner

**FORM A**

Page 3- Historic Property Inventory

**Application for Designation of a Historic Landmark**

<b>DETAILED PROPERTY INFORMATION</b> continued	
<b>Describe the condition of the property.</b>	non-historic shed is used for storage and hobby auto repair; to be removed from the property
<b>Who was the original architect?</b>	Source: N/A
<b>Who was the original Builder/Contractor?</b>	Source: N/A
<b>Who was the original Owner(s)?</b>	Source: N/A
<b>Are there structures associated with the subject property not under the ownership of this applicant? Please describe.</b>	NO
<b>Detailed description of the architectural characteristics of the property.</b>	<p><i>Please attach additional sheets if necessary.</i></p> <p>This application is to amend the legal description of the original historic designation of the Loveland Feed &amp; Grain Building, City of Loveland's Ordinance # 4971, signed April 5, 2005. A plat amendment application before City Planning will realign the property into two lots. Lot 1 will remain the Feed &amp; Grain with a 10' boundary on the west side of the building; this building will be stabilized and used for community arts. Lot 2, on land that was vacant until the 1980's, will be west of the Feed &amp; Grain with 30 new, affordable live/work units for income-eligible artists and their families. A public plaza will link the two buildings. The Loveland Feed &amp; Grain will not be materially affected by this property adjustment.</p>





City of Loveland

Page 4 – Historical Significance

**FORM A****Application for Designation of a Historic Landmark**

The Historic Preservation Commission and City Council will consider the following criteria when reviewing nominations of properties for designation.

Landmarks must be at least fifty (50) years old and meet one (1) or more of the following criteria for architectural, social/cultural, or geographic/environmental significance. A landmark may be less than fifty (50) years old if it is found to be exceptionally important in other criteria.

Age of Site is: 120

**1. Proposed Historic Landmarks. Please check all that apply:**

*For prehistoric or historic archaeological sites, please go to Form A Section 2, pg. 5.*

**A) Architectural:**

- ☐ 1) Exemplifies specific elements of an architectural style or period.
- ☐ 2) Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, or locally.
- ☐ 3) Demonstrates superior craftsmanship, or high artistic value.
- ☐ 4) Represents innovation in construction, materials, or design.
- ☐ 5) Represents a built environment of a group of people in an era of
- ☐ 6) Exhibits a pattern or grouping of elements representing at least one of the above
- ☐ 7) Is a significant historic remodel.

**B) Social/Cultural**

- ☐ 1) Is a site of an historic event that had an effect upon society.
- ☐ 2) Exemplifies the cultural, political, economic, or social heritage of the community.
- ☐ 3) Is associated with a notable person(s) or the work of notable person(s).

**C) Geographical/Environmental**

- ☐ 1) Enhances sense of identity of the community.
- ☐ 2) Is an established and familiar natural setting or visual feature of the community.



City of Loveland

Page 5 – Historical Significance (cont.)

**FORM A****Application for Designation of a Historic Landmark**

- 2. Prehistoric and historic archaeological sites shall meet one (1) or more of the following. Please check all that apply.**

*\*\*Complete this section only if the subject property is a prehistoric or historic archaeological site.*

**A) Architectural**

- ☐ 1) Exhibits distinctive characteristics of a type, period, or manner of construction.
- ☐ 2) Is a unique example of a structure.

**B) Social/Cultural**

- ☐ 1) Has the potential to make an important contribution to the knowledge of the area's history or
- ☐ 2) Is associated with an important event in the area's development.
- ☐ 3) Is associated with a notable person(s) or the work of notable person(s).
- ☐ 4) Is a typical example/association with a particular ethnic or other community group.
- ☐ 5) Is a unique example of an event in local history.

**C) Geographical/Environmental**

- ☐ 1) Is geographically or regionally important.

- 3. Each property or site will also be evaluated based on physical integrity using the following criteria (*a property need not meet all the following criteria*):**

- a) Shows character, interest, or value as part of the development, heritage or cultural characteristics of the community, region, state, or nation;
- b) Retains original location or same historic context if it has been removed; or
- c) Has been accurately reconstructed or restored based on documentation.





City of Loveland

Page 6 – Historical Significance (cont.)

**FORM A****Application for Designation of a Historic Landmark**

<p><b>Statement of Significance</b></p> <p>Please provide a brief statement summarizing the applicable criteria checked on previous pages.</p>	<p><i>Please attach additional sheets if necessary.</i></p> <p>This application is to amend the legal description of the original historic designation of the Loveland Feed &amp; Grain Building, City of Loveland's Ordinance # 4971, signed April 5, 2005. A plat amendment will create two separate lots under separate ownership as required by our primary funding source, \$5.6M in low income housing tax credits (LIHTC), provided by CHFA. CHFA requires that no LIHTC dollars be spent on non-residential uses. Lot 1 will remain the Feed &amp; Grain. Lot 2 does not meet the historic designation criteria and the non-historic metal building to the west of the Feed &amp; Grain will be removed. Thirty new, permanently affordable live/work units for income-eligible artists and their families will be constructed. The plat amendment will not materially affect the Feed &amp; Grain.</p>								
<p><b>Photographs of property as it appears today</b></p>	<p><i>Include photos from all angles: front, rear, and side elevations.</i></p> <table border="1"> <tr> <td>North elevation</td> <td>East elevation</td> <td>South elevation</td> <td>West elevation</td> </tr> <tr> <td>Other</td> <td>Other</td> <td>Other</td> <td>Other</td> </tr> </table>	North elevation	East elevation	South elevation	West elevation	Other	Other	Other	Other
North elevation	East elevation	South elevation	West elevation						
Other	Other	Other	Other						
<p>Please identify all references used during the research of the property. Include titles, author, publisher, publication date, ISBN# (when applicable), and location of source such as public library, etc.</p>	<p><i>Please attach additional sheets if necessary.</i></p>								

*Historical Qualities (continued)*

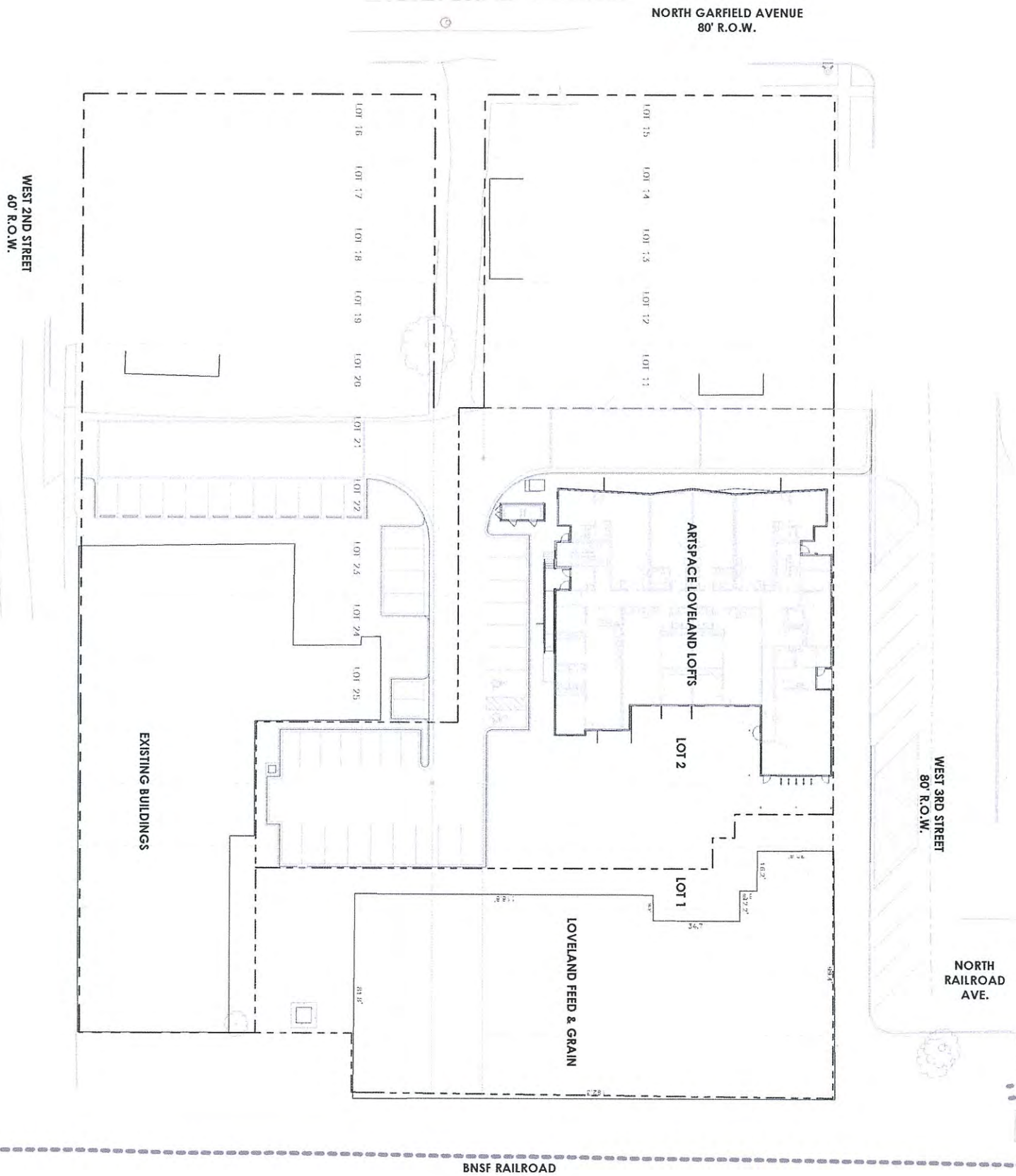
The new Lot 2 was historically vacant land until the construction of a metal "Butler-type" storage building in the 1970's.

*Architectural Characteristic (continued)*

Upon the construction of a mixed-use arts campus with the Feed & Grain as the centerpiece, Lot 2 will no longer meet the criteria for designation, while the Feed & Grain on Lot 1 will retain its designation. Thirty new, permanently affordable live/work units for income-eligible artists and their families will be constructed on the historically vacant Lot 2.

The attitude towards the aesthetics of this new residential component will be clean and modern with a nod to the Colorado mill vernacular. The goal is not to mimic, but rather to complement the existing structure to create a cohesive arts campus - linked by a public courtyard that will host a variety of events.









## Washburn Land Surveying

### Legal Description Lot 1

A PARCEL OF LAND BEING A PORTION OF BLOCK 21 AND A PORTION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY THE COLORADO & SOUTHERN RAILWAY COMPANY) 100.00 FOOT WIDE RIGHT OF WAY, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO:

**BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE EAST LINE OF LOT 1 BLOCK 21, WHICH BEARS S 00°20'26" W.

**BEGINNING** AT THE INTERSECTION OF THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID BLOCK 21 AND THE EAST LINE OF THE WESTERLY 25.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY THE COLORADO & SOUTHERN RAILWAY COMPANY) 100.00 FOOT WIDE RIGHT OF WAY BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE;

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THENCE S 89°47'03" W, ON SAID LINE, A DISTANCE OF 23.66 FEET, TO A POINT ON THE EAST LINE OF LOT 30 OF SAID BLOCK 21;

THENCE S 00°13'55" E, ON SAID EAST LINE, A DISTANCE OF 38.16 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH ½ OF LOTS 26 THROUGH 30, INCLUSIVE, OF SAID BLOCK 21;

THENCE S 89°47'11" W, ON SAID SOUTH LINE, A DISTANCE OF 66.05 FEET;

THENCE N 00°13'51" W, A DISTANCE OF 181.82 FEET;

S 89°46'09" W, A DISTANCE OF 12.50 FEET;

N 00°13'51" W, A DISTANCE OF 9.00 FEET;

S 89°46'09" W, A DISTANCE OF 9.42 FEET;

N 00°24'09" W, A DISTANCE OF 39.31 FEET, TO THE NORTH LINE OF SAID BLOCK 21;

N 89°45'58" E, ON SAID NORTH LINE AND THE EASTERLY EXTENSION THEREOF, A DISTANCE OF 113.67 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 20,903 SQUARE FEET, OR 0.4799 ACRES.

*I, CHAD R. WASHBURN, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE PROPERTY DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.*

CHAD R. WASHBURN, PROFESSIONAL LAND SURVEYOR  
COLORADO NO. 37963  
FOR AND ON BEHALF OF WASHBURN LAND SURVEYING, LLC





## Washburn Land Surveying

### Legal Description Lot 2

A PARCEL OF LAND BEING A PORTION OF BLOCK 21, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO:

**BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE NORTH LINE OF BLOCK 21, WHICH BEARS N 89°45'58" E.

**BEGINNING** AT THE NORTHWEST CORNER OF LOT 10 OF SAID BLOCK 21;  
 THENCE N 89°45'58" E, ON THE NORTH LINE OF SAID BLOCK 21, A DISTANCE OF 162.58 FEET;  
 THENCE S 00°24'09" E, A DISTANCE OF 39.31 FEET;  
 THENCE N 89°46'09" E, A DISTANCE OF 9.42 FEET;  
 THENCE S 00°13'51" E, A DISTANCE OF 9.00 FEET;  
 THENCE N 89°46'09" E, A DISTANCE OF 12.50 FEET;  
 THENCE S 00°13'51" E, A DISTANCE OF 181.82 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF LOT 28 OF SAID BLOCK 21;  
 THENCE S 89°47'11" W, ON THE SOUTH LINE OF THE NORTH HALF OF LOTS 28, 27 AND 26 OF SAID BLOCK 21, A DISTANCE OF 58.50 FEET, TO A POINT ON THE WEST LINE OF SAID LOT 26;  
 THENCE N 00°13'55" W, ON SAID WEST LINE AND THE NORTHERLY EXTENSION THEREOF, A DISTANCE OF 80.17 FEET, TO A POINT ON THE CENTERLINE OF THE EAST-WEST ALLEY OF SAID BLOCK 21;  
 THENCE S 89°42'24" W, ON SAID CENTERLINE, A DISTANCE OF 126.12 FEET, TO A POINT ON THE SOUTHERLY EXTENSION OF THE WEST LINE OF SAID LOT 10;  
 THENCE N 00°13'47" W, ON SAID SOUTHERLY EXTENSION AND THE WEST LINE OF SAID LOT 10, A DISTANCE OF 150.06 FEET, TO THE **POINT OF BEGINNING**.  
 SAID PARCEL OF LAND CONTAINS AN AREA OF 31,403 SQUARE FEET, OR 0.7209 ACRES.

*I, CHAD R. WASHBURN, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE PROPERTY DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.*

CHAD R. WASHBURN, PROFESSIONAL LAND SURVEYOR  
 COLORADO NO. 37963  
 FOR AND ON BEHALF OF WASHBURN LAND SURVEYING, LLC

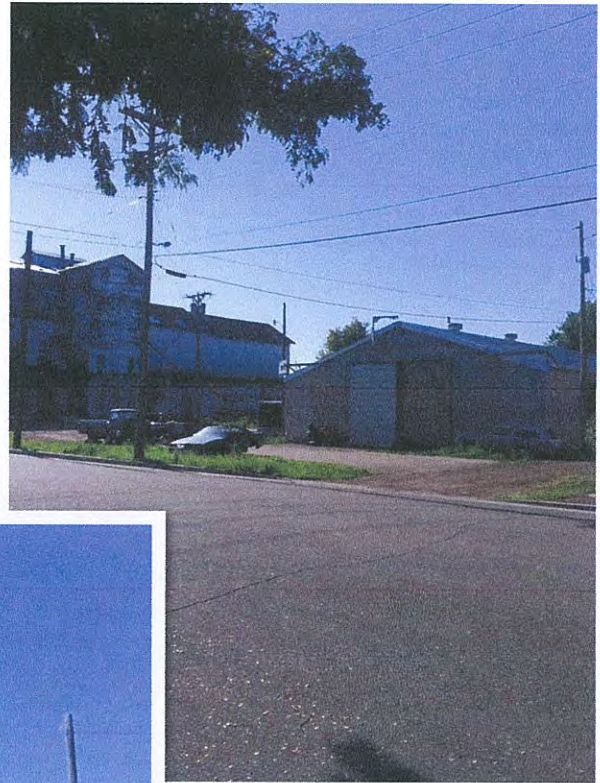




**Existing Conditions Photos**

**Loveland Feed & Grain Building Historic Designation Amendment**

**North Elevation**





**Existing Conditions Photos**

**Loveland Feed & Grain Building Historic Designation Amendment**



East Elevation



East Elevation



East Elevation



West Elevation



South Elevation



North Elevation





City of Loveland

Page 7 – Signature Sheet

**FORM A****Application for Designation of a Historic Landmark**

The Property Owner, by signature below and submittal of this application, acknowledges and agrees that if the Property is designated as a historic landmark, the Property will be subject to the provisions of Chapter 15.56 of the Loveland Municipal Code, as they may be amended from time to time by action of the Loveland City Council. The provisions of Chapter 15.56 of the Loveland Municipal Code are available to the Property Owner at <http://www.cityofloveland.org/index.aspx?page=68> and currently include, among other provisions:

- Requirements for maintenance of a historic landmark as set forth in Code Section 15.56.150; and
- Requirements that any proposed alteration, relocation or demolition of a designated historic landmark is subject to approval, which may include application, public notice and hearing, and decision by the Historic Preservation Commission and/or City Council, prior to undertaking such actions, as more fully set forth in Code Sections 15.56.60-.80, 15.56.110-.140 and 15.56.170; and
- Remedies for violation as set forth in Code Section 15.56.090, including but not limited to provisions that moving or demolishing a designated landmark or a structure without an approved landmark alteration certificate will result in a five-year moratorium on all moving, demolition, or building permits for the structure and for the property at the structure's original location, and that altering a designated landmark without an approved landmark alteration certificate will result in a one year moratorium on all building permits for the property.

Further, the Property Owner authorizes the recording of any Ordinance designating the Property as a historic landmark in the real property records of the Larimer County Clerk and Recorder and agrees to disclose to any purchaser of the Property the designation of the Property as a historic landmark subject to the benefits and obligations of Chapter 15.56 of the Loveland Municipal Code.

Signature of Property/Site Owner(s) :

Date: 8/28/13

The Property Owner has read and agrees with all that is contained in Section 15.56.090 of the Loveland Municipal Code and understands all the benefits and obligations of said code. The Property owner specifically understands and agrees that the once the property is a designated landmark any proposed alterations must receive an approved alterations certificate prior to construction. The Property owner also understands and agrees that moving or demolishing a designated landmark or a structure without an approved landmark alteration certificate will result in a five-year moratorium on all moving, demolition, or building permits for the structure and for the property at the structure's original location. Additionally, the Property owner will disclose to future owners of the property all the benefits and obligations of Section 15.56.090 of the Loveland Municipal Code.

Signature of Property/Site Owner(s)

Date: 8/28/13



City of Loveland

Page 8 – Signature Sheet (cont.)

**FORM A****Application for Designation of a Historic Landmark**

Please type or print legibly.

**FORM A completed by:**

City of Loveland's Ordinance # 4971, signed April 5, 2005

**Signature of Preparer:**Helicia Harmon**Date:**8/28/13**Phone No.**970.481.1981**Address:**PO Box 7266, Loveland, CO 80537**Signature of Property/Site Owner(s) if different than Preparer:**Barry G. Floyd**Date:**8/28/13**E-Mail Form**



**City of Loveland**  
**Historic Preservation Commission**  
**Meeting Summary**  
**September 16, 2013**

A meeting of the Loveland Historic Preservation Commission was held Monday, September 16, 2013 at 6:00 P.M. in the City Council Chambers in the Civic Center at 500 East Third Street, Loveland, CO. Historic Preservation Commissioners in attendance were: Janelle Armentrout, David Berglund, Jim Cox, Trudi Manuel, Matt Newman and Mike Perry. Bill Cahill, City Manager, Bethany Clark of Community & Strategic Planning, Greg George and Nikki Garshelis of Development Services, Judy Schmidt of the City Attorney's office and City Council Liaison, John Fogle were also present.

Guests: Charles Salwei, owner of the Lincoln Hotel, Felicia Harmon on behalf of Novo Restoration and ArtSpace and Jason Kopecky of The Abo Group, Inc.

**CALL TO ORDER**

*Commission Chair Newman called the meeting to order at 6:00 p.m.*

**APPROVAL OF AGENDA**

*Commissioner Cox made the motion to approve the agenda as is. Commissioner Perry seconded the motion and it passed unanimously.*

**APPROVAL OF MINUTES FROM AUGUST MEETING**

*Commissioner Cox made the motion to approve the minutes of the August 19, 2013 meeting. The motion was seconded by Commissioner Manuel and it passed unanimously.*

**CITIZEN REPORTS**

**None**

**CITY COUNCIL UPDATE**

*City Councilor Fogle said City staff is doing a great job with the flood crisis. He toured the damage with Councilor McKean and spoke about areas with the worst damage. He took pictures and videos of the flooding off Railroad Avenue which included the Swartz Farmstead, River's Edge Natural Area, the Milner Schwarz House and Fairgrounds Park, he said.*

**STAFF UPDATE**

*Bethany Clark welcomed Bill Cahill, the City Manager, who reported on the flood and the cost of recovery and repair to the City's existing infrastructure. The City has suffered a great financial loss to parks, bridges, roads and property, he said. He expressed his concern over the flooding in the River's Edge and Swartz Farmstead area and said that the protection of citizens comes first and then comes the protection of property. The City should not invest in or allow others to invest in property or structures in the flood plain, he said, because the risk of destruction and financial loss is too great. Therefore, he explained, staff's strong recommendation to Council – if and when this matter reaches the City Council as the property owner – is that the City not agree to a historic designation of the property, and that the City not invest any money nor encourage or permit any other organization to invest their money in these buildings. Staff will recommend the removal of the Swartz Farmstead buildings. It would be irresponsible to invest in structures in the flood way, he said. He said he understands that the HPC may have a responsibility to determine significance, however.*

*Commission Chair Newman asked what the City is investing in the floodplain. City Manager Cahill said that approximately 1.5 million was invested in the River's Edge Natural area but the City may invest very differently*

in the coming months. Newman asked if the City will be investing in existing structures and Cahill said he didn't know, it has only been a few days since the flood. Planning has just begun, he said.

*Commissioner Armentrout* wanted to know why the City issues building permits in the floodplain. City Manager Cahill said the City does not issue permits in the floodway, but developers can build in the floodplain provided they meet certain requirements. He further stated that only roughly 65 structures within City limits were affected by the flood, but a greater number of structures were affected which were in County jurisdiction. Greg George later explained that the entire area is called the floodplain and there are two areas in that called the floodway and the flood fringe. Building permits can be issued in the flood fringe if the developer can demonstrate that the structures can be raised in elevation without causing flooding in other areas, he said.

*Councilor Fogle* said he agrees with staff to recommend demolition. After seeing the damage to the structures, he concluded that it is not worth the investment. The buildings could pose a health hazard with the sewage, dead fish and dead wildlife around, he added.

*Commissioner Newman* commented that the flood seemed like an opportunity to target the farmstead. The City hasn't done a full inventory of the damage, he said. He asked if the City would allow some of the structures to be moved. *City Manager Cahill* said that would be acceptable but doesn't see how that could be accomplished.

## **CONSIDERATION OF NEW BUSINESS**

### **PUBLIC HEARING – Landmark Alteration Certificate at 365 N Lincoln Ave**

(*Commission Chair Newman* recused himself from this item due to a professional conflict of interest in that the firm by which he is employed did an initial design for the alteration for which the certificate was requested; Commission Chair Newman left the room during discussion of and voting on this item.)

*Bethany Clark* presented an overview and staff analysis of the proposed alteration to the building at 365 N. Lincoln Ave. The applicant proposed the installation of a new fire escape on the east elevation. Clark presented the required criteria to the Commission. She emphasized that the applicant is responsible for complying with all code standards and obtaining all other permits required, including a building permit.

*Commissioner Cox* said he was satisfied with the resolution and specifically that it addressed the liability concerns regarding professionals on the Commission. He said he would like the language in section 3 of the resolution to be included in all of the HPC legal documents. That language is: "The Historic Preservation Commission makes no determination as to the whether the improvements included in the Application and approved in pursuant to the landmark alteration certificate comply with the City's building codes, fire codes, or other ordinances, rules, regulations or policies of the City although it does not believe that the fire escape will meet the required building codes or fire codes and hereby calls the Chief Building Official's and Fire Chief's attention to the matter for their determination."

*The property owner, Charlie Salwei*, thanked the HPC for their interest in the project. He spoke about the safety of the residents and answered some questions.

*Councilor Fogle* thanked Mr. Salwei for being "the most tenacious developer in the City."

*Commission Co-Chair Berglund opened the public hearing at 6:55pm and closed it at 6:56pm without any public coming forward to comment.*

*Commissioner Cox made the motion to approve the findings listed in Section VI of the Historic Preservation Commission staff report dated September 16, 2013 and, based on those findings, adopt Resolution #13-01 approving the landmark alteration certificate for 365 N Lincoln Avenue. Commission Co-chair Berglund seconded the motion and it passed unanimously.*

**(Commission Chair Newman returned to the Council Chambers.)**

#### **PUBLIC HEARING –Landmark Alteration Certificate at 130 W 3<sup>rd</sup> Street/Loveland Feed & Grain**

*Bethany Clark presented an overview of the proposed alteration to the Feed and Grain property at 130 W 3<sup>rd</sup> Street. The applicant submitted a request to demolish a non-historic 1970s metal building and construct a new 30-unit permanently affordable live/work artist residence building. She explained to the HPC that their task was to make the following decisions:*

- *Whether the proposed development is visually compatible with the designated historic structures located on the property in terms of design, finish, material, scale, mass and height.*
- *Whether the proposed work would or would not detrimentally alter, destroy, or adversely affect any architectural or landscape feature which contributes to its original historical designation.*

*Felicia Harmon, representing Novo Restoration, presented some background information about the project and answered questions. Jason Kopecky of The Abo Group, Inc., architect for the project, also provided information. He explained how the live/work apartments were designed to unify the buildings.*

*Commission Chair Newman opened the Public Hearing at 7:23p.m.*

*Trish Murtha, who said she was speaking for the board of Novo Restoration, reported that ArtSpace is an incredibly competent organization. Further she said Novo Restoration is 100% in favor of the project.*

*Commission Chair Newman closed the Public Hearing at 7:25p.m.*

*Commissioner Cox moved to make the findings listed in Section VI of the HPC staff report dated September 16, 2013 and, based on those findings, approve the landmark alteration certificate for 130 W 3<sup>rd</sup> Street for the construction of a 30-unit affordable live/work residential complex. Commissioner Manuel seconded the motion and it passed unanimously.*

#### **PUBLIC HEARING – Amended Landmark Nomination at 130 W 3<sup>rd</sup> Street/Loveland Feed & Grain**

*Bethany Clark reported that on August 20 she met with representatives of the Feed & Grain building and the future ArtSpace project to discuss the designation of the Feed & Grain. The primary funding source for the ArtSpace project is low income housing tax credits provided by the Colorado Housing and Finance Authority (CHFA), she said. CHFA has a requirement that no low income housing tax credits be spent on non-residential uses. To ensure this, the intent is to legally separate the Feed & Grain property from the new ArtSpace loft project through a lot merger and boundary line adjustment. The proposed Lot 1 and Lot 2 configurations will not be legal lots until a final plat is recorded with Larimer County, she explained. The purpose of the application*

is to amend the original designation of the Feed & Grain building by City Ordinance #4971, to include only the proposed Lot 1 (encompassing the Feed & Grain building) and to exclude Lot 2 (encompassing the new affordable live/work units).

Clark explained that the HPC must consider whether or not the property meets the criteria for designation set forth in section 15.56.100 of the Loveland Municipal Code.

*Commission Chair Newman opened the Public hearing at 7:38p.m. and with no public comment, he closed the Public Hearing at 7:38p.m.*

*Commissioner Armentrout moved to make the findings listed in Section III of the Historic Preservation Commission staff report dated September 16, 2013 and, based on those findings, recommend that City Council amend Ordinance #4971, revising the historic landmark boundaries to include only the proposed Lot 1 as described in the attached legal description, contingent upon the final plat being recorded with Larimer County. Commissioner Perry seconded the motion and it passed unanimously.*

#### **PUBLIC HEARING – Landmark Nomination at 715 S Roosevelt Ave/ Swartz Farmstead**

*Bethany Clark* provided background information about the ongoing Swartz Farmstead activities. On May 11, 2013, the City of Loveland Parks & Recreation Department submitted a demolition permit for the 11 structures that make up the Swartz Farmstead, she reported. On May 21, HPC designees found that the property met the criteria for nomination. The designees submitted a nomination application on July 8, 2013.

Further, Clark explained, the City worked with representatives from both the HPC and the OLAC to develop a shared vision and concept plan for the farmstead site that encompasses both Commissions' interests. On August 5<sup>th</sup> both the OLAC and HPC approved in concept a proposal for the Swartz Farmstead, which involved designation of only a limited number of specified structures.

*Clark* acknowledged the flooding has complicated the situation and likely compromised the integrity of the structures. *Councilor Fogle* presented his recent flood videos and pictures of the farmstead and surrounding area. The pictures included water levels, damage to the interior of the farmhouse and the area around the property. He reiterated his opinion that the City should not invest funds in the farmstead.

*Clark* restated the staff recommendation that due to the flood, it is not in the City's interest to invest in the farmstead structures.

*Commission Chair Newman opened the Public Hearing at 8:11p.m.*

*No public comment*

*Commission Chair Newman closed the Public Hearing at 8:11p.m.*

Some of the discussion included the following:

- *Councilor Fogle* suggested that the HPC request that the City fund the repair and clean-up of the Milner-Schwarz House as well as request the OLAC fund the documentation of the Swartz Farmstead and a

marker commemorating its history. *Greg George* said he would look into the cost of the repairs and documentation and report back to the HPC.

- *Commission Chair Newman* commented that the presentation contained 5% of what the HPC was here to do. He said the HPC is tasked with determining the eligibility of the property for the local listing.
- *Commission Berglund* agreed but said, as citizens, it is important to be cognizant of the current situation of the buildings and decide if that's how we want our tax dollars to be spent. Another flood could happen next month, he added.
- *Bethany Clark* pointed out that the HPC should consider the integrity of both the structures and the property they are on. If the HPC approves the designation, the City Council would have to consent as the property owner, she said.
- *Commissioner Berglund* said the integrity of the structures and the property has been compromised.
- *Commissioner Perry* suggested documenting the farmstead and the flood as a way to preserve their history.
- *Bethany Clark* said there is a Level II HABS documentation that can be done and recorded with the State Historic Preservation Office.
- *Councilor Fogle* suggested using the silo as a marker to hold a plaque.

*Commissioner Cox moved not to make the findings listed in Section VI of the Historic Preservation Commission staff report dated September 16, 2013 [stating that the Swartz Farmhouse, Root Cellar, Barn, Privy, Chicken Shed, Tenant House, and Silo as outlined in the nomination application and as approved in concept by the Historic Preservation Commission and Open Lands Advisory Commission meet the criteria for designation] and not to recommend to Council that the Swartz Farm structures be designated as historic structures.. Commissioner Berglund seconded the motion and it passed 4-2 with Commission Chair Newman and Commissioner Armentrout opposing.*

*Commissioner Perry moved to request that the City provide funds for Level II documentation of the Swartz Farmstead prior to demolition and place a plaque at the site, preferably on the silo, if it is structurally sound, or another appropriate location on the property, if it is not. The motion was seconded by Commissioner Cox and it passed unanimously.*

#### **Next Meeting's Agenda/Action Items**

- Assessment/cost of repair and clean-up of Milner-Schwarz House and property.

#### **COMMISSIONER COMMENTS**

*None*

**Meeting adjourned at 8:56p.m.**



**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

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**AGENDA ITEM:** 19  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Keith Reester, Public Works Department  
**PRESENTER:** Keith Reester, Director of Public Works

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**TITLE:**

An Ordinance on first reading Enacting a Supplemental Budget and Appropriation to the 2013 Loveland General Improvement District #1 for Downtown Parking Improvements

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and 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
- 

**SUMMARY:**

This is an administrative action. The ordinance on first reading appropriates an additional \$20,000 from reserves for the construction of the new parking lot on Railroad Avenue. This action brings the total project budget to \$90,000.

**BUDGET IMPACT:**

- ☐ Positive  
☒ Negative  
☐ Neutral or negligible

The appropriation is from reserves reducing the flexibility to fund other projects.

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**BACKGROUND:**

In 2013, the City entered into a lease for the land located west of the railroad tracks and south of 4<sup>th</sup> Street with the Burlington Northern Santa Fe Railroad (BNSF). Staff initially estimated the project to construct a parking lot adding 41 spaces of surface parking to be \$70,000. After field engineering for the base materials, safety requirements added by the railroad, and additional



utility work, the bid for the project came in at \$90,000. This equates to \$2,195 per space which is substantially lower than recent parking space project additions. This additional funding from the General Improvement District supports the GID's mission of parking management and growth in downtown. GID funds are collected from property owners in the downtown district.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Ordinance

FIRST READING October 15, 2013

SECOND READING \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND GENERAL IMPROVEMENT DISTRICT #1 FOR DOWNTOWN PARKING IMPROVEMENTS**

**WHEREAS**, the Loveland General Improvement District #1 (“**District**”) has reserved funds not appropriated at the time of the adoption of the 2013 District budget; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the 2013 District budget, 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**, acting as the ex officio Board of Directors of the Loveland General Improvement District #1:

:

**Section 1.** That revenues in the amount of \$20,000 from reserves in the Loveland General Improvement District #1 Fund 602 are available for appropriation. Revenues in the total amount of \$20,000 are hereby appropriated for parking lot improvements 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  
Loveland General Improvement District #1 Fund 602**

<b>Revenues</b>	
Fund Balance	20,000
<b>Total Revenue</b>	<b>20,000</b>
<b>Appropriations</b>	
602-90-901-0000-49360-DT1201 Construction	20,000
<b>Total Appropriations</b>	<b>20,000</b>

**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.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

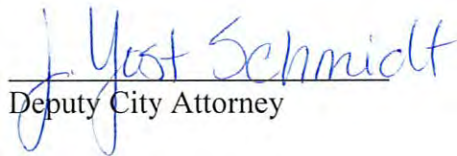
ADOPTED this \_\_\_\_ day of November, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
Deputy City Attorney



**CITY OF LOVELAND**  
**WATER & POWER DEPARTMENT**  
200 North Wilson • Loveland, Colorado 80537  
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

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**AGENDA ITEM:** 20  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Chris Matkins, Water Utilities Manager  
**PRESENTER:** Michael McCrary, Wastewater Treatment Plant Manager

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**TITLE:**

A Resolution Approving a Contract for a Grant of \$1,080,000 from the Colorado Department of Health and Environment (CDPHE) to the City of Loveland Water and Power Department to Model, Design and Begin Construction of Biological Nutrient Removal Processes at the Wastewater Treatment Facility

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the resolution.

**OPTIONS:**

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

**SUMMARY:**

This contract is a combination of two grants awarded to the City of Loveland Water and Power Department by the Colorado Department of Health and Welfare from an appropriation proposed by Colorado Governor John Hickenlooper and enacted by the Colorado General Assembly to ease the financial impact of the new nutrient removal regulations on rate payers in affected jurisdictions. One grant is for \$80,000 for modeling and selection of appropriate nutrient removal technology for the Wastewater Treatment Facility. This part of the grant includes matching funds of \$20,000 from the City. These funds are currently available in our operating budget and will not require a supplemental budget request. The second grant is for \$1,000,000 and does not include any matching funds requirement. These funds must be used for design and construction of the selected nutrient removal technology. All funds must be used by May 31, 2016. Current planning shows the entire Nutrient Removal Project totaling over approximately \$6,000,000 and lasting into 2017.

**BUDGET IMPACT:**

- ☒ Positive impact  
☐ Negative impact
-

☐ Neutral or negligible impact

**BACKGROUND:**

In 2012, the Colorado Water Quality Control Commission established Regulation #85. Nutrients Management Control is requiring larger public domestic wastewater treatment facilities to meet Phase I of the effluent limits for nutrients beginning with nitrogen and phosphates. The limits were based on levels attainment with technology and process schemes called Biological Nutrient Removal (BNR). Many of the 44 largest wastewater treatment facilities, including Loveland, will have these new limits being established in their next permit cycle. The current permit at the wastewater treatment plant expires October 31, 2015.

In order to meet these new limits, new technology and construction processes will need to be performed. There is a very large cost statewide to build the capability meeting the new limits. In 2013, the Colorado General Assembly created a Nutrients Grants Program that amended the Water Quality Improvement Fund (WQIF). The purpose of the fund is to assist Domestic Wastewater Treatment Facilities with the costs associated with Phase I planning, design, construction and/or improvements to comply with Regulation #85.

The total amount of this fund was \$15,700,000 with \$2,700,000 of the available funds appropriated for planning projects with no one project receiving more than \$80,000 in funding. The rest of the available funds, \$12,000,000, was appropriated for design and construction of BNR capability with no one project receiving more than \$1,000,000. The City of Loveland Water Division applied for the maximum grant level for both appropriations and was awarded the maximum levels for each. These funds can only be used for projects or parts of projects dealing with Biological Nutrient Removal. Any other aspects of the projects are not eligible for these funds such as planning, design, and construction components dealing with repair, rehabilitation or increasing capacity.

Our current Capital Improvement Plan (CIP) shows over \$6 Million budgeted for plant improvement only to meet the new Regulation #85 limits beginning in 2015 and extending into 2017. The attached work plan summarizes the milestones and activities we need to meet the requirements of this grant. This grant will create a need to move planning into later this year and into 2014. Since the funds will be available from this grant, our project planning can be accelerated. Future budgets and plans will include these funds as well.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution
  2. Contract (Exhibit A to the Resolution)
-

3. Work Plan Summary for the Wastewater Treatment Plant Nutrient Grants Program (Exhibit B to the Resolution)



**RESOLUTION #R-89-2013****A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE STATE OF COLORADO, FOR THE USE AND BENEFIT OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION, FOR NUTRIENTS MANAGEMENT**

**WHEREAS**, the City of Loveland, Colorado (“City”) and the State of Colorado, for the use and benefit of the Department of Public Health and Environment, Water Quality Control Division (“State”), desire to contract with one another to improve water quality for the City’s customers through compliance with the Water Quality Control Division’s Regulation #85, Nutrients Management Control Regulation, subject to the terms and conditions set forth in the Intergovernment Contract attached hereto as Exhibit A and incorporated herein by reference (“Intergovernment Contract”); and

**WHEREAS**, governmental entities 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; and

**WHEREAS**, the City Council desires to approve the Intergovernment Contract on behalf of the City.

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

**Section 1.** That the Intergovernment Contract is hereby approved.

**Section 2.** That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Intergovernment Contract 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 Intergovernment Contract on behalf of the City.

**Section 4.** That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 15<sup>th</sup> day of October, 2013.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Assistant City Attorney

DEPARTMENT OF PUBLIC HEALTH  
AND ENVIRONMENT

ROUTING NO. 14 FAA 61481

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**INTERGOVERNMENT CONTRACT**

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STATE:

State of Colorado for the use & benefit of the  
Department of Public Health and Environment  
Water Quality Control Division  
4300 Cherry Creek Drive South  
Denver, CO 80246

CONTRACT MADE DATE:

09/10/2013

PO/SC ENCUMBRANCE NUMBER:

PO FAA WQC1461481

TERM:

This contract shall be effective upon approval  
by the State Controller, or designee, or on  
09/15/2013, whichever is later. The contract  
shall end on 05/31/2016.

PROCUREMENT METHOD:

Exempt

BID/RFP/LIST PRICE AGREEMENT NUMBER:

RFA

LAW SPECIFIED VENDOR STATUTE:

Not Applicable

STATE REPRESENTATIVE:

Michael S. Beck, Grants & Loans Unit  
Water Quality Control Division  
4300 Cherry Creek Drive South  
Denver, CO 80246

SCOPE OF WORK:

Improve water quality for the customers of the City of Loveland through compliance with  
WQCD Regulation #85, Nutrients Management Control Regulation.

CONTRACTOR:

City of Loveland  
200 North Wilson Avenue  
Loveland, CO 80537

CONTRACTOR ENTITY TYPE:

Colorado Political Subdivision

BILLING STATEMENTS RECEIVED:

Monthly

STATUTORY AUTHORITY:

House Bill 13-1191

CONTRACT PRICE NOT TO EXCEED:

\$1,080,000

FEDERAL FUNDING DOLLARS: \$0.00

STATE FUNDING DOLLARS: \$1,080,000

MAXIMUM AMOUNT AVAILABLE PER FISCAL YEAR:

FY 14-FY 16: \$1,080,000

PRICE STRUCTURE:

Cost Reimbursement

CONTRACTOR REPRESENTATIVE:

Michael McCrary  
City of Loveland  
200 North Wilson Avenue  
Loveland, CO 80537

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**EXHIBITS:**

The following exhibits are hereby incorporated:

- Exhibit A - Additional Provisions (and any of its Attachments; e.g., A-1, A-2, etc.)
- Exhibit B - Statement of Work (and any of its Attachments; e.g., B-1, B-2, etc.)
- Exhibit C - Budget (and any of its Attachments; e.g., C-1, C-2, etc.)

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**COORDINATION:**

The State warrants that required approval, clearance and coordination has been accomplished from and with appropriate agencies. Section 29-1-203, C.R.S., as amended, encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other to the fullest extent possible to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting entities.

**APPROVAL:**

In no event shall this contract be deemed valid until it shall have been approved by the State Controller or his/her designee.

**PROCUREMENT:**

All State of Colorado contracts with its political subdivisions and other governmental entities are exempt from the State of Colorado's personnel rules and procurement code.

**PRICE PROVISIONS:**

Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services and/or deliverables. The liability of the State at any time for such payments shall be limited to the encumbered amount remaining of such funds.

Authority exists in the laws and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment.

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

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## GENERAL PROVISIONS

The following clauses apply to this contract. In some instances, these general clauses have been expanded upon in other sections/exhibits of/to this contract. To the extent that other provisions of the contract provide more specificity than these general clauses, the more specific provision shall control.

1. Governmental Immunity. Notwithstanding any other provision to the contrary, no term or condition of this contract shall 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, Section 24-10-101 et.seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 et.seq., CRS and the risk management statutes, Section 24-30-1501, et.seq., CRS as now or hereafter amended.
2. Available Funds Contingency
  - a. Available Funds. The State is prohibited by law from making commitments beyond the term of the State's current fiscal year; therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the available amount remaining of such encumbered funds. In the event that state funds become unavailable for this Contract, as determined by the State, the State may immediately terminate this Contract or amend it accordingly.
  - b. Federal Funds Contingency. Payment pursuant to this contract, if in federal funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. In the event that said funds, or any part thereof, become unavailable, as determined by the State, the State may immediately terminate this contract or amend it accordingly without liability including liability for termination costs.
3. Billing Procedures. The State shall establish billing procedures and requirements for payment due the Contractor in providing performance pursuant to this contract. The Contractor shall comply with the established billing procedures and requirements for submission of billing statements. The State shall comply with CRS 24-30-202(24) when paying vendors upon receipt of a correct notice of the amount due for goods or services provided hereunder.
4. Exhibits - Interpretation. Unless otherwise stated, all referenced exhibits are incorporated herein and made a part of this contract. Unless otherwise stated, the terms of this contract shall control over any conflicting terms in any of its exhibits. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) the Special Provisions of this Contract; 2) the Additional Provisions **Exhibit A** and its attachments if included; 3) the Contract (other than the Special Provisions); 4) the RFP if applicable and attached; 5) the Scope/Statement of Work **Exhibit B** and its attachments if included; 6) the Contractor's proposal if applicable and attached; 7) other exhibits/attachments in their order of appearance.

The conditions, provisions, and terms of any RFP attached hereto, if applicable, establish the minimum standards of performance that the Contractor must meet under this Contract. If the Contractor's Proposal, if attached hereto, or any attachments or exhibits thereto, or the Scope/Statement of Work Exhibit B, establish or create standards of performance greater than those set forth in the RFP, then the Contractor shall also meet those standards of performance under this Contract.

5. Notice and Representatives. For the purposes of this contract, the representative for each party is as designated herein. Any notice required or permitted may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address provided, and if sent by mail it is effective when posted in a

U.S. Mail Depository with sufficient postage attached thereto. Notice of change of address or change or representative shall be treated as any other notice.

6. Contractor Representations - Qualifications/Licenses/Approvals/Insurance. The Contractor certifies that, at the time of entering into this contract, it and its agents have currently in effect all necessary licenses, certifications, approvals, insurance, etc. required to properly provide the services and/or supplies covered by this contract in the state of Colorado. Proof of such licenses, certifications, approvals, insurance, etc. shall be provided upon the State's request. Any revocation, withdrawal or non-renewal of necessary license, certification, approval, insurance, etc. required for the Contractor to properly perform this contract, shall be grounds for termination of this contract by the State.

Contractor certifies that it is qualified to perform such services or provide such deliverables as delineated in this contract.

7. Legal Authority. The Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and bind the Contractor to its terms. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.
8. Insurance – Contractor. The Contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act (CGIA), section 24-10-101, *et seq.*, C.R.S., as amended. Therefore, at all times during the initial term of this Contract, and any renewals or extensions hereof, the Contractor shall maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA. If requested by the State, the Contractor shall provide the State with written proof of such insurance coverage.
9. Rights in Data, Documents and Computer Software or Other Intellectual Property. All intellectual property including without limitation, databases, software, documents, research, programs and codes, as well as all, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this contract shall be the exclusive property of the State. Unless otherwise stated, all such material shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor’s obligations under this contract without the prior written consent of the State. All documentation, accompanying the intellectual property or otherwise, shall comply with the State requirements which include but is not limited to all documentation being in a paper, human readable format which is useable by one who is reasonably proficient in the given subject area. Software documentation shall be delivered by Contractor to the State that clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages. The documentation shall contain source code which describes the program logic, relationship between any internal functions, and identifies the disk files which contain the various parts of the code. Files containing the source code shall be delivered and their significance to the program described in the documentation. The documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated. The Contractor warrants that the delivered software will be sufficiently descriptive to enable maintenance and modification of the software. The State’s ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

If any material is produced under this Contract and the parties hereto mutually agreed that said material could be copyrighted by Contractor or a third party, then the State, and any applicable federal funding entity, shall, without additional cost, have a paid in full, irrevocable, royalty free, and non-exclusive license to reproduce, publish, or otherwise use, and authorize others to use, the copyrightable material for any purpose authorized by the Copyright Law of the United States as now or hereafter enacted. Upon the written request of the State, the Contractor shall provide the State with three (3) copies of all such copyrightable material.



10. Confidential or Proprietary Information. Subject to the Public (Open) Records Act, section 24-72-101, *et seq.*, C.R.S., as amended, if the Contractor obtains access to any records, files, or other information of the State in connection with, or during the performance of, this Contract, then the Contractor shall keep all such records, files, or other information confidential and shall comply with all laws and regulations concerning the confidentiality of all such records, files, or information to the same extent as such laws and regulations apply to the State. Any breach of confidentiality by the Contractor, or third party agents of the Contractor, shall constitute good cause for the State to cancel this Contract, without liability to the State. Any State waiver of an alleged breach of confidentiality by the Contractor, or third party agents of the Contractor, does not constitute a waiver of any subsequent breach by the Contractor, or third party agents of the Contractor. Contractor shall protect the confidentiality of all information used, held, created or received in connection with this Contract and shall insure that any subcontractors or agents of Contractor protect the confidentiality of all information under this Contract. Contractor shall use and disclose confidential information only for purposes of this Contract and for the operation and administration of the Contractor. Contractor shall implement appropriate safeguards as are necessary to prevent the use of disclosure of confidential information and shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards for the electronic transmission of confidential information which are appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. Contractor shall promptly notify the State if Contractor breaches the confidentiality of any information covered by this Contract.

The Contractor must identify to the State the information that it considers confidential or proprietary. This is a continuing obligation. Confidential or proprietary information for the purpose of this paragraph is information relating to Contractor's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, information which is in the public domain, or information which is or could have been acquired/developed independently by the State or a third party. Notwithstanding the foregoing, the State shall not be in violation of its obligations under this section should it disclose confidential information if such disclosure is, in the sole opinion of the State's legal counsel, required by applicable law and/or legal process (including, but not limited to, disclosures required pursuant to the Colorado (Open) Public Records Act, sections 24-72-201, *et. seq.*, C.R.S., as now or hereafter amended). The State shall endeavor to provide notice to the Contractor, as promptly as practicable under the circumstances, of any demand, request, subpoena, court order or other action requiring such disclosure, in order to afford Contractor the opportunity to take such lawful action as it deems appropriate to oppose, prevent or limit the disclosure, solely at its own instance and expense; but nothing herein shall be construed to require the State to refuse or delay compliance with any such law, order or demand.

11. Records Maintenance, Performance Monitoring & Audits. The Contractor shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the program/project or the delivery of services under this contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Contractor records.

The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with this contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, guardian, or the State. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its agents, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its agents, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.

The Contractor authorizes the State, the federal government or their designee, to perform audits and/or inspections of its records, at any reasonable time during the term of this contract and for a period of six (6) years following the termination of this contract, to assure compliance with the state or federal government's terms and/or to evaluate the Contractor's performance. Any amounts the State paid improperly shall be immediately returned to the State or may be recovered in accordance with other remedies.

All such records, documents, communications, and other materials shall be the property of the State unless otherwise specified herein and shall be maintained by the Contractor in a central location as custodian for the State on behalf of the State, for a period of six (6) years from the date of final payment or submission of the final federal expenditure report under this contract, unless the State requests that the records be retained for a longer period, or until an audit has been completed with the following qualification. If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the six (6) year period, or if audit findings have not been resolved after a six (6) year period, the materials shall be retained until the resolution of the audit findings.

The Contractor shall permit the State, any other governmental agency authorized by law, or an authorized designee thereof, in its sole discretion, to monitor all activities conducted by the Contractor pursuant to the terms of this contract. Monitoring may consist of internal evaluation procedures, reexamination of program data, special analyses, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

12. Taxes. The State, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. 39- 26-114(a) and 203, as amended]. The Contractor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.
13. Conflict of Interest. During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this contract.

Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor's fully performing his/her obligations to the State under the terms of this contract, without the prior written approval of the State.

In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

Further, the Contractor, and its subcontractors or subgrantees, shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of the Contractor, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of the employee's immediate family;
- c. The employee's partner; or
- d. An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. The Contractor's, subcontractor's, or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor's potential contractors, or parties to subagreements.

14. Inspection and Acceptance (Services) and Contractor Warranty. The State reserves the right to inspect services provided under this contract at all reasonable times and places during the term of the contract. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to contract requirements, the State may require the contractor to perform the services again in conformity with contract requirements, with no

additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the State may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

Contractor warrants that all supplies furnished under this contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Contractor shall, at its option, repair or replace any supplies that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the State all written manufacturer warranties relating to the supplies and to deliver such written warranties to the State.

15. Adjustments in Price. Adjustments to contract prices are allowable only so long as they are mutually agreeable by the parties and so long as they are included within a contract amendment made prior to the effective date of the price adjustments and made pursuant to the State of Colorado Fiscal Rules, signed by the parties, and approved by the State Controller or designee. The Contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data Section of the Colorado State Procurement Rules. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:
  - a. By agreement on a fixed-price adjustment;
  - b. By unit prices specified in the contract;
  - c. In such other manner as the parties may mutually agree; or
  - d. In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.
16. Contract Modifications. This contract 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 contract on the effective date of such change as if fully set forth herein. If either the State or the Contractor desires to modify the terms and conditions of this Contract, then the parties shall execute a standard written amendment to this Contract initiated by the State. The standard written amendment must be executed and approved in accordance with all applicable laws and rules by all necessary parties including the State Controller or delegate.
17. Litigation. The Contractor shall within five (5) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency notify the State that it is a party defendant in a case which involves services provided under this contract. The Contractor shall deliver copies of such document(s) to the State's Executive Director. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.
18. Notice of Breach and Dispute Resolution: If the State or the Contractor believes in good faith that the other party has failed to timely complete a deliverable, or has otherwise committed a material breach of this Contract, then the non-breaching party shall notify the breaching party in writing of the alleged breach within ten (10) business days of: 1) the date of the alleged breach if the non-breaching party is aware of the breach at the time it occurs; or 2) the date that the non-breaching party becomes aware of the breach.

Upon receipt of written notice of an alleged breach of the Contract, the breaching party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, within which to cure the alleged breach or to notify the non-breaching party in writing of the breaching party's belief that a material breach of this Contract has not occurred. Failure of the breaching party to cure or respond in writing within the above time period shall result in the non-breaching party being entitled to pursue any and all remedies available at law or in equity.

Except as herein specifically provided otherwise, disputes concerning the performance of this contract which cannot be resolved by the designated contract representatives shall be referred in writing to a senior

departmental management staff designated by the department and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

The Contractor and its sureties shall be liable for any damage to the State resulting from the Contractor's breach, whether or not the Contractor's right to proceed with the work is terminated. The State reserves the right, in its sole discretion, to determine whether or not to accept substituted performance tendered by the Contractor or the Contractor's sureties and acceptance is dependent upon completion of all applicable inspection procedures.

19. Remedies: In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Contractor. Without limitation, these remedial actions include:
- a. withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
  - b. require the vendor to take necessary action to ensure that the future performance conforms to contract requirements; and/or
  - c. request the removal from work on the contract of employees or agents of Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
  - d. deny payment for those services or obligations which have not been performed and which due to circumstances caused by Contractor cannot be performed, or if performed would be of no value to the State; denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
  - e. suspend Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
  - f. modify or recover payments (from payments under this contract or other contracts between the State and the vendor as a debt due to the State) to correct an error due to omission, error, fraud and/or defalcation; and/or
  - g. terminate the contract.

These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

20. Termination.

- a. Termination for Default. The State may terminate the contract for cause. In the event this contract is terminated for cause, the State will only reimburse the Contractor for accepted work or deliverables received up to the date of termination. In the event this contract is terminated for cause, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Contractor is determined. If it is determined that the Contractor was not in default then such termination shall be treated as a termination for convenience as described herein. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this contract.

- b. Termination for Convenience. The State shall have the right to terminate this contract at any time the State determines necessary by giving the Contractor at least twenty (20) calendar days prior written notice. If notice is so given, this contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.

In the event that the State terminates this contract under the Termination for Convenience provisions, the Contractor is entitled to submit a termination claim within ten (10) days of the effective date of termination. The termination claim shall address and the State shall consider paying the following costs:

- I. the contract price for performance of work, which is accepted by the State, up to the effective date of the termination;
- II. reasonable and necessary costs incurred in preparing to perform the terminated portion of the contract;
- III. reasonable profit on the completed but undelivered work up to the date of termination;
- IV. the costs of settling claims arising out of the termination of subcontracts or orders, not to exceed 30 days pay for each subcontractor;
- V. reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the contract amount reduced by amounts previously paid by the State to the Contractor.

- c. Immediate Termination. This contract is subject to immediate termination, in whole or in part, by the State without further liability in all of the following circumstances:
- I. In the event that the State determines that the health, safety, or welfare of persons receiving services may be in jeopardy;
  - II. Upon verifying that the Contractor has engaged in or is about to participate in fraudulent or other illegal acts; or
  - III. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract.

21. Stop Work Order. Upon written approval by the State Procurement Officer or delegee, the State may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the Contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, as legally extended, the State Procurement Officer or delegee shall either:

- a. Cancel the stop work order; or
- b. Terminate the work covered by such order; or
- c. Terminate the contract.

If a stop work order issued under this clause is properly canceled, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified accordingly in writing pursuant to the terms of this contract dealing with contract modifications, if:

- a. The stop work order results in increased time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- b. The Contractor asserts claim for such an adjustment within thirty (30) days after the end of the period of work stoppage.

If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

22. Venue. The parties agree that exclusive venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

23. Understanding of the Parties.

- a. Complete Integration. This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.
- b. Severability. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
- c. Binding Agreement. Except as herein specifically provided otherwise, it is expressly understood and agreed that this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. All rights of action relating to enforcement of the terms and conditions shall be strictly reserved to the State and the named Contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.
- d. Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
- e. Continuing Obligations. The State and the Contractor's obligations under this contract shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.
- f. Assignment and Change In Ownership, Address, Financial Status. Except as herein specifically provided otherwise, the rights, duties and obligations of the Contractor arising hereunder cannot be assigned, delegated, subgranted or subcontracted except with the express prior written consent of the State, which consent shall not be unreasonably withheld. In the case of assignment or delegation, Contractor and the State shall execute the standard State novation agreement prior to the assignment or delegation being effective against the State. The subgrants and subcontracts permitted by the State shall be subject to the requirements of this contract. The Contractor is responsible for all subcontracting arrangements, delivery of services, and performance of any subgrantor or subcontractor. The Contractor warrants and agrees that any subgrant or subcontract, resulting from its performance under the terms and conditions of this contract, shall include a provision that the said subgrantor or subcontractor shall abide by the terms and conditions hereof. Also, the Contractor warrants and agrees that all subgrants or subcontracts shall include a provision that the subgrantor or subcontractor shall indemnify and hold harmless the State. The subgrants or subcontractors must be certified to work on any equipment for which their services are obtained.



This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller – as distinguished from the State Controller – and the Contractor assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

The Contractor is required to formally notify the State prior to, or if circumstances do not allow prior notification then immediately following, any of the following:

- I. change in ownership;
- II. change of address;
- III. the filing of bankruptcy.

- g. Force Majeure. Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure.” As used in this contract “force majeure” means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions, strikes or other labor disputes; freight embargoes; or unusually severe weather.
- h. Changes In Law. This contract is subject to such modifications as may be required by changes in applicable federal or State law, or their implementing rules, regulations, or procedures. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in the form of a written amendment to this Contract that has been previously executed and approved in accordance with applicable law.
- i. Media or Public Announcements. Unless otherwise provided for in this Contract, the Contractor shall not make any news release, publicity statement, or other public announcement, either in written or oral form that concerns the work provided under this Contract, without the prior written approval of the State. The Contractor shall submit a written request for approval to the State no less than ten (10) business days before the proposed date of publication. The State shall not unreasonably withhold approval of the Contractor’s written request to publish. Approval or denial of the Contractor’s request by the State, shall be delivered to the Contractor in writing within six (6) business days from the date of the State’s receipt of Contractor’s request for approval.

If required by the terms and conditions of a federal or state grant, the Contractor shall obtain the prior approval of the State and all necessary third parties prior to publishing any materials produced under this Contract. If required by the terms and conditions of a federal or state grant, the Contractor shall also credit the State and all necessary third parties with assisting in the publication of any materials produced under this Contract. It shall be the obligation of the Contractor to inquire of the State as to whether these requirements exist and obtain written notification from the State as Contractor deems appropriate.

- 24. Intellectual Indemnity. Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s), or any part thereof, supplied by Contractor under this agreement constitutes infringement of any patent, copyright, trademark, or other proprietary rights, provided that the State gives Contractor written notice within twenty (20) days of receipt by the State of such notice of such claim or suit, provides assistance and cooperation to Contractor in connection with such action, and Contractor has sole authority to defend or settle the claim. Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense. Should the State not choose to participate, Contractor shall keep the State advised of any settlement or defense.

Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State for all liability incurred by the State as a result of such infringement. Contractor shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction, awarded or agreed to by Contractor regarding such claims or suits.

If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, Contractor, after consultation with the State, shall do one of the following at Contractor's expense:

- a. produce for the State the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof; or
- b. replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and State specifications; or
- c. suitably modify the products, or part thereof.

Except as otherwise expressly provided herein, Contractor shall not be liable for any costs or expenses incurred without its prior written authorization.

Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon:

- a. the use of an altered release if Contractor had not consented to the alteration; or
- b. the combination, operation or use of the product(s) with programs or data which were not furnished by Contractor, if such infringement would have been avoided if the programs or data furnished by persons or entities other than Contractor had not been combined, operated or used with the product(s); or
- c. the use of product(s) on or in connection with equipment or software not permitted under this contract if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.

25. Conformance with Law. If this Contract involves federal funds or compliance is otherwise federally mandated, the Contractor and its agent(s) shall at all times during the term of this contract strictly adhere to all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Without limitation, these federal laws and regulations include:

- a. Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, A-133, and The Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable;
- b. the "Hatch Act" (5 U.S.C. 1501-1508) and Public Law 95-454, Section 4728. These federal statutes declare 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;
- c. the "Davis-Bacon Act" (40 U.S.C. 276A-276A-5). This federal Act requires that all laborers and mechanics employed by contractors or subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor;
- d. 42 U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794. These federal Acts mandate that no person shall, on the grounds of race, color, national origin, age, or disability, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by federal funds;
- e. the "Americans with Disabilities Act" (Public Law 101-336; 42 U.S.C. 12101, 12102, 12111 - 12117, 12131 - 12134, 12141 - 12150, 12161 - 12165, 12181 - 12189, 12201 - 12213 and 47 U.S.C. 225 and 47 U.S.C. 611);
- f. if the Contractor is acquiring an interest in real property and displacing households or businesses in the performance of this Contract, then the Contractor is in compliance with 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);
- g. when applicable, the Contractor shall comply with the provisions of the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (Common Rule);
  - h. Section 2101 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, which prohibits the use of federal money to lobby the legislative body of a political subdivision of a State; and
  - i. If the Contractor is a covered entity under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d – 1320d-8, the Contractor shall comply with applicable HIPAA requirements. **If Contractor is a business associate under HIPAA, Contractor hereby agrees to, and has an affirmative duty to, execute the State’s current HIPAA Business Associate Agreement. In this case, Contractor must contact the State’s representative and request a copy of the Business Associate Agreement, complete the agreement, have it signed by an authorized representative of the Contractor, and deliver it to the State.**
  - j. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required thereunder. This Act is also referred to as FFATA.
6. Contractor Affirmation. If this Contract involves federal funds or compliance is otherwise federally mandated, then by signing and submitting this Contract the Contractor affirmatively avers that:
- a. the Contractor is in compliance with the requirements of the “Drug-Free Workplace Act” (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. 701 et seq.);
  - b. the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; the Contractor shall comply with all applicable regulations pursuant to Executive Order 12549, including, Debarment and Suspension and Participants’ Responsibilities, 29 C.F.R. 98.510 (1990); and,
  - c. the Contractor shall comply with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including, Certification and Disclosure, 29 C.F.R. 93.110(1990).
27. Annual Audits. If the Contractor expends federal funds from all sources (direct or from pass-through entities) in an amount of \$500,000 or more during its fiscal year, then the Contractor shall have an audit of that fiscal year in accordance with Office of Management and Budget (OMB) Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). If the Contractor expends federal funds received from the State in an amount of \$500,000 or more during its fiscal year, then the Contractor shall furnish one (1) copy of the audit report(s) to the State’s Internal Audit Office within thirty (30) calendar days after the Contractor’s receipt of its auditor’s report or nine (9) months after the end of the Contractor’s audit period, whichever is earlier. If (an) instance(s) of noncompliance with federal laws and regulations occurs, then the Contractor shall take all appropriate corrective action(s) within six (6) months of the issuance of (a) report(s).
- If the Contractor submits an annual indirect cost proposal to the State for review and approval, then the Contractor’s auditor shall audit the proposal in accordance with the requirements of OMB Circulars A-21 (Cost Principles for Educational Institutions), A-87 (Cost Principles for State, Local, and Tribal Governments), or A-122 (Cost Principles for Non-Profit Organizations), whichever is applicable.
28. Holdover. In the event that the State desires to continue the services provided for in this Contract and a replacement contract has not been fully executed by the expiration date of the Contract, this Contract may be extended unilaterally by the State for a period of up to two (2) months upon written notice to the Contractor under the same terms and conditions of the original Contract including, but not limited to, prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.

29. Survival of Certain Contract Terms. Notwithstanding anything in this contract to the contrary, the parties understand and agree that all terms and conditions of this contract which may require continued performance, compliance, or effect beyond the termination date of the contract and shall survive such termination date and shall be enforceable by the State as provided herein in the event of failure to perform or comply by the Contractor.

30. **STATEWIDE CONTRACT MANAGEMENT SYSTEM** *[This section shall apply when the Effective Date is on or after July 1, 2009 and the maximum amount payable to Contractor hereunder is \$100,000 or higher]*

By entering into this Contract, Contractor 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 contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be evaluated in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Statement of Project of this Contract. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and a final review and rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation determine that Contractor demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Public Health and Environment and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (ii) 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 Contractor, by the Executive Director, upon showing of good cause.

## SPECIAL PROVISIONS

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

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
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.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract 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.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor 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 Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor 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.
5. **COMPLIANCE WITH LAW.** Contractor 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.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. 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 contract, to the extent capable of execution.
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 contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
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 contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
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.

**11. PUBLIC CONTRACTS 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]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract 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 Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, 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 contract.

Revised 1-1-09



**\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

**John W. Hickenlooper, GOVERNOR**

Department of Public Health and Environment

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

**John W. Suthers, Attorney General**

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

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.**

**STATE CONTROLLER:**  
**Robert Jaros, CPA, MBA, JD**

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

Date: \_\_\_\_\_

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**ADDITIONAL PROVISIONS**  
**To Contract Dated 09/10/2013 - Contract Routing Number 14 FAA 61481**

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

1. To receive compensation under the Contract, the Contractor shall submit a signed monthly CDPHE Reimbursement Invoice Form. This form is accessible from the CDPHE internet website <http://www.colorado.gov/cs/Satellite/CDPHE-Main/CBON/1251622941228>. CDPHE will provide technical assistance in accessing and completing the form. The CDPHE Reimbursement Invoice Form and Expenditure Details page must be submitted within **forty-five (45)** calendar days of the end of the billing period for which services were rendered. Expenditures shall be in accordance with the Statement of Work and Budget.

The Contractor shall provide the following documentation with the completed invoice; all applicable invoices to substantiate the amount being requested. This supporting documentation shall be submitted with the completed CDPHE Reimbursement Invoice Form and Expenditure Details page.

Scan the completed and signed CDPHE Reimbursement Invoice Form and supporting documentation into an electronic document. Email the scanned invoice and Expenditure Details page and supporting documentation to: Nicole Rollo, GLU Administrative Assistant, [nicole.rollo@state.co.us](mailto:nicole.rollo@state.co.us). Also, courtesy copy your GLU project manager.

Final billings under the Contract must be received by the State within a reasonable time after the expiration or termination of the Contract; but in any event no later than **forty-five (45)** calendar days from the effective expiration or termination date of the Contract.

Unless otherwise provided for in the Contract, "Local Match," if any, shall be included on all invoices as required by funding source.

2. Time Limit for Acceptance of Deliverables.

The State shall follow the review goals and timelines outlined within existing regulations, where applicable. Examples of existing review processes include the site location application and design review processes as described within the *Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works 5 CCR 1002-22* and the *State of Colorado Design Criteria for Domestic Wastewater Treatment Works WPC-DR-1*. Processing of all deliverables not identified through other existing regulatory authorities, the State and the Contractor shall adhere to the following:

- a. Initial Evaluation Period. The State shall have ninety **(90)** calendar days from the date a deliverable is delivered to the State by the Contractor to initially evaluate that deliverable, except for those deliverables that have a different time negotiated by the State and the Contractor.
- b. Notice of Defect. If the State believes in good faith that a deliverable fails to meet the design specifications for that particular deliverable, or is otherwise deficient, then the State shall notify the Contractor of the failure or deficiencies, in writing, within **thirty (30)** calendar days of the date the State becomes aware of the failure or deficiency. The above time frame shall apply to all deliverables except for those deliverables that have a

**EXHIBIT A**

different time negotiated by the State and the Contractor in writing pursuant to the State's fiscal rules

- c. Time to Correct Defect. Upon receipt of timely written notice of an objection to a completed deliverable, the Contractor shall have a reasonable period of time, not to exceed **thirty (30)** calendar days, to correct the noted deficiencies.
3. Health Insurance Portability and Accountability Act (HIPAA) Business Associate Determination. The State and the Contractor have determined that Contractor is not a business associate under HIPAA.
4. The contractor shall request pre-approval from CDPHE Project Manager for budget activity redistribution over \$5,000.
5. The parties agree that General Provision number 24, Intellectual Indemnity is struck in its entirety.

**STATEMENT OF WORK**  
**To Contract Dated 9/10/2013 - Contract Routing Number 14 FAA 61481**

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

**I. Entity Name:** City of Loveland

**Term:** September 15, 2013 – May 31, 2016

**II. Project Description:**

This project serves to improve water quality for the customers of the City of Loveland. Improvements will be achieved through compliance with WQCD Regulation #85, Nutrients Management Control Regulation. This project provides for the development of a nutrients engineering report to address biological nutrient removal (BNR) and the preparation of construction documents to reconfigure and expand existing biological treatment basins.

**III. Definitions:**

1. BNR – Biological Nutrient / Nitrogen Removal
2. BOD – Biochemical Oxygen Demand (as in BOD reduction)
3. CDPHE – Colorado Department of Public Health and Environment
4. COD – Chemical Oxygen Demand (as in soluble COD)
5. Contractor and/or Vendor – Any party to which a purchase order is issued.
6. ERU - Engineering Review Unit
7. GLU - Grants and Loans Unit
8. NCS – Nutrient Compliance Study
9. NER- Nutrient Engineering Report
10. NGP- Nutrients Grant Program
11. PDR- Process Design Report
12. PELs - Preliminary Effluent Limits
13. PER - Preliminary Engineering Report
14. POTW- Publicly Owned Treatment Works
15. RAS- Return Activated Sludge
16. SOW - Statement of Work
17. SRT- Solids Retention Time
18. Start up & Commissioning – Initiating and operating facility improvements
19. TIN-Total Inorganic Nitrogen
20. TP- Total Phosphorous
21. TSS- Total Suspended Solids
22. WQIF – Water Quality Improvement Fund
23. WRF – Water Reclamation Facility
24. WWTF- Wastewater Treatment Facility

**IV. Performance (Work Plan and Requirements):**

**Goal #1:** To improve water quality in Colorado by meeting requirements of Regulation #85, Nutrients Management Control Regulation.

**Objective #1:** No later than March 31, 2014 develop a Nutrients Engineering Report detailing a selective alternative to meet future nutrient effluent limits at the wastewater treatment facility.

		Budget
<b>Primary Activity #1</b>	The Contractor shall develop and evaluate alternatives for Biological Nutrient Removal (BNR) process that optimizes the use of the existing WWTF.	\$80,000
<b>Sub-Activities:</b>	<ol style="list-style-type: none"> <li>1. The contractor shall review wastewater influent characterization, process and effluent.</li> <li>2. The contractor shall calibrate and validate existing process and hydraulic baseline models.</li> <li>3. The contractor shall develop schematic layouts of BNR alternatives.</li> <li>4. The contractor shall model up to three proposed BNR additions to existing treatment facility at design loadings and performance to meet PELs. This will include an activity of how BNR will impact existing liquid and solids treatment processes at present and future design loading and PELs.</li> <li>5. The contractor shall develop lifecycle and capital costs and constructability pros/cons for each alternative.</li> <li>6. The contractor shall prepare BNR treatment alternative evaluation report (cost benefit).</li> </ol>	
<b>Primary Activity #2</b>	The contractor shall develop a Nutrients Engineering Report.	
<b>Sub-Activities:</b>	<ol style="list-style-type: none"> <li>1. The contractor shall select a treatment alternative for BNR to comply with Regulation #85.</li> </ol>	
<b>Standards and Requirements</b>	<ol style="list-style-type: none"> <li>1. The contractor shall complete a Nutrient Engineering Report in accordance with the <i>State Revolving Fund Waste Water Preliminary Engineering Report Guidance and Review Checklist Form</i>. These documents are incorporated and made part of the SOW by reference. The documents can be accessed at <a href="http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251640440472">http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251640440472</a></li> <li>2. The content of the electronic documents and information contained on CDPHE websites may be updated periodically during the contract term. The Contractor shall monitor documents and website content for updates and comply with all updates.</li> <li>3. The Contractor shall notify the WQIF Nutrients administrator via email if the website links are broken.</li> </ol>	
<b>Measurement of Expected Results</b>	<ol style="list-style-type: none"> <li>1. Data contained in the Nutrients Engineering Report that indicates a selected alternative for complying with Regulation #85 at the wastewater treatment facility.</li> </ol>	
		Completion Date
<b>Deliverables</b>	<ol style="list-style-type: none"> <li>1. The Contractor shall submit the Nutrient Engineering Report via email to the Project Manager.</li> </ol>	No later than: March 31, 2014
	<ol style="list-style-type: none"> <li>2. The Contractor shall submit a progress report form, as provided by CDPHE, identifying progress made on the nutrients engineering report via email to the Project Manager.</li> </ol>	No later than: December 1, 2013; February 1, 2014; May 1, 2014, and July 1, 2014



<b>Goal #1:</b> To improve water quality in Colorado by meeting requirements of Regulation #85, Nutrients Management Control Regulation.		
<b>Objective #2:</b> No later than May 31, 2016 complete final design and begin construction process for facility improvements that will meet future effluent limitations for nutrients.		
		<b>Budget</b>
<b>Primary Activity #1</b>	The Contractor shall complete a preliminary effluent limit (PEL) application.	\$40,000
<b>Primary Activity #2</b>	The Contractor shall prepare site application for the recommended facility improvements.	\$97,000
<b>Primary Activity #3</b>	The Contractor shall prepare a process design report for the recommended facility improvements.	\$191,900
<b>Primary Activity #4</b>	The Contractor shall prepare final engineering design documents for the recommended facility improvements as identified in the Nutrients Engineering Report.	\$219,350
<b>Sub-Activities:</b>	<ol style="list-style-type: none"> <li>1. The Contractor shall complete final drawings for the recommended improvements.</li> <li>2. The Contractor shall complete final project technical specifications for the recommended improvements.</li> </ol>	
<b>Primary Activity #5</b>	The Contractor shall begin the construction process for the BNR improvements to the wastewater treatment facility. Final construction of full BNR process will extend into 2017 with the City of Loveland expending upwards of \$4,500,000 in addition to the grant funding.	\$451,750
<b>Sub-Activities:</b>	<ol style="list-style-type: none"> <li>1. The Contractor shall advertise project for bid submittals.</li> <li>2. The Contractor shall award construction contract.</li> <li>3. The Contractor shall begin construction of the BNR process including project technical submittals.</li> <li>4. The Contractor shall complete a discharge permit application.</li> </ol>	
<b>Expected Results of the Activity</b>	<ol style="list-style-type: none"> <li>1. The wastewater treatment facility will procure all required approvals necessary for construction of facility improvements that will meet future effluent limitations for nutrients.</li> <li>2. Facility improvements started to meet nutrient effluent limits.</li> </ol>	
<b>Standards and Requirements</b>	<ol style="list-style-type: none"> <li>1. The Contractor shall obtain PEL approval prior to submission of the site application.</li> <li>2. The Contractor shall utilize a registered licensed Professional Engineer to complete and certify the process design report and construction documents.</li> <li>3. The Contractor shall utilize the <i>State of Colorado Design Criteria for Waste Treatment Works</i>. This document is incorporated and made part of this SOW by reference and is available on the following website <a href="http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615">http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615</a></li> <li>4. The Contractor shall comply with the <i>Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works (Regulation No. 22)</i> when upgrading facilities. This document is incorporated and made part of this SOW by reference and is available on the following website <a href="http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615">http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615</a></li> <li>5. The Contractor shall utilize the <i>Regulation 22 Application Form</i>. This document is incorporated and made part of this SOW by reference and is available on the following</li> </ol>	

	<p>website <a href="http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615">http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615</a></p> <p>6. The Contractor shall utilize the <i>Process Design Report Submittal Checklist</i>. This document is incorporated and made part of this SOW by reference and is available on the following website <a href="http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615">http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615</a></p> <p>7. The Contractor shall utilize the <i>Wastewater Design Form</i> when submitting the engineering design documents. This document is incorporated and made part of this SOW by reference and is available on the following website <a href="http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615">http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251629028615</a></p> <p>8. The Contractor shall include in the project technical specifications for the recommended improvements, the <i>State of Colorado Construction Bidding Requirements for State Revolving Fund (SRF) Loan Projects</i>. This document is incorporated and made part of this SOW by reference and is available on the following website <a href="http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251640440472">http://www.colorado.gov/cs/Satellite/CDPHE-WQ/CBON/1251640440472</a></p> <p>9. The Contractor shall invite the project manager from CDPHE, Grants and Loans Unit to any pre-bid and pre-construction meetings related to the wastewater treatment facility's construction project.</p> <p>10. CDPHE will conduct a final inspection of the construction sites. CDPHE will provide the contractor with a copy of the final inspection report.</p> <p>11. The content of the electronic documents and information contained on CDPHE websites may be updated periodically during the contract term. The contractor shall monitor documents and website content for updates and comply with all updates.</p> <p>12. The Contractor shall notify the WQIF Nutrients administrator via email if the website links are broken.</p>	
<b>Measurement of Expected Results</b>	<p>1. CDPHE site location approval for the wastewater treatment facility upgrades.</p> <p>2. CDPHE Process Design Report approval for wastewater treatment facility upgrades.</p> <p>3. Design documents that incorporate the approved Nutrients Engineering Report and process design report selective alternative. Design documents are in compliance with the State of Colorado Design Criteria for Wastewater Treatment Works.</p> <p>4. Construction is in accordance with CDPHE issued design approval.</p>	
		<b>Completion Date</b>
<b>Deliverables</b>	1. The Contractor shall submit a completed site application for the facility upgrade via email to the CDPHE engineering section manager <a href="mailto:bret.icenogle@state.co.us">bret.icenogle@state.co.us</a> and the Project Manager.	No later than: March 15, 2015
	2. The Contractor shall submit the Process Design Report via email to the CDPHE engineering section manager <a href="mailto:bret.icenogle@state.co.us">bret.icenogle@state.co.us</a> .	No later than: May 31, 2015
	3. The Contractor shall submit final engineering design documents via email to the CDPHE engineering section manager <a href="mailto:bret.icenogle@state.co.us">bret.icenogle@state.co.us</a> and the Project Manager.	No later than: October 30, 2015

	4. The Contractor shall submit all subcontractor agreements via email to the Project Manager.	No later than: 30 days after agreements are signed
	5. The Contractor shall submit a quarterly progress report form, as provided by CDPHE, identifying progress made on the design and construction via email to the Project Manager.	No later than: October 10, January 10, April 10, July 10.
	6. The Contractor shall submit a final report including photo summary, as provided by CDPHE, on completed construction via email to the Project Manager.	No later than: 30 days following final completion

#### **V. Monitoring:**

CDPHE's monitoring of this contract for compliance with performance requirements will be conducted throughout the contract period by the CDPHE Project Manager. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include progress reports and other fiscal and programmatic documentation as applicable. The Contractor's performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

#### **VI. Resolution of Non-Compliance:**

The Contractor will be notified in writing within **10** calendar days of discovery of a compliance issue. Within **30** calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the CDPHE Project Manager and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the provisions of this contract.

**EXHIBIT C**

<b>Project Budget</b> <b>To Contract Dated 9/10/2013 – Contract Routing Number 14 FAA 61481</b>
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These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

**Entity Name:** City of Loveland

<b>Planning Project Activity</b>	<b>Budget</b>
1. Develop and evaluate alternatives for Biological Nutrient Removal (BNR).	\$80,000
<b>Design and Construction Project Activity</b>	<b>Budget</b>
1. Complete Preliminary Effluent Limit (PEL) application.	\$40,000
2. Prepare site application.	\$97,000
3. Prepare a process design report.	\$191,900
4. Prepare final engineering design documents for the recommended facility improvements.	\$219,350
5. Construct the BNR improvements.	\$451,750
<b>Total Project Cost:</b>	<b>\$1,080,000</b>



**Work Plan Summary for the WWTP Nutrient Grants Program**

**Goal #1:** To improve water quality in Colorado by meeting requirements of Regulation #85, Nutrients Management Control Regulation.

**Nutrients Planning Project Work Plan, \$80,000**

**Objective #1:** No later than March 31, 2014 develop a Nutrients Engineering Report detailing a selective alternative to meet future nutrient effluent limits at the wastewater treatment facility.

		<b>Budget</b>
<b>Primary Activity #1</b>	The contractor shall develop and evaluate alternatives for Biological Nutrient Removal (BNR) process that optimizes the use of the existing WWTF.	\$80,000 + \$20,000 matching fund
<b>Primary Activity #2</b>	The contractor shall develop a Nutrients Engineering Report.	

**Nutrients Design/Construction Project Work Plan, \$1,000,000**

**Objective #1:** No later than May 31, 2016 complete final design and begin construction process for facility improvements that will meet future effluent limitations for nutrients.

		<b>Budget</b>
<b>Primary Activity #1</b>	The contractor shall complete a preliminary effluent limit (PEL) application.	\$40,000
<b>Primary Activity #2</b>	The contractor shall prepare site application for the recommended facility improvements.	\$97,000
<b>Primary Activity #3</b>	The contractor shall prepare a process design report for the recommended facility improvements.	\$191,900
<b>Primary Activity #4</b>	The contractor shall prepare final engineering design documents for the recommended facility improvements as identified in the Nutrients Engineering Report.	\$219,350
<b>Sub-Activities:</b>	1. The contractor shall complete final drawings for the recommended improvements. 2. The contractor shall complete final project technical specifications for the recommended improvements.	
<b>Primary Activity #5</b>	The contractor shall begin the construction process for the BNR improvements to the wastewater treatment facility. Final construction of full BNR process will extend into 2017 with the City of Loveland expending upwards of \$4,500,000 in addition to the grant funding.	\$451,750

**MINUTES**  
**LOVELAND CITY COUNCIL**  
**STUDY SESSION**  
**TUESDAY, SEPTEMBER 24, 2013**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

**STUDY SESSION AGENDA**

**6:30 P.M. STUDY SESSION - City Council Chambers**

**CALL TO ORDER**

Mayor Gutierrez called the Study Session of the Loveland City Council to order on the above date at 6:30 PM.

**ROLL CALL**

Councilors present: Mayor Gutierrez, Trenary, Shaffer, McKean, Taylor, Farley, Fogle, and Clark. Mayor Pro Tem Klassen was absent.

**1. ECONOMIC DEVELOPMENT (presenters: Mike Scholl, 60 min)**

**Economic Incentive Agreement for Value Plastics/Nordson Corporation**

Economic Development Manager, Mike Scholl introduced this item to Council. George Porter and John Gibson of Value Plastics were present to address Council and answer questions. According to Council policy, the Economic Incentive Agreement with Value Plastics/Nordson Corporation is being taken to Council for preliminary review. The City is offering to provide the company with an incentive for the \$28,000,000 investment in the Longview/Midway business park for a 150,000 square foot advanced manufacturing facility. The investment includes both the construction costs and the equipment. The company will retain 83 jobs to the region and add roughly 60 new jobs with an average salary of \$72,385 per year. The City is providing an incentive for the investment; it is not a "jobs incentive". If the agreement is approved by Council, the total value of the package would be roughly \$1,094,353. Discussion ensued. Council directed staff to move forward and return to the October 1, 2013 regular meeting for formal consideration of the agreement.

**ADJOURNMENT**

Having no further business to come before Council, the September 24, 2013 Study Session was adjourned at 7:52 p.m.

Respectfully Submitted,

\_\_\_\_\_  
 Jeannie M. Weaver, Deputy City Clerk

\_\_\_\_\_  
 Cecil A. Gutierrez, Mayor





**2. A motion to approve the September 17, 2013 Regular Meeting minutes was approved.**

This is an administrative action to approve the September 17, 2013 Regular Meeting Minutes.

**2. CITY MANAGER (presenter: Bill Cahill)  
APPOINTMENT OF A MEMBER TO THE CONSTRUCTION ADVISORY BOARD**

**A motion to appoint Bob Dehn to the Construction Advisory Board for a full term effective until June 30, 2016 was approved.**

This is an administrative action recommending the reappointment of a member to the Construction Advisory Commission.

**2. PUBLIC WORKS (presenter: Ken Cooper)  
SALE OF NORTH TAFT PROPERTIES**

**Ordinance #5802**

**A motion to approve and order published on second reading 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 was approved.**

This is an administrative matter to consider an ordinance on second reading 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 ordinance was approved unanimously by Council on first reading at the September 17, 2013 regular meeting.

**3. PUBLIC WORKS (presenter: Keith Reester)  
SUPPLEMENTAL APPROPRIATION FOR EMERGENCY MOSQUITO SPRAYING  
Ordinance #5803**

**A motion to approve and order published on second reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Contractual Costs of Emergency Sprayings Due to the West Nile Virus was approved.**

This is an administrative item. The ordinance appropriates available fund balance in the Mosquito Control Division (part of the Solid Waste Enterprise Fund) to cover four West Nile Virus mosquito sprayings required to safeguard the community. The mosquito control function is funded by a separate fee. The balance used is not from Refuse or Recycling Rate revenue. The appropriation is from the Mosquito Control Division balance which reduces the flexibility to fund other items within the Solid Waste Enterprise Fund. The ordinance was approved unanimously on first reading by Council at the September 17, 2013 regular meeting.

**5. PUBLIC WORKS (presenter: David Klockemen & Kevin Gingery)  
REVISIONS TO SYSTEM INVESTMENT FEES AND STORMWATER UTILITY FEES**

**A motion to approve Resolution #R-66-2013 on second reading Concerning Revisions to the Stormwater Rates for System Investment Fees (SIF's) and the Stormwater Utility Fee for 2014 and Beyond was approved.**

This is an administrative action to adopt a resolution on second reading that provides funding for the Stormwater Enterprise through a series of rate increases for System Investment Fees (SIF's) and the Stormwater Utility Fee. Two readings of the resolution are required, as it is a rate change. The first reading of the resolution was approved unanimously by City Council at the September 17, 2013 regular meeting.

6. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)  
**PUBLIC HEARING CONTINUED FROM SEPTEMBER 17, 2013**  
**ASPEN KNOLLS VACATION FOR ALL PUBLIC RIGHTS-OF-WAY AND AMENDMENT RELATING TO ZONING**  
 1. A motion to approve and order published on first reading an Ordinance Vacating All Public Rights-of-Way Located in the Aspen Knolls First and Second Subdivisions, City of Loveland, Larimer County, Colorado was approved.  
 This is a legislative action for adoption of an ordinance on first reading to vacate all public rights-of-way within the Aspen Knolls First and Second Subdivisions.  
 2. A public hearing was continued from September 17, 2013 and a motion to approve and order published on first reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "P-50 - Aspen Knolls" to the City of Loveland was approved.  
 This is a quasi-judicial action for adoption of an ordinance on first reading to rezone the property from P-50 – Aspen Knolls Planned Unit Development (PUD) to DR – Developing Resource. This item was continued from the September 17, 2013 City Council.
7. **WATER & POWER** (presenter: Larry Howard)  
**ASPEN KNOLLS WATER BANK CREDIT**  
 A motion to approve Resolution #R-73-2013 Removing the Water Rights Dedicated to Aspen Knolls 1st and 2nd Subdivisions and Issuing a Credit in the City's Water Bank to McWhinney Enterprises was approved.  
 This is an administrative action. McWhinney Enterprises, as owner of Aspen Knolls 1st and 2nd Subdivisions (Aspen Knolls), has requested that City Council consent to the removal of the water rights dedicated to Aspen Knolls in the total amount of 316.94 acre-feet and issue McWhinney a credit of 316.94 acre-feet in the City's Water Bank. Water Utility staff supports this request as long as Aspen Knolls is first down-zoned to DR-Developing Resource, which would indicate that the water rights have not been paid and would provide the City with a method for collecting the water rights in the future if the property develops. The Loveland Utilities Commission voted at its September 18, 2013 meeting to unanimously recommend that City Council adopt the resolution.
8. **ECONOMIC DEVELOPMENT** (presenter: Marcie Erion and Mike Scholl)  
**MADWIRE MEDIA LLC LEASE AGREEMENT**  
 A motion to adopt Resolution #R-74-2013 Approving the Madwire Media, LLC Lease at the Rialto Theater Center was approved.  
 This is an administrative action. The resolution would authorize the City Manager to sign a lease agreement for the ongoing use of the Devereaux Room at the Rialto Theater Center (RTC). Madwire Media is moving into the 3<sup>rd</sup> Floor (privately owned space) of the Rialto Theater Center and the company has requested the use of the 2<sup>nd</sup> floor Community Room for morning meetings. The City of Loveland will receive approximately \$4,420 annually for the use of the space.
9. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)  
**VALUE PLASTICS INCENTIVE AGREEMENT**  
 A motion to adopt Resolution #R-75-2013 Approving the Value Plastics Incentive Agreement was approved.  
 This is an administrative action. The resolution would authorize the City Manager to enter into an Incentive Agreement with Value Plastics to construct a facility in Loveland. The Incentive Agreement will provide the company with an incentive package valued at

\$1,094,353 in support of the construction of a \$28,000,000 advanced manufacturing facility in Loveland. The cost of the facility includes both the construction costs and the equipment. The company will retain 83 jobs to the region and add roughly 60 new jobs with an average salary of \$72,000 per year. The City is providing an incentive for the investment; it is not a "jobs incentive". A preliminary review was conducted for the September 24, 2013 Council Study Session.

**10. HUMAN RESOURCES (presenter: Julia Holland)**  
**AMENDING THE CODE TO ALLOW ADOPTION OF THE PAY PLAN BY RESOLUTION**

**A public hearing was held and a motion to approve and order published on first reading an Ordinance Amending Section 2.68.020 of the Loveland Municipal Code Regarding the Manner of Adopting the Employee Pay Plan was approved.**

This is a legislative action and a public hearing to consider an ordinance, on first reading, amending the Section 2.68.020 Loveland Municipal Code to permit adoption of the employee pay plan from time to time by resolution, as opposed to an ordinance.

**11. FINANCE (presenter: Brent Worthington)**  
**AUGUST 2013 FINANCIAL REPORT**

This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending August 31, 2013.

**12. CITY MANAGER (presenter: Alan Krcmarik)**  
**INVESTMENT REPORT FOR AUGUST 2013**

This is an information only item. The budget estimate for investment earnings for 2013 is \$2,760,420. Through August, the amount posted to the investment account is \$963,739 including realized gains. Actual year-to-date earnings are much lower than the budget projection. Earlier this year, several very high interest rate corporate bonds matured, so future yields will be lower. The estimated annualized yield on market value for securities held by US Bank decreased to 1.14% at the end of August, lower than the 1.16% yield reported at the end of July. The yield is still under the annual target rate of 1.20% for 2013. Reinvestment rates have risen recently after being at near record low levels. Current reinvestment rates are now higher than the budget projection target.

**13. ECONOMIC DEVELOPMENT (presenter: Mike Scholl)**  
**ARTSPACE INCENTIVE AND LOAN AGREEMENT AND SUPPLEMENTAL APPROPRIATION FOR ACQUISITION OF THE FEED & GRAIN**

**1. A motion to adopt Resolution #R-76-2013 Approving the Artspace Affordable Housing Incentive and Loan Agreement and the Feed & Grain Building Agreement was approved.**

This is an administrative action. The resolution would authorize the City Manager to sign an incentive and loan agreement with Artspace Inc. for the affordable housing building to be constructed west of the Feed & Grain Building. The loan is for \$300,000 to be repaid over 30 years at 1.75% interest. Annual payments will be made to the City according to the repayment schedule in the agreement. The loan would fill the gap in funding and complete the financing package to allow Artspace to close on the acquisition of the property and to close on the tax credits. The agreement would also waive the Construction Materials Use Tax estimated to be \$71,000. The resolution would also authorize the City Manager to sign the agreement regarding stabilization and redevelopment of the Feed & Grain Building.

**2. A public hearing was held and a motion to approve and order published on first reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for a Loan to Artspace Inc. for Acquisition of the Feed and Grain was approved.**

This is an administrative action. The ordinance appropriates the funding for the loan from the City Council Reserve Fund. The City would commit \$300,000 to the project to be repaid over 30 years at 1.75% interest. The City will also forego \$71,000 in potential revenue from the Construction Materials Use Tax waiver.

**14. DEVELOPMENT SERVICES (presenter: Troy Bliss)  
ARTSPACE VACATION OF A PORTION OF A PUBLIC RIGHT-OF-WAY**

**A public hearing was held and a motion to approve and order published on first reading an Ordinance Vacating a Portion of a Public Right-of-Way Located in the Loveland Addition to the City of Loveland, City of Loveland, Larimer County, Colorado was approved.**

A legislative action to consider adoption of an ordinance on first reading vacating a portion of existing public alley right-of-way located within Block 21 of the Loveland Addition. The right-of-way to be vacated is in association with the Artspace project and will be replaced with a public access and utility easement.

**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.*

Loveland Residents:

Kim Orr: Expressed disappointment regarding the Council's decision to not refer the Petition Matter to the voters on the November ballot.

Shaon Mueller: 2016 N Dotsero, expressed disappointment regarding the Council's decision to not refer the Petition Matter to the voters on the November ballot.

Leo Hatherly: Expressed disappointment regarding the Council's decision to not refer the Petition Matter to the voters on the November ballot.

Linda Sandal: 4170 S. Garfield, expressed disappointment regarding the Council's decision to not refer the Petition Matter to the voters on the November ballot.

Longmont Residents:

Mike Bellmont: Expressed disappointment regarding the Council's decision to not refer the Petition Matter to the voters on the November ballot.

Kay Fissenger: Expressed disappointment regarding the Council's decision to not refer the Petition Matter to the voters on the November ballot.

Jason Landers: Loveland resident at Lake Vista Apartment Complex asked Council to look into the parking space situation at the complex; Staff will be in touch with him.

The City Attorney's Office will give Council an update on the petition litigation and include timelines.

- 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.*

## Councilors

Shaffer: HACOL is currently housing two families; Attended the CDOT Flood assessment meeting and received information regarding Flood Assistance; Announced that Namaqua Road is now open.

Trenary: Acknowledged City Staff and volunteers during the Flood event; Commended the City for its recovery efforts.

McKean: Acknowledged all City volunteers for Parks restoration.

Klassen: Thanked Cumberland & Western for the use of the Rocky Mountain Center for Innovation and Technology (RMCIT) for use of the buildings free of charge for the Disaster Assistance Center

Fogle: Commended Grimm Brothers Brewery for the October Fest, Saturday night, September 27, 2013; Encouraged Loveland residents to support the businesses impacted by the Flood waters.

Mayor Gutierrez: Thanked volunteers; Attended US 287 Coalition Meeting- Topic of discussion was the restoration of Highway 34; Announced the Black & White Gala at the Rialto, Friday, October 4, 2013 from 7 - 10 p.m.; Announced the Hearts & Horses Annual Fundraiser, Saturday, October 5, 2013 at the RMCIT; Artspace is requesting a letter of support- Consensus of Council was to authorize the Mayor to sign the letter after Council looked at the final draft via email.

**c. City Manager Report**

Cahill Reported an update on the Flood; Expressed appreciation for continued Council support; Announced that the Incident Commander role was transitioning from Fire Chief, Randy Mirowski, to Assistant City Manager, Rod Wensing, for the Recovery and Restoration Phase; Larimer County is now overseeing the Disaster Assistance Center; Gave an update on FEMA.

**d. City Attorney Report**

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 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****15. CITY MANAGER**

**(presenter: Bill Cahill)**

**LARIMER COUNTY OFFICE BUILDING**

City Manager, Bill Cahill presented this item to Council. County Commissioner, Tom Donnelly spoke in support of the resolution. This is an administrative action. Larimer County residents will be asked at the November 5, 2013 election to vote on repurposing existing funds authorized by a previous ballot measure, linked to the construction of a new County administrative facility in the City of Loveland. Larimer County has requested the Loveland City Council approve a resolution of support. **Councilor Klassen moved**



to approve Resolution #R-77-2013 of the City Council of the City of Loveland Expressing Support for Larimer County's Construction of a New Office Building in Loveland, Colorado. Councilor Clark seconded the motion, which carried with all councilors present voting in favor thereof.

**\*Consensus of Council was to consolidate the public hearings for Budget items # 16 - 20.**

**16. FINANCE**

**(presenter: John Hartman)**

**2014 CITY OF LOVELAND BUDGET**

Budget Officer, John Hartman presented this item to Council and addressed Flood impacts. This is an administrative action to adopt the fee resolutions and ordinances, except for the mill levy ordinance, to approve the 2014 Budget on first reading. The adoption of the 2013 mill levy is a legislative action. Included are all the Fee Resolutions and Ordinances necessary to adopt and implement the 2014 Budget. **\* Mayor Gutierrez opened the public hearing at 9:16 p.m. and with no further public comment the public hearing was closed at 9:16 p.m.**

- 1. Councilor Shaffer moved to approve Resolution #R-78-2013 Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the City of Loveland, Other Than Services Provided by the Water and Power Department and the Stormwater Enterprise, and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**
- 2. Councilor Shaffer moved to approve on first reading Resolution #R-79-2013 Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the Storm Water Enterprise of the City of Loveland, Colorado and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**
- 3. Councilor Shaffer moved to approve on first reading Resolution #R-80-2013 Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the Water and Power Department of the City of Loveland and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**
- 4. Councilor Shaffer moved to approve Resolution #R-81-2013 Amending Resolution #R-51-2013 Approving the 2014-2023 Capital Program for the City of Loveland to Add \$1 Million to the Street Rehabilitation Program and \$199,880 to the Transportation Program. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**
- 5. Councilor Shaffer moved to approve and order published on first reading an Ordinance Adopting the 2013 Mill Levy for the General Fund of the City of Loveland, Colorado. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**
- 6. Councilor Shaffer moved to approve and order published on first reading an Ordinance Adopting the 2014 Budget for the City of Loveland, Colorado. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**
- 7. Councilor Shaffer moved to approve and order published on first reading an Ordinance Making an Appropriation for the Fiscal Year Beginning January 1, 2014 and Ending December 31, 2014 for the City of Loveland, Colorado. Councilor Farley seconded the motion which carried with all councilors**

present voting in favor thereof.

**ADJOURNED AS CITY COUNCIL AND CONVENED AS THE BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID)**

17. **FINANCE** (presenter: John Hartman)  
**2014 BUDGET FOR THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID)**  
 Budget Officer, John Hartman introduced this item to Council. This is an administrative action. The City serves as the sponsoring agency for the Special Improvement District (SID) and the ex-officio Board of Directors. The SID #1 was established to allow for the collection of assessments from property owners in the District to back bonded debt used to construct infrastructure improvements in the district. The City does not have any legal obligation towards this debt. By State law, all special districts with a connection to the City must adopt a budget. The City of Loveland serves as staff for the District. This action adopts the budget and appropriates funds for the 2014 expenditures of the District. **Councilor Shaffer moved to approve and order published on first reading an Ordinance Adopting the 2014 Budget for the Loveland Special Improvement District #1. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

**ADJOURNED THE BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 AND CONVENED AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)**

18. **FINANCE** (presenter: John Hartman)  
**2014 BUDGET FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)**  
 Budget Officer, John Hartman presented this item to Council. This is an administrative action. City Council serves as the Board of Commissioners for the Loveland Urban Renewal Authority. By State budget law, the Board must approve an annual budget for the Authority. The City of Loveland serves as staff for the District. The Authority is funded by tax increment revenues from property and sales taxes. This action adopts the budget and appropriates funds for the 2014 expenditures of the Authority. **Councilor Shaffer moved to approve and order published on first reading an Ordinance of the Board of Commissioners of the Loveland Urban Renewal Authority Adopting the 2014 Budget for the Loveland Urban Renewal Authority. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

**ADJOURNED AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY AND CONVENED AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 (GID)**

19. **FINANCE** (presenter: John Hartman)  
**2014 BUDGET FOR THE GENERAL IMPROVEMENT DISTRICT #1 (GID)**  
 Budget Officer, John Hartman presented this item to Council. City Council serves as the ex-officio Board of Directors for the District. The Board must approve a budget and set the mill levy for the District. The City of Loveland serves as staff for the District. These items establish a budget and appropriate funds for District expenses in 2014 and set the mill levy rate for the property tax collections.  
 1. The ordinance adopting the budget is an administrative action. **Councilor Shaffer moved to approve and order published on first reading an Ordinance Adopting the**

**2014 Budget for the Loveland General Improvement District #1. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

**2. The ordinance setting the mill levy is a legislative action. Councilor Shaffer moved to approve and order published on first reading an Ordinance Setting the 2013 Mill Levy for the Loveland General Improvement District #1. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

**ADJOURNED AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 AND RECONVENED AS CITY COUNCIL**

**20. FINANCE (presenter: John Hartman)**

**2014 SCHEDULE OF RATES, CHARGES & FEES AND 2014 AIRPORT BUDGET**

Budget Officer, John Hartman presented this item to Council. This is an administrative action. The City of Loveland provides staff support to the Airport through the Intergovernmental Agreement with the City of Ft. Collins. As a part of this function the City Council approves the Airport Budget, including the City's share of the Airport Budget. These items set a schedule of fees, establish a budget, and appropriate funds for the Airport expenses in 2014.

**1. Councilor Shaffer moved to approve Resolution #R-82-2013 Adopting the Schedule of Rates, Charges and Fees for the Fort Collins-Loveland Municipal Airport Repealing Resolution #R-66-2012, Effective January 1, 2014. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

**2. Councilor Shaffer moved to approve and order published on first reading an Ordinance Adopting the 2014 Budget for the Fort Collins-Loveland Municipal Airport. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

**21. DEVELOPMENT SERVICES (presenter: Alison Hade)**

**HUD-MIRASOL SETTLEMENT AGREEMENT**

**Councilor Fogle recused himself citing a potential conflict of interest as his wife is currently an employee of the Housing Authority.** Community Partnership

Administrator, Alison Hade presented this item to Council. In 2004, 2005 and 2006 the City awarded the Loveland Housing Authority CDBG funds to be used to acquire water rights for the development of the Mirasol Senior Living Community. In March 2012, February 2013 and August 2013 the City received letters from the US Department of Housing and Urban Development (HUD) regarding the use of those CDBG funds. Three findings were issued by HUD asserting that awarded CDBG funds for Mirasol were used in violation of HUD's CDBG regulations. The proposed Resolution would approve a Settlement Agreement between the Housing Authority and the City setting forth their agreement to share the cost to resolve HUD's three findings. The payment of funds by the City necessary to resolve HUD Findings #1, #2 and #3 will have a negative effective on the City budget. The total amount of these payments is estimated to be not more than \$146,468. However, the total of the payments made to HUD under Findings #2 and #3 will be credited by HUD back to the City's CDBG program account with HUD, which will be \$92,936. The Housing Authority's Board approved the Settlement Agreement at its September 25, 2013, meeting. Liam Weston spoke in opposition to the resolution. **Councilor Shaffer moved to adopt Resolution #R-83-2013 of the Loveland City Council Approving the Mirasol Settlement Agreement. Councilor**

Farley seconded the motion. Councilor Klassen moved to amend the motion requiring HACOL to report back to City Council when restitution had been distributed to the residents per the settlement agreement. Councilor Shaffer seconded the motion which carried with all councilors present voting in favor thereof. Roll call vote was taken on original motion as amended which carried with five councilors voting in favor and Councilors McKean and Clark voting against.

**22. DEVELOPMENT SERVICES (presenter: Alison Hade)**  
**HACOL FEE WAIVER- GREEN HOUSE PROJECT**

Development Services Director, Greg George, presented this item to Council. HACOL representatives, Sam Betters, and Nancy Fox, representing "Vivage", the project manager, also gave a detailed presentation. This is an administrative action. The Housing Authority of the City of Loveland is requesting a waiver of certain fees for the construction of six 10-unit buildings and one office building to provide skilled nursing services for 60 residents. A minimum of twenty four of the housing units within the project would be affordable. The total fee waiver request for the project is \$584,135.40, none of which are fees that are required to be backfilled by city council. The applicant would be paying \$255,605.30 for water rights and \$241,930.00 for fees that would otherwise require backfill. No backfill is required from the City. The \$584,135.40 fee waiver request consists of permit fees and capital expansion fees that do not need to be backfilled, but constitutes potential revenue lost to the City. Liam Westin was against the resolution. **Councilor Shaffer moved to approve Resolution #R-84-2013 Granting an Exemption from Certain Capital Expansion Fees and Other Development Fees for Qualified Affordable Housing to be Constructed by the Housing Authority of the City of Loveland. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof. Discussion ensued. Councilor Klassen called the question. Councilor Farley seconded the motion which carried with all councilors present voting in favor. Roll was called on the original motion which carried with all councilors voting in favor.**

**ADJOURNMENT**

Having no further business to come before Council, the October 1, 2013 Regular Meeting was adjourned on October 2, 2013 at 12:50 a.m.

Respectfully Submitted,

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Teresa G. Andrews, City Clerk

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Cecil A. Gutierrez, Mayor



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

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**AGENDA ITEM:** 22  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Greg George, Development Services Department  
**PRESENTER:** Brian Burson, Current Planning Division

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**TITLE:**

1. A Resolution Approving Amendments to the City of Loveland "2005 Comprehensive Plan" by the Amendment of Section 4.7 Land Use Plan Map
2. An Ordinance on first reading Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for Certain Property Located in the Big Thompson Farms Addition, City of Loveland, Larimer County, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct A Public Hearing:

1. Move to adopt a resolution approving amendments to the City of Loveland "2005 Comprehensive Plan" by the amendment of Section 4.7 Land Use Plan Map; and
2. Move to make the findings in Section VII of the Planning Commission staff report dated September 9, 2013, and based on those findings, adopt on first reading an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in the Big Thompson Farms Addition, City of Loveland, Larimer County, Colorado

**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
- 

**SUMMARY:**

1. This is a legislative action to consider a parcel-specific amendment to the Land Use Map in the Section 4.7 of the City of Loveland 2005 Comprehensive Plan for Tracts A and B of the Big Thompson Farms Addition. The proposed amendment would change the recommended land use for these two tracts, consisting of 32.78 acres, from Low-Density Residential (LDR) to Development Reserve (DR). The property is located between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River corridor.
2. This is a quasi-judicial action to consider rezoning the easterly portion of Tract A of the Big Thompson Farms Addition, consisting of 15.26 acres, from R1, Developing Low-Density

Residential District to DR, Developing Resources District. The property is located between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River corridor.

**BUDGET IMPACT:**

- ☐ Positive  
☐ Negative  
☒ Neutral or negligible
- 

**BACKGROUND:**

The Tracts A and B of the Big Thompson Farms Addition are owned by the Fancher family and are adjacent to land in unincorporated Larimer County, on which active gravel extraction has been underway for several years. If approved, the proposed Comprehensive Plan amendment and rezoning would make it possible to conduct gravel extraction on Tracts A and B as well. A recent Mineral Extraction Report provided by the applicant indicates that the gravel resources underlying portions of these tracts are now considered economically viable. The Comprehensive Plan amendment and rezoning would allow the owner to seek approval for gravel extraction through the special review process with the City and similar applications with the State of Colorado. The procedures for obtaining the permits necessary to conduct gravel extraction activities on Tract A and B require public notice and participation by property owners in the vicinity. Any decision by the City at the administrative level on the special review permit could be appealed to the Planning Commission and City Council.

The Planning Commission conducted a public hearing on the requested amendment to the Comprehensive Plan and the rezoning on September 9, 2013. At the hearing, citizens expressed concerns regarding visual impacts, noise, dust, reclamation, security, safety, and development of the land after reclamation. These issues were primarily focused on the proposed gravel extraction operation, and no specific testimony was given pertaining to the Comprehensive Plan amendment or the rezoning. The Planning Commission expressed concerns pertaining to adequate reclamation, visual screening, safety and security for children, and the process for allowing a gravel extraction to be approved. Having heard all testimony and all information provided by the applicant, staff, and the public, the Planning Commission unanimously recommended approval of both applications.

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**REVIEWED BY CITY MANAGER:**




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**LIST OF ATTACHMENTS:**

1. Resolution
  2. Ordinance
-



3. Staff memorandum (October 15, 2013)

**RESOLUTION #R-90-2013****A RESOLUTION APPROVING AMENDMENTS TO THE CITY OF  
LOVELAND “2005 COMPREHENSIVE PLAN” BY THE AMENDMENT  
OF SECTION 4.7 LAND USE PLAN MAP**

**WHEREAS**, the City of Loveland “2005 Comprehensive Plan” was recommended for approval in February, 2007 by the Loveland Planning Commission and approved by Resolution in March, 2007 by the Loveland City Council; and

**WHEREAS**, pursuant to §6.0(A) of the 2005 Comprehensive Plan, the Plan may be amended by City Council, after a duly noted public hearing is held and recommendations are received by the Planning Commission; and

**WHEREAS**, the City of Loveland has, through the Planning Commission, City Council, and citizens of Loveland, considered an application to amend Section 4.7, Land Use Plan Map in the Comprehensive Plan, which proposes to change the land use designation for the easterly portion of Tract A and all of Tract B of the Big Thompson Farms Addition, as more fully described on Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”) located on the west side of Wilson Avenue and north of 1<sup>st</sup> Street, as follows:

- **Approximately 15.26 acres, being a portion of Tract A of Big Thompson Farms Addition, to be designated Development Reserve; and**
- **Approximately 17.52 acres, being all of Tract B of Big Thompson Farms Addition, to be designated Development Reserve; and**

**WHEREAS**, the owner of the Property has also filed an application for the rezoning of the Property from R-1 – Developing Low Density Residential District to DR – Developing Resource, to prepare the Property for non-urban uses that are allowed by special review in the DR zone district, which uses will require further application; and

**WHEREAS**, the “down zoning” to DR will allow the owner of the Property to seek approval for the use the Property for mineral extraction by Special Review, since economic conditions and technology have changed to permit such extraction on an economically viable basis; and

**WHEREAS**, prior to rezoning the Property to DR- Developing Resource, the designation of the Property on the Land Use Plan Map in the Comprehensive Plan requires modification to be consistent with the DR zone district; and

**WHEREAS**, while the amendment of the Comprehensive Plan to reflect a land use consistent with the proposed rezoning of the Property does not implement, or is not

otherwise consistent with, one or more of the philosophies, goals, policies and strategies of the 2005 Comprehensive Plan, it will allow the Property to be used for mineral extraction prior to development as contemplated by the Colorado Mineral Preservation Act, C.R.S. §34-1-301 et. seq, and is therefore not inconsistent with the philosophies, goals, policies and strategies of the 2005 Comprehensive Plan, which would be directly served by a subsequent amendment of the Comprehensive Plan and rezoning for development after mineral extraction is complete or no longer viable; and

**WHEREAS**, the amendment will not interfere with the existing, emerging, proposed or future land use patterns and densities of the surrounding neighborhood as depicted on the Land Use Plan Map since Development Reserve contemplates that urban development is not likely to occur prior to 15-20 years into the future and non-urban use (such as possible mineral extraction) will, after rezoning of the Property to “DR”, be subject to Special Review which is intended to address compatibility with surrounding land uses; and

**WHEREAS**, designating the land as Development Reserve indicates that urban development is not likely to occur prior to 15-20 years into the future and no urban development could take place unless or until a subsequent Comprehensive Plan amendment and rezoning were approved, at which time impact to, and provision of, community services will be evaluated. If any non-urban use of the land is proposed, the impact to, and provision of, community services will be determined as a part of the required approval process of the City, such as a special review for any future proposed mineral extraction. Accordingly the amendment will not interfere with, prevent or implement the provision of any of the area’s existing planned, or previously committed services or proposals for community facilities, or other specific public or private actions contemplated within the 2005 Comprehensive Plan, as amended; and

**WHEREAS**, the amendment will not interfere with or prevent the provision of any of the existing or planned transportation system services in the area as contemplated by the 2030 Transportation Plan because Development Reserve indicates that urban development is not likely to occur prior to 15-20 years into the future and no urban development could take place unless or until a subsequent Comprehensive Plan amendment and rezoning were to be approved, at which time impact to, and provision of, transportation systems will be evaluated. If any non-urban use of the land is proposed, the impact to, and provision of, the transportation system will be determined as a part of the required approval process of the City, such as a special review for any future proposed mineral extraction; and

**WHEREAS**, on September 9, 2013, a duly noticed public hearing was held on this amendment to the 2005 Comprehensive Master Plan by the Planning Commission, which was unanimously recommended.

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

**Section 1.** City Council hereby adopted the findings set forth above.

**Section 2.** The revised Section 4.7 Land Use Plan Map, attached hereto and incorporated herein as **Exhibit B**, is hereby approved as an amendment to the 2005 Loveland Comprehensive Plan.

**Section 3.** This Resolution shall be effective as of the date of its adoption.

Signed this 15<sup>th</sup> day of October, 2013.

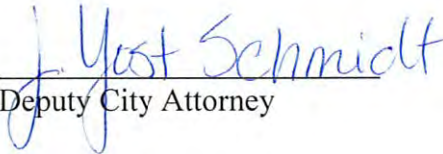
**ATTEST:**

**CITY OF LOVELAND**

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

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:

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

**EXHIBIT A****Legal Description for Comp Plan Amendment  
LDR to DR**

**A parcel of land being all of Tract B, Big Thompson Farms Addition, located in the Southeast Quarter of Section 16, Township 5 North, Range 69 West of the 6th P.M., City of Loveland, Larimer County, Colorado of the Big Thompson Farms Addition to the City of Loveland, Larimer County, Colorado.**

**The above described Tract of land contains 17.52 acres more or less and is subject to all easements, agreements, and rights-of-way of record.**

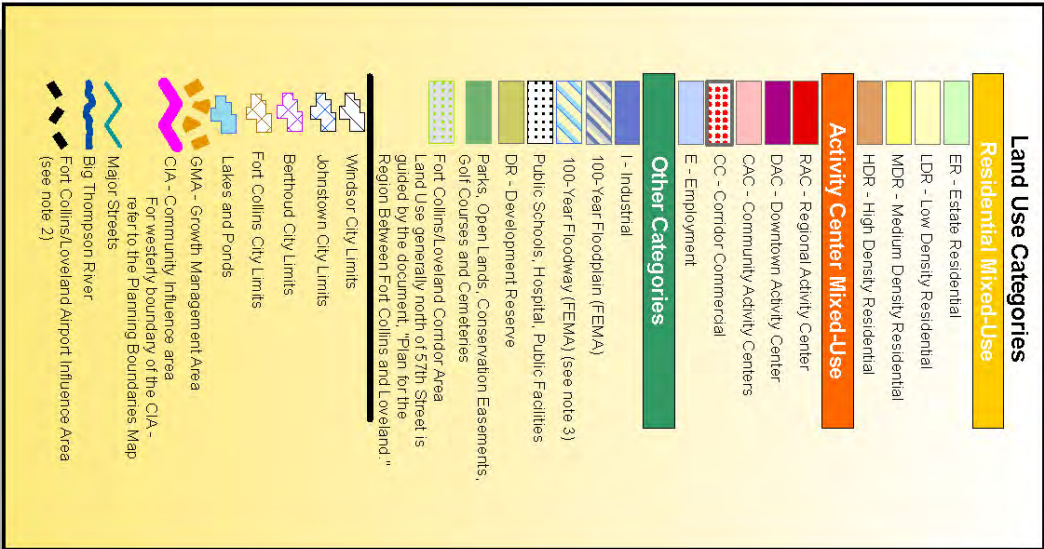
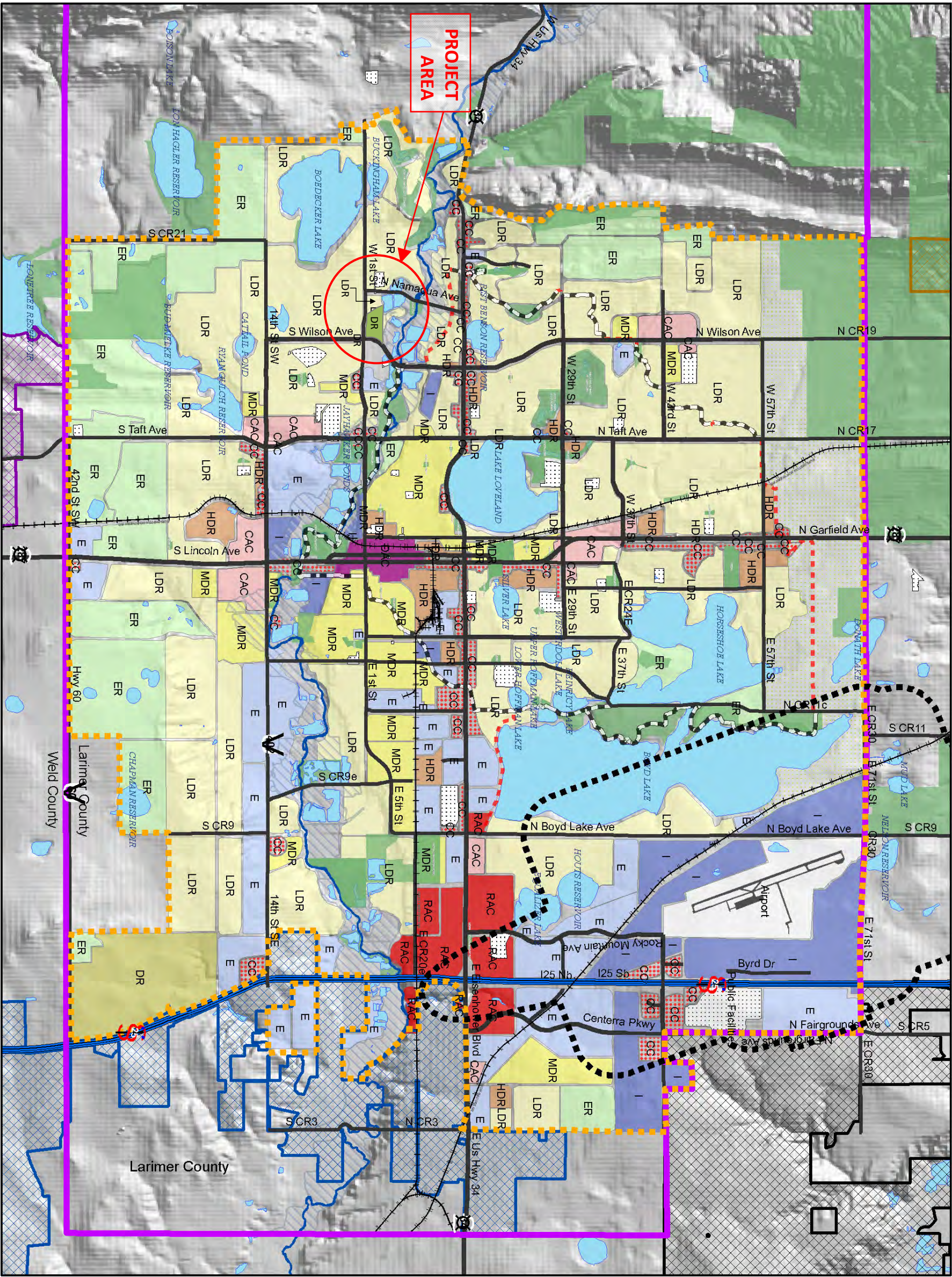
**AND**

**A parcel of land being a portion of Tract A, Big Thompson Farms Addition, located in the Southeast Quarter of Section 16, Township 5 North, Range 69 West of the 6th P.M., City of Loveland, Larimer County, Colorado of the Big Thompson Farms Addition to the City of Loveland, Larimer County, Colorado, being more particularly described as follows:**

**Beginning at the Southwest corner of said Tract A, thence along the West line of said Tract A, North 04°18'26" East 810.11 feet to the Northwest corner of said Tract A; thence along the North line of said Tract A, South 89°18'13" East 470.99 feet to the True Point of Beginning; thence continuing along the North line of said Tract A, South 89°18'13" East 1041.65 feet; thence departing said North line South 41°59'12" East 88.73 feet; thence South 47°18'07" East 570.00 feet; thence South 42°41'53" West 210.00 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 71°53'00" and a radius of 230.00 feet; thence Southwesterly along the arc of said curve 288.56 feet to the end of said curve; thence tangent from said curve North 65°25'07" West 300.00 feet; thence South 24°34'53" West 225.00 feet; thence South 03°38'24" West 59.22 feet thence North 42°27'25" West 1,100.03 feet to the True Point of Beginning.**

**The above described Tract of land contains 15.260 acres more or less and is subject to all easements, agreements, and rights-of-way of record.**

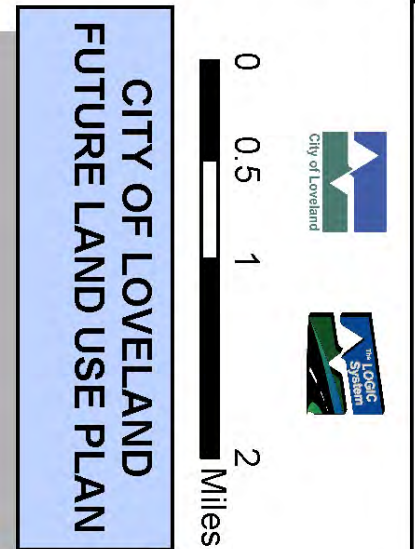




(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development is subject to City standards for protection of environmentally sensitive areas, and other performance guidelines.

(2) For details regarding appropriate land uses within the Airport Influence Area refer to section 4.6, "Airport and Surrounding Areas" of the Comprehensive Master Plan.

(3) The 100-year Floodway is displayed only within City Limits, awaiting further data.





**FIRST READING:** October 15, 2013  
**SECOND READING:** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR A PORTION OF TRACT A OF THE BIG THOMPSON FARMS ADDITION TO THE CITY OF LOVELAND, CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

**WHEREAS**, the “**Property**” (as defined below) is the easterly portion Tract A of the Big Thompson Farms Addition to the City of Loveland, Larimer County, Colorado and is currently zoned R-1 - Developing Low Density Residential District; and

**WHEREAS**, the Property owner has filed an application to rezone the Property from R-1 – Developing Low Density Residential District (“**R-1**”) to “DR- Developing Resource District (“**DR**”) as set forth in this Ordinance (“**Rezoning Ordinance**”) and to amend the plat of the Property to adjust the boundary line between the easterly portion of Tracts A and B of the Big Thompson Farms Addition (the “**Amended Plat**”), which Amended Plat is subject to an administrative approval process and will only be approved if Council adopts this Rezoning Ordinance; and

**WHEREAS**, City Council has approved a Resolution amending the City of Loveland 2005 Comprehensive Plan (the “Resolution”) to change the designation of the Property from “Low-Density Residential” to “Development Reserve” to be consistent with and permit the rezoning of the Property and desires to approve the rezoning of the Property as set forth in this Ordinance.

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

**Section 1.** That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

Legal description of a parcel of land (the “**Property**”) being a portion of Tract A, Big Thompson Farms Addition, located in the Southeast Quarter of Section 16,



Township 5 North, Range 69 West of the 6th P.M., City of Loveland, Larimer County, Colorado being more particularly described as follows:

Beginning at the Southwest corner of said Tract A, thence along the West line of said Tract A, North 04°18'26" East 810.11 feet to the Northwest corner of said Tract A; thence along the North line of said Tract A, South 89°18'13" East 470.99 feet to the True Point of Beginning; thence continuing along the North line of said Tract A, South 89°18'13" East 1041.65 feet; thence departing said North line South 41°59'12" East 88.73 feet; thence South 47°18'07" East 570.00 feet; thence South 42°41'53" West 210.00 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 71°53'00" and a radius of 230.00 feet; thence Southwesterly along the arc of said curve 288.56 feet to the end of said curve; thence tangent from said curve North 65°25'07" West 300.00 feet; thence South 24°34'53" West 225.00 feet; thence South 03°38'24" West 59.22 feet thence North 42°27'25" West 1,100.03 feet to the True Point of Beginning.

which is now included within the boundaries designated "**R1-DEVELOPING LOW DENSITY RESIDENTIAL**" shall be removed therefrom and included within the boundaries of the district designated as follows:

**"DR – DEVELOPING RESOURCE"**

The Property contains 15.260 acres, more or less, and is subject to all easements and rights-of-way now on record or existing.

**Section 2.** That the Property shall be subject to all applicable zoning regulations for the City of Loveland.

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

Signed this \_\_\_\_ day of \_\_\_\_\_, 2012.

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Cecil A. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney



**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](http://www.cityofloveland.org)

**MEMORANDUM**

**TO:** City Council

**FROM:** Brian Burson, Senior City Planner

**DATE:** October 15, 2013

**SUBJECT:** Big Thompson Farms Addition - Comprehensive Plan Amendment and Rezoning

**I. EXHIBITS**

- A. Planning Commission staff report dated September 9, 2013, including:
1. Applicant's Comp Plan Amendment Assessment Report
  2. Applicant's Rezoning Assessment Report
  3. Legal description for Rezoning
  4. Copy of the zoning code for the DR-Developing Resource District
  5. Comprehensive Plan Amendment exhibit
  6. Rezoning map
  7. Big Thompson Farms Addition plat (for information purposes only)
  8. Big Thompson Farms 1st Subdivision plat (for information purposes only - vacated in 1996)
- B. Planning Commission minutes dated September 9, 2013
- C. Staff Power Point presentation

**II. EXECUTIVE SUMMARY**

**A. Project Description**

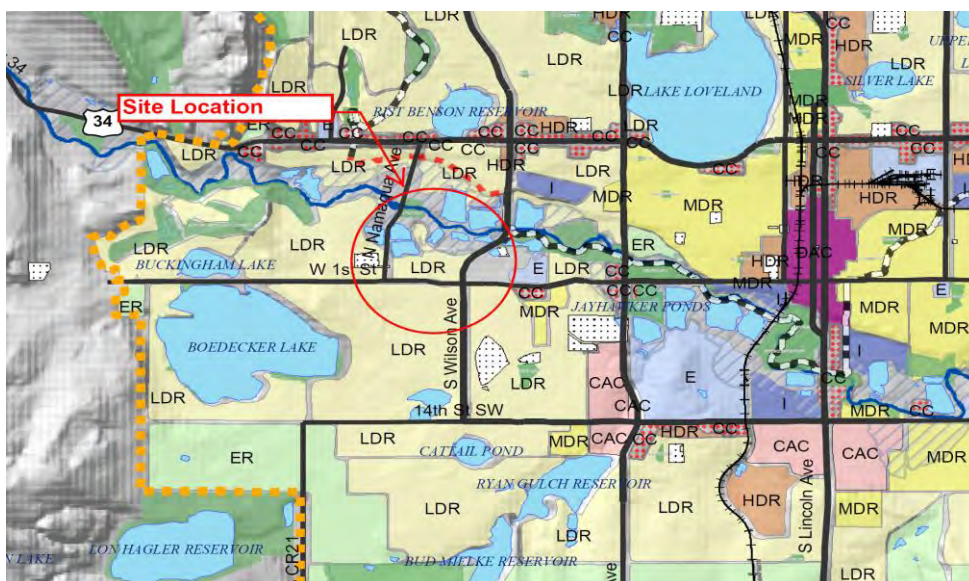
The City Council public hearing is for consideration of a parcel-specific Comprehensive Plan Amendment and Rezoning for Tracts A and B of the Big Thompson Farms Addition. The property is

owned by the Fancher family and is located between North Wilson Avenue and North Namaqua Avenue, and north of West First Street. The property has been used for agricultural purposes, and is adjacent to areas in the Big Thompson River corridor that have historically been used for gravel extraction.



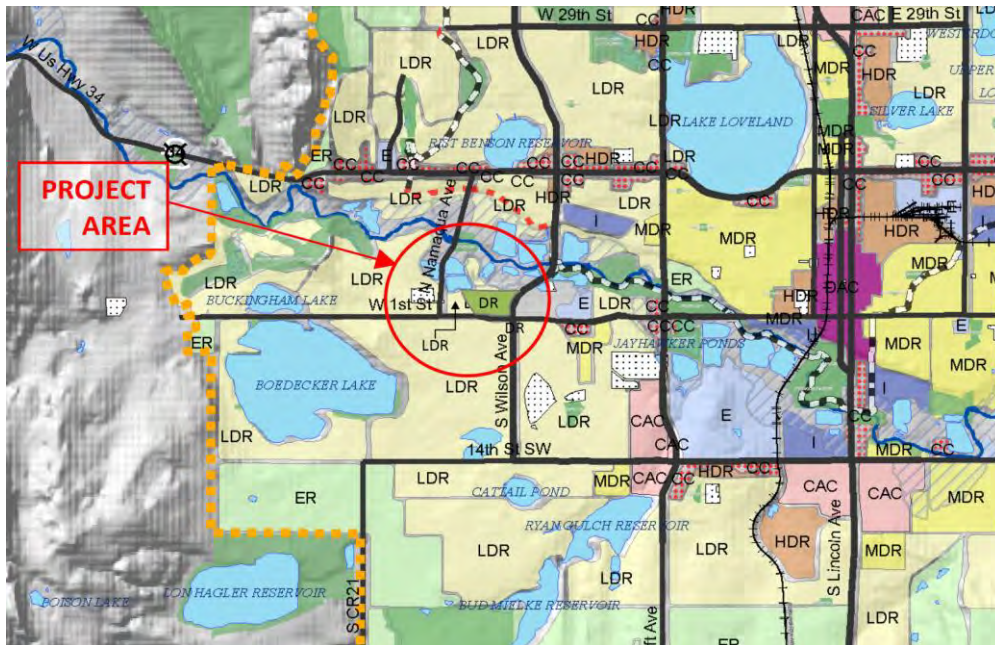
The current Comprehensive Plan land use category for the entire property is for Low-Density Residential (LDR). The application proposes to amend the land use category to Development Reserve (DR) for Tract B and the easterly portion of Tract A, but allow the westerly portion of Tract A to remain LDR. This would result in a change to the Comprehensive Plan designation for 32.78 acres.

Existing Comprehensive Plan designation:



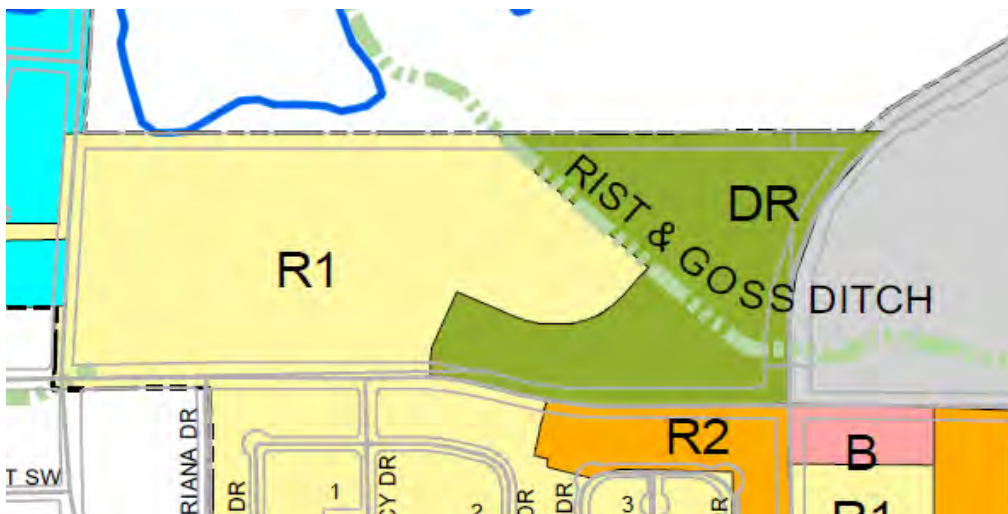


Proposed Comprehensive Plan designation:

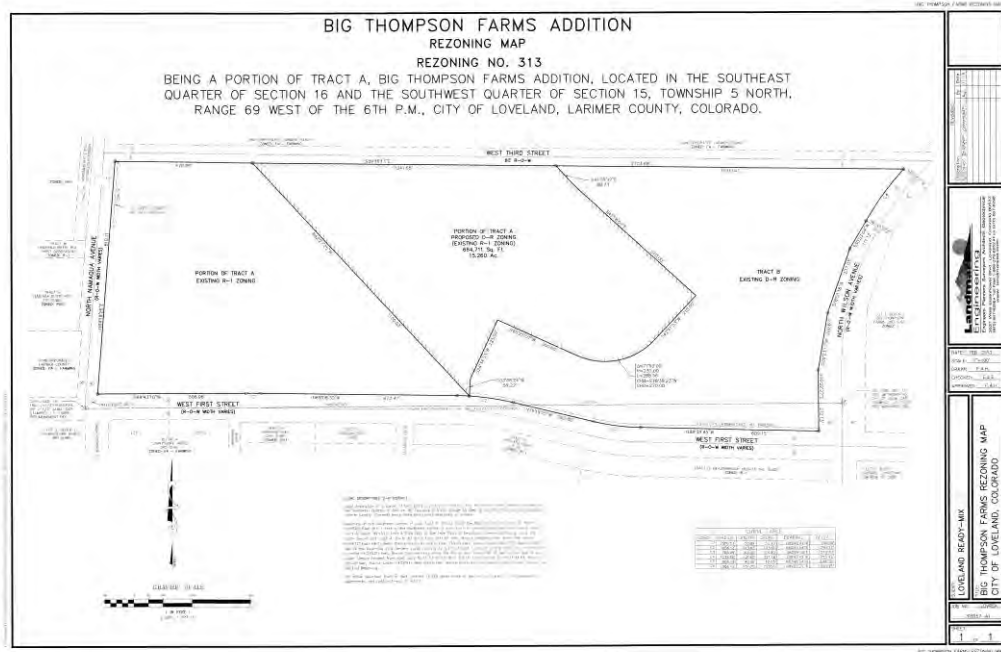


The current zoning of the property is R1-Developing Low-Density Residential for Tract A and DR-Developing Resource for Tract B. The application proposes to rezone the easterly portion of Tract A to DR-Developing Resource. This would result in a changing of zoning for 15.26 acres.

Existing zoning:

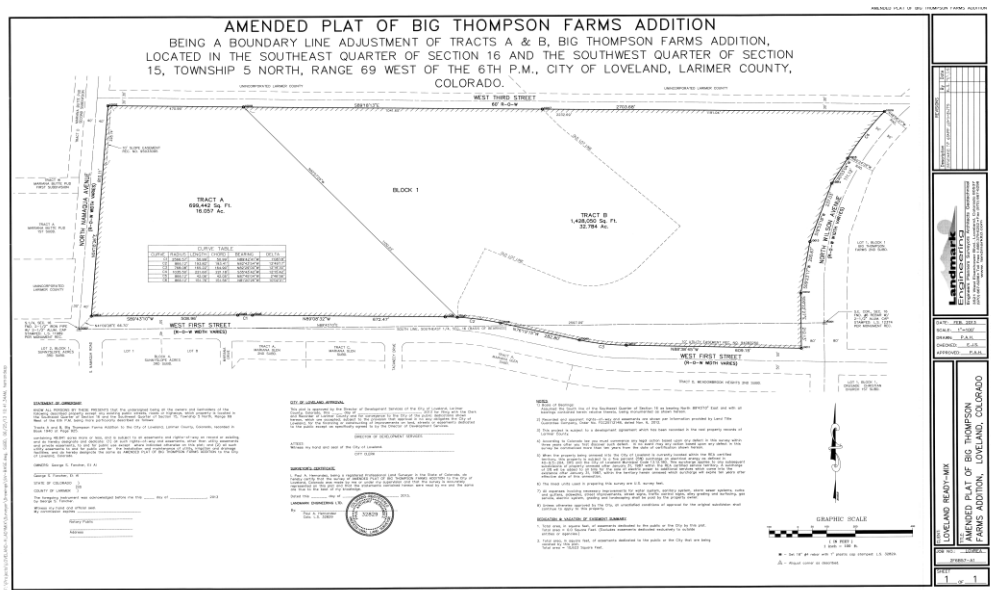


Rezoning map:



The City is also reviewing an amended plat for the property which would move and realign the shared lot line between Tracts A and B to the west to incorporate all of the DR zoned area into a larger version of Tract B. This review is administrative, requiring no Planning Commission or City Council action. If the Comprehensive Plan amendment and rezoning are approved, the City will take an administrative action to approve the amended plat.

Proposed Amended Plat:



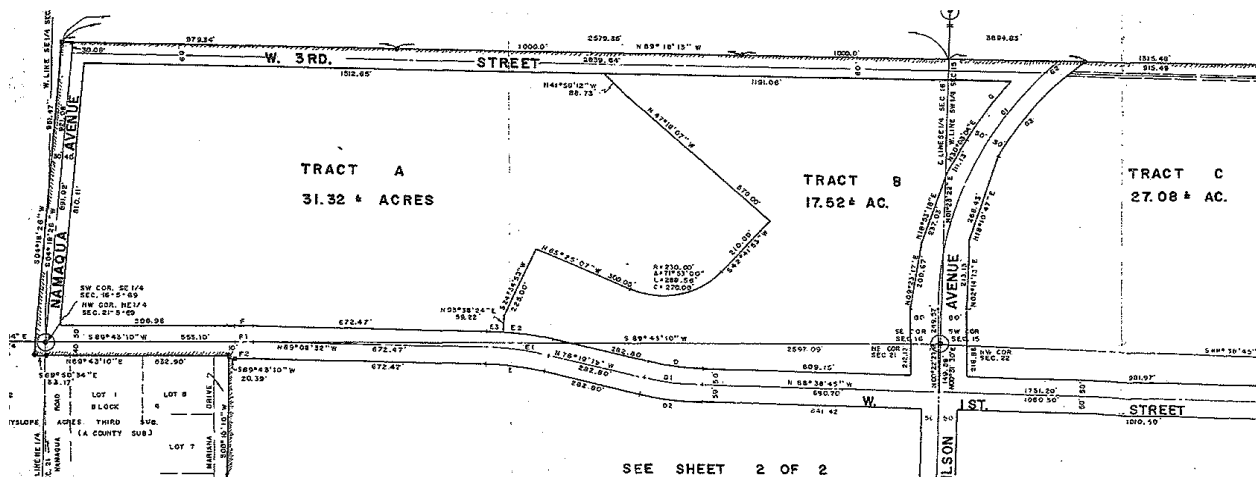
Recent sub-surface explorations for Tracts A and B have shown that there are gravel resources underlying Tract B and the easterly portion of Tract A. At the time of annexation and initial zoning, a determination was made that these gravel resources were not commercially viable, as defined by state statute and the Municipal Code. However, with changes in technology and the market, they have now been determined to be commercially viable, and the owner requests a change of zoning that would allow them to seek approval from the City and the state for extraction of these commercial minerals. The only zone district that allows extraction of commercial minerals is the DR-Developing Resource District, as a Use-by-Special Review.

The Comprehensive Plan and Municipal Code require that property be zoned or rezoned in a manner that is consistent with the general land use categories shown on the Future Land Use Map, in Sub-section 4.7 of the Comprehensive Plan. Therefore, before the property can be rezoned to DR-Developing Resource, the land use category in the Comprehensive Plan must first be revised to DR-Development Reserve. If approved, the applications would make Tract B and the easterly portion of Tract A as unavailable for urban land uses such as homes or businesses, and limit the uses to those allowed only by special review in the DR zone, such as gravel extraction.

## B. Background

Big Thompson Farms Addition was annexed in 1979. Tract A was zoned R1, Tract B and all other portions of the addition were initially zoned DR. The zoning of these Tracts has remained as originally zoned.

Property as annexed:



At the time of annexation, the Applicant was required to document to the City that there were no commercial mineral deposits underlying the site. The condition of the annexation, found in the petition, and adopted by the approving ordinance, was as follows:



"(11.) (c.) That a mineral extraction report be filed and that the City Council determine that there are no commercial deposits on the site."

This was, and still is, the normal practice for the City, and in keeping with the purposes of CRS 35-1-305 (1) and (2), and sub-section 18.52.040 of the Municipal Code. Staff has not been able to locate the referenced mineral extraction report in City files. However, since the annexation went forward for approval and recording, it implies that the report was filed and showed what was required by the condition. The Comp Plan and Rezoning applications have been reviewed by staff under this assumption.

In common City terminology, commercial minerals are most often referred to as "economically viable minerals", and the evaluation for commercial mineral deposits is referred to as a "Mineral Extraction Report". The purpose of such a report is to document whether commercial minerals, as defined in state statute, underlie the site. If such minerals underlie the site, the City may not zone the property in a manner that interferes with the extraction of the minerals before development occurs. This prohibition is stated in the Municipal Code in Section 18.52.040, as follows:

**18.52.040 Commercial mineral deposit.**

".....For the purpose of this title, there are or may be established and designated on the zoning district map, commercial mineral deposits, as defined by CRS 1963 Section 92-36-2, as amended. A master plan for the extraction of such deposits may be adopted by the city council. No real property shall be used, or permanent structures placed thereon, which shall permanently preclude the extraction of such mineral deposits by an extractor in violation of the provisions of CRS 1963 Section 92-36-2, as amended. (Ord. 1628 § 1 (part), 1977; Ord. 1004 § 15.4, 1968)

The definition of Commercial Minerals from state statute is as follows:

"Natural mineral deposit of limestone used for construction purposes, coal, sand, gravel and quarry aggregate for which extraction by an extractor is, or will be, commercially feasible and regarding which it can be demonstrated by geological, mineralogical or other scientific data that such deposit has a significant or strategic value to the area, state or nation."

The City' measure of whether they are, "...of value to the area, state, or nation", is whether the deposits are economically viable. However, the measure of what is economically viable is subject to the influence of market forces at the time of each evaluation, and this can change over time. With changing technology and market, deposits that were not economically viable in 1979 may become viable later on, thereby becoming a "commercial mineral deposit".

The City routinely handles this matter by requiring that a Mineral Extraction Report be submitted for every annexation and zoning, and for every rezoning of land that is zoned DR-Developing Resource. Before any permanent structures are constructed/installed on the land that would interfere with extraction of commercial minerals, those minerals are to be extracted. With good practices for

reclamation and restoration of extraction sites, the land can be left in a condition that will allow subsequent land uses and improvements that fulfill other needs of the community.

### **C. Key Issues**

All of the issues and concerns expressed by the neighborhood and Planning Commission are related to any future application that may be submitted to the City for gravel extraction. The City does not have, nor do we anticipate imminent submittal of, an application for gravel extraction. Once an application is submitted for City review, staff believes that all issues can be adequately addressed as part of the special review process, as well as the state process. Staff believes that there are no unresolved key issues related to the Comprehensive Plan amendment or rezoning applications.

### **D. Planning Commission Recommendation**

The Planning Commission conducted a public hearing for these applications on September 9, 2013. At the hearing, citizens expressed concerns regarding visual impacts, noise, dust, reclamation, security, safety, and other land uses that might occur in association with gravel extraction. These issues focus primarily on future gravel extraction operations, and no specific testimony was given pertaining to the Comprehensive Plan amendment or the rezoning. The Planning Commission expressed concerns pertaining to adequate reclamation, visual screening, safety and security for children, and the process for allowing a gravel extraction approval. Having heard all testimony and all information provided by the Applicant, staff and the public, the Planning Commission unanimously recommended approval of both applications. (See **Exhibit B** of the staff memorandum)

### **E. Subsequent to Planning Commission**

There have been no new issues identified by staff since the Planning Commission hearing, and there have been no further inquiries or contacts from the Applicant, neighborhood or general public.

## **III. RECOMMENDED CONDITIONS**

Conditions of approval are not appropriate for a Comprehensive Plan amendment or rezoning. There are no recommended conditions of approval from either staff or the Planning Commission.



## Development Services Current Planning

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### Planning Commission Staff Report September 9, 2013

**Agenda #:** Regular Agenda - 2

**Title:** Big Thompson Farms Addition

**Applicant:** George S. Fancher, et. al.

**Request:** Comprehensive Plan Amendment and Rezoning

**Location:** between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River

**Existing Zoning:** R1 - Developing Low Density Residential District

**Proposed Zoning:** DR - Developing Resource District

**Staff Planner:** Brian Burson

**Staff Recommendation:**

Subject to additional evidence presented at the public hearing, City staff recommends the following motions:

**Recommended Motions:**

*"Move to make the findings listed in Section VI. of this report dated September 9, 2013; and, based on those findings, recommend that the Future Land Use Plan, incorporated into Section 4.0 of the 2005 City of Loveland Comprehensive Plan, be amended for Tracts A and B of Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR)."*

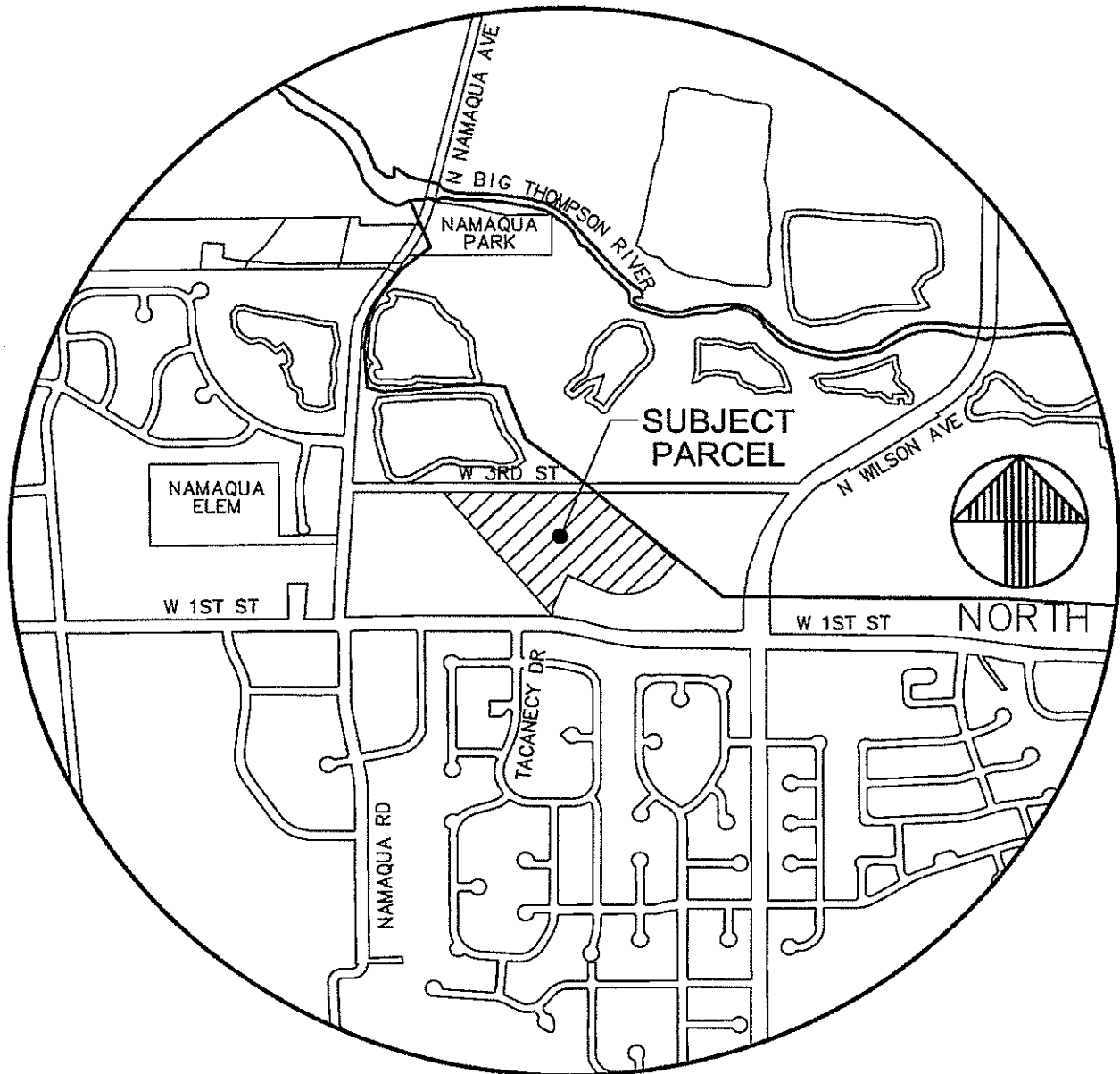
*"Move to make the findings listed in Section VII. of this report dated September 9, 2013; and, based on those findings, recommend approval of the rezoning of the land described in Attachment # 4 of this report from R1-Developing Low Density Residential District to DR-Developing Resource District."*

**Summary of Analysis:**

This is a public hearing to consider a parcel-specific Comprehensive Plan amendment to amend the recommended land use category of property within the Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR), followed by a rezoning from R1-Developing Low Density Residential District to DR-Developing Resource District.

Staff supports the requested Comprehensive Plan amendment and rezoning because information has been submitted to demonstrate that there are Commercial Minerals underlying the site. CRS 35-1-305 (1) and (2), as well as Sub-section 18.52.040 of the Municipal Code stipulate that the City may not zone any property in a manner that interferes with the extraction of a commercial mineral deposit. At the time of annexation and initial zoning, a report was provided to the City indicating that there were no commercial mineral resources underlying the site. However, with changes in the market, the existing mineral resources have now been determined as economically viable.

I. VICINITY MAP:



VICINITY MAP  
1" = 1000'

## II. SUMMARY:

### A. Process:

This is a public hearing to consider the following:

1. An amendment to the Land Use Plan Map in the 2005 Comprehensive Plan for Tracts A and B of Big Thompson Farms Addition, consisting of 48.84 acres. The amendment would revise the recommended land use category for these tracts from Low-Density Residential (LDR) to Development Reserve (DR).
2. A subsequent rezoning of a portion of Tract A of Big Thompson Farms Addition, consisting of 15.26 acres, from R1 - Developing Low-Density Residential District to DR-Developing Resource District. (See **Attachment #3** for complete legal description of rezoning.)

Planning Commission's action on the Comprehensive Plan Amendment is legislative, meaning, their consideration and recommendation is to be made on the basis of broad and general policy as well as any information deemed appropriate and applicable. Planning Commission's action on the rezoning is quasi-judicial, meaning that their consideration and recommendation is to be made on the basis of adopted policies, codes and standards as they apply to this property, and the specific information submitted by the Applicant and/or presented at the hearing. Planning Commission must evaluate whether the applications meet the appropriate criteria/findings for each application and forward their recommendations to the City Council for a subsequent public hearing and final decision, currently scheduled for October 15, 2013. The appropriate criteria/findings, along with staff analysis, are provided below in Sections VI. and VII. of this staff report.

### B. Purpose:

The purpose of the applications is to rezone the easterly portion of Tract A of the Big Thompson Farm Addition from R-1 Established Low Density Residential, to DR-Developing Resources. This would prepare the land for potential land uses that are allowed in the DR zone district. There are no uses allowed by right in the DR zone, but a number of uses are allowed by special review. (See **Attachment #4**). The Comprehensive Plan currently recommends that the land be developed for Low-Density Residential uses, which is consistent with the current zoning of Tract A. Since any rezoning should be consistent with the recommendation of the 2005 Comprehensive Plan, as amended, the Plan must be amended before the rezoning can be approved.

The City currently has no applications for any of the uses allowed in the DR zone, and we are not anticipating imminent submittal of any such application. Future applications may be submitted if the Comprehensive Plan amendment and rezoning are approved.

### C. Background:



Big Thompson Farms Addition was annexed in 1979. (See **Attachment #7**) Tract A was zoned R1, and all other portions of the addition were initially zoned DR. Later in 1979, the Big Thompson Farms 1st Subdivision was approved, platting a residential subdivision from Tract A, in keeping with its zoning of R1. In 1996, the City vacated the plat of Big Thompson Farms 1st Subdivision as an obsolete subdivision, but did not alter the zoning of Tract A. (See **Attachment # 8**) Over time, other tracts within the addition were rezoned and platted for subdivisions to the east, southeast and south, including the City Service Center at the northeast corner of W. 1st Street and N. Wilson Avenue. However, the zoning of Tracts A and B have remained unchanged.

At time of annexation, the applicant was required to document to the City that there were no economically viable minerals under the site. This is normal practice for the City, and in keeping with the purposes of CRS 35-1-305 (1) and (2), and sub-section 18.52.040 of the Municipal Code. In City terminology, the evaluation for commercial mineral deposits is referred to as a Mineral Extraction Report. The purpose of the report is to document whether or not there are commercial minerals (as defined in state statute) underlying the site. If such minerals are underlying the site, the City may not zone the property in a manner that interferes with the extraction of the minerals before development occurs. However, the definition of commercial minerals is subject to the influence of market forces at the time of evaluation, and this can change over time. Deposits that were not economically viable in 1979 may become viable with changing market conditions. The condition of the annexation, found in the petition, and adopted by the approval ordinance, was as follows:

"(11.)(c.) That a mineral extraction report be filed and that the City Council determine that there are no commercial deposits on the site."

Staff has not been able to locate the referenced mineral extraction report in City files. However, since the annexation went forward for approval and recording, it implies that the report was filed and showed what was required by the condition. The Comp Plan and Rezoning applications have been reviewed by staff under this assumption.

The City is also reviewing a Boundary Line Adjustment plat in conjunction with these two applications. If the rezoning is approved, the common lot line between Tracts A and B will be shifted to the west to match the new zoning line.

#### D. Key Issues:

As indicated above, both state statute and Municipal Code stipulate that the City may not zone property in a manner that interferes with the extraction of commercial minerals before development occurs. State statute designates the extraction of commercial mineral deposits as a "matter of state-wide concern"; therefore local zoning can regulate such extraction, but not unduly interfere. Commercial minerals such as gravel and sand are an essential material required for many products necessary for the health, safety and welfare of citizens and for urban development, such as concrete, mortar, and asphalt. They can make an important contribution to the local and regional economy. It is important that the opportunity to extract and use these materials before approval of any development that would unduly interfere with their extraction.



The DR zone district allows extraction of minerals as a Use-by-Special Review. No other zone allows such extraction. The DR zone allows a number of other uses by special review, but all others are expressly limited to prohibit any permanent structures that would interfere with the extraction of commercial minerals. Up to this time, Tracts A and B of the Big Thompson Farms Addition have remained as open land, used primarily for agricultural purposes. There are no permanent structures that could interfere with the potential of future extraction of commercial minerals.

As indicated in the record for the annexation, the City requires the potential of commercial minerals to be initially identified at time of annexation and zoning. However, as resources in the market fluctuate, the determination as to economic viability can also fluctuate. This may present an issue which has not been dealt with before by the City.

At the neighborhood meeting, the Applicant volunteered that it is their hope to expand the existing gravel mining use into the rezoned area, provided approvals can be obtained from local and state authorities. Questions and concerns were expressed, and answered by either the applicant and/or staff regarding the following matters:

- Would DR zoning allow higher density or non-residential uses to be designated in the future?

Response: Future land use designations cannot be determined at this time, or as part of this application.

- How much of the overall site can be mined?
- How much heavy equipment would be used?
- How soon would mining start?
- How long would gravel mining operations take place?
- What would the daily hours of operation be?

Response: These issues can will only be known and evaluated as part of any future application for uses allowed by special review in the DR zone. If gravel/sand mining were proposed, the application (s) would have to be reviewed and approved by both the City and the State Mined Land Bureau, through formal review processes that allow neighborhood awareness and involvement.

- Will oil and gas be drilled on the site?

Response: The applicant does not believe there are any gas or oil reserves underlying the site.

### **III. ATTACHMENTS:**

1. Applicant's Comp Plan Amendment Assessment Report
2. Applicant's Rezoning Assessment Report
3. Legal description for Rezoning
4. Copy of the zoning code for the DR-Developing Resource District

5. Comprehensive Plan Amendment exhibit
6. Rezoning map
7. Big Thompson Farms Addition plat (for information purposes only)
8. Big Thompson Farms 1st Subdivision plat (for information purposes only - vacated in 1996)

#### IV. SITE DATA:

ACREAGE OF SITE (GROSS ACRES).....	48.84 ACRES
ACREAGE TO BE REZONED (GROSS ACRES).....	15.26 ACRES
EXISTING COMP PLAN DESIGNATION .....	LOW-DENSITY RESIDENTIAL (LDR)
PROPOSED COMP PLAN DESIGNATION.....	DEVELOPMENT RESERVE (DR)
EXISTING ZONING .....	R1- DEVELOPING LOW-DENSITY
.....	RESIDENTIAL
PROPOSED ZONING.....	DR-DEVELOPING RESOURCE
EXISTING USE.....	VACANT/AG
PROPOSED USE .....	NO CHANGE
NUMBER OF DWELLING UNITS PROPOSED .....	NA
GROSS DENSITY (DU/A) .....	NA
NET DENSITY (DU/A) .....	NA
EXISTING ADJACENT ZONING AND USE - NORTH .....	LARIMER COUNTY FA- FARMING;
.....	GRAVEL MINING
EXISTING ADJACENT ZONING AND USE - EAST .....	I- DEVELOPING INDUSTRIAL; CITY
.....	SERVICE CENTER/EMS STATION
EXISTING ADJACENT ZONING AND USE - SOUTH.....	R1 AND R2; SINGLE FAMILY & TWO
.....	FAMILY DWELLINGS
EXISTING ADJACENT ZONING AND USE - WEST .....	R1; VACANT/AG
UTILITY SERVICE PROVIDER - SEWER.....	CITY OF LOVELAND
UTILITY SERVICE PROVIDER - ELECTRIC.....	CITY OF LOVELAND
UTILITY SERVICE PROVIDER - WATER.....	CITY OF LOVELAND

#### V. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION:

- A. **Notification:** An affidavit was received from Landmark Engineering certifying that notice of the hearing was mailed to all owners of property within 900 feet of the site, and that notices were posted in prominent locations on the perimeter of the project site at least 15 days prior to the date of the Planning Commission hearing. A notice was also published in the Reporter Herald on August 24, 2013. In addition, Current Planning staff mailed written notice of the Comprehensive Plan Amendment to the surrounding communities of Berthoud, Johnstown, Windsor, and Fort Collins, as well as to Larimer County. All notices stated that a public hearing would be held by the Planning Commission on September 9, 2013 at 6:30 pm.
- B. **Neighborhood Response:** A noticed neighborhood meeting was held at 6:30 pm on August 22, 2013 in the Gertrude Scott Meeting Room of the Loveland Public Library. Twenty-seven persons attended the meeting, along with City staff and the applicants' representatives. The concerns and question expressed by the neighborhood at the meeting included the following:

- Would DR zoning allow higher density or non-residential uses to be designated in the future?
- How much of the overall site can be mined?
- How much heavy equipment would be used?
- How soon would mining start?
- How long would gravel mining operations take place?
- What would the daily hours of operation be?
- Will oil and gas be drilled on the site?

Responses were given to each of these matters, as described above in **Section II.D.** of this report. The neighborhood expressed appreciation that the Applicant was transparent about the potential future use of gravel/sand mining. The meeting was adjourned at approximately 7:10 pm

## **VI. FINDINGS AND ANALYSIS - COMPREHENSIVE PLAN AMENDMENT**

***Finding 1.** Does the amendment implement or further, or is it otherwise consistent with, one or more of the philosophies, goals, policies and strategies of the Comprehensive Plan, as amended.*

**Current Planning:** There are no policies in the Comprehensive Plan about the Development Reserve land use category. There are no policies concerning revising initial land use categories "down" to the Development Reserve. Staff believes this finding does not apply to this application.

***Finding 2.** Will the amendment interfere with the existing, emerging, proposed or future land use patterns and/or densities/intensities of the surrounding neighborhood as depicted on the Land Use Plan Map as contained within the 2005 Comprehensive Plan, as amended?*

**Current Planning:** The land use category of Development Reserve is assigned to land which is designated for eventual urban development, but for which development is not likely to occur within 15-20 years. (In this context, urban development may be described as development of uses that are typical of cities and towns, including the uses that are allowed in all of the zoning districts of the City except the DR zone.) The Plan does not prohibit determining the recommended land use and/or allowing actual development of the land sooner than 15-20 years. Under Development Reserve, no urban development of the land could take place until a subsequent Comprehensive Plan amendment and rezoning were to be approved. At that time, a determination would be made to assure that such future proposed land uses would not interfere with existing, emerging, or proposed land use patterns and/or densities. Staff believes this finding can be met.

***Finding 3.** Will the amendment interfere with, prevent or implement the provision of any of the area's existing planned, or previously committed services or proposals for community facilities, or other specific public or private actions contemplated within the 2005 Comprehensive Plan, as amended?*

**Current Planning:** Designating the land as Development Reserve indicates that urban development is not likely to occur prior to 15-20 years into the future. No urban development of the land could take place until a subsequent Comprehensive Plan amendment and rezoning were to be approved, at which time impact to, and provision of, community services will be evaluated. If any non-urban use of the land were proposed, the impact to, and provision of, community services would be determined as part of the required approval process with the City. Staff believes this finding can be met.

***Finding 4.** Will the amendment interfere with, prevent, or implement the provision of any of the area's existing or planned transportation system services as contemplated by the 2030 Transportation Plan, as amended?*

**Current Planning:** Designating the land as Development Reserve indicates that urban development is not likely to occur prior to 15-20 years into the future. No urban development of the land could take place until a subsequent Comprehensive Plan amendment and rezoning were to be approved, at which time impact to, and provision of, transportation systems will be evaluated. If any non-urban use of the land were proposed, the impact to, and provision of, the transportation system will be determined as part of the required approval process with the City. Staff believes this finding can be met.

## **VII. FINDINGS AND ANALYSIS – REZONING**

***Finding 1.** The purposes set forth in Section 18.04.010 of the Loveland Municipal Code would be met if any use permitted by right in the zone district being requested was developed on the subject property.*

**Current Planning:** There are no uses by right in the DR zone. There is a legal assumption that legal conforming uses in place at time of annexation may continue, unless agreement otherwise is reached with the City. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses requiring City approval are proposed. None of the purposes set forth in Section 18.04.010 of the zoning code address continuation of legal non-conforming agricultural land uses following annexation. Staff believes this finding does not apply to this application.

***Finding 2.** Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in development that is compatible with existing land uses adjacent to and in close enough proximity to the subject property to be effected by development of it.*

**Current Planning:** There are no uses by right in the DR zone. There is a legal assumption that legal conforming uses in place at time of annexation may continue, unless agreement otherwise is reached with the City. The impacts of continuing agricultural uses should be evaluated by the City as part of the annexation process. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses that require City approval are proposed. Rezoning the property to DR will not affect that right. Staff believes this finding does not apply to this application.

**Finding 3.** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.*

**Current Planning:** There are no uses by right in the DR zone. There is a legal assumption that legal conforming uses in place at time of annexation may continue, unless agreement otherwise is reached with the City. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses that require City approval are proposed. Rezoning the property to DR will not affect that right.

**PW-Transportation:** All future development or land application within this proposed property shall be in compliance with the City of Loveland Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application.

Therefore, pending future proposed development within this property, of which review and approval by the City is required, the Transportation Engineering Staff does not object to the proposed rezoning.

**Fire:** The site can comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 3). The proposed rezoning will not negatively impact fire protection for the subject development or surrounding properties. Staff believes that this finding can be met.

**Water/Wastewater:** This development is situated within the City's current service area for both water and wastewater. The proposed rezoning will not negatively impact City water and wastewater facilities

**PW-Stormwater:** Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans. Staff believes that this finding can be met.

**Finding 4.** *Development of the subject property pursuant to any of the uses permitted by right under the zoning district being requested would result in development that is consistent with relevant policies contained in Section 4.0 of the 2005 Loveland Comprehensive Plan, as amended.*

**Current Planning:** There are no uses by right in the DR zone. The legal conforming uses in place at time of annexation can continue unless agreement is reached otherwise with the City. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses requiring City approval are proposed. There are no policies in the Comprehensive Plan concerning the continuation of legal, conforming agricultural land uses.

The limited uses that are allowed by special review (see **Attachment # 4**) include a strict limitation to prevent any permanent structures that would interfere with the extraction of commercial minerals on the site. Staff believes this finding does not apply to this application.

***Finding 5.** Development of the subject property pursuant to any of the uses permitted by right under the zoning district being requested would result in development that would not be detrimental to the health, safety, or welfare of the neighborhood or general public.*

**Current Planning:** There are no uses by right in the DR zone. However, there is a legal assumption that legal uses in place at time of annexation can continue unless agreement is reached with the City to end them. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses requiring City approval are proposed.

The limited uses that are allowed by special review (see **Attachment # 4**) include a strict limitation to prevent any permanent structures that would interfere with the extraction of commercial minerals on the site. Staff believes this finding does not apply to this application.

***Finding 6. Colorado Revised Statute 34-1-305 and Municipal Code Section 18.52.040.** The proposed location and the use of the land, and the conditions under which it would be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-302 (1), as amended. Owners of all severed mineral estates have been notified of the public hearing at least 30 days prior to the hearing date.*

**Current Planning:** Rezoning the land to DR -Developing Resources is the best choice to open the potential for future extraction of commercial minerals. No other City zoning would normally allow this. Staff believes this finding can be met.

## **VIII. RECOMMENDED CONDITIONS:**

There are no staff recommended conditions for these applications.



**Justification For Requested Comprehensive Master Plan Amendment:** (State the rationale for the requested amendment in terms of addressing a public need or interest; a change in community or neighborhood character; or a mistake or oversight in the Comprehensive Master Plan.

*The 48 acre site currently has approximately 31 acres zoned R1-Residential, and approximately 17 acres zoned DR-Developing Resource. The site falls entirely within a Low Density Residential (LDR) Land Use Designation. The Comprehensive Master Plan Amendment is being proposed in conjunction with a rezoning effort for a portion of the current R1 zoned property to DR. The description of the DR zoning district is inconsistent with the uses intended in the Low Density Residential Land Use Designation, thus the need to amend the Comprehensive Master Plan.*

*The project site is currently undeveloped, with the primarily land use being agriculture related irrigated crop growth and grazing. After further analysis of the site characteristics, it became apparent that a larger portion of the site would remain undeveloped, thus making it more suited for a DR zoning designation. It is likely that the proposed DR zoned portion of the site will remain undeveloped and ultimately used as open space for the remaining R1 zoned portion of the site.*

*In an effort to align the proposed zoning and the land uses, a Comprehensive Plan Amendment is requested.*

**Determination of Plan consistency:** (See attached Guidelines for Determining Plan Consistency)

**(NOTE: The 2005 Comprehensive Plan was used to evaluate this request for a Comprehensive Plan Amendment, not the 1994 Plan which is referred to in each of the discussion points below.)**

- A. Does the amendment request implement, or further one or more of the philosophies, goals, policies and strategies of the 1994 Comprehensive Master Plan? Explain.

*The subject property is comprised of Tracts A and B of the Big Thompson Farms Addition. All 48.841 acres of Tracts A and B are designated LDR-Low Density Residential. Within this LDR Land Use Designation, 31.317 acres were historically zoned R-1 Low Density Residential, and 17.524 acres zoned DR-Developing Resource. This amendment proposes to realign the Comprehensive Land Use Plan Map so that the total of 32.784 acres proposed to be zoned DR Developing Resource will be designated DR Development Reserve, while the remaining 16.057 acres zoned R-1 will retain the LDR Low Density Residential Land Use Designation.*

*The property is located on the north side of 1st Street, between Namaqua Avenue and Wilson Avenue. When the Comprehensive Plan Map was originally crafted in 1999 and the Land Use Designation LDR was assigned to this property it was already zoned R-1 Low Density Residential and DR Developing Resource; with the R1 portion platted for residential development. The Plat was later abandoned. Both the 32.784 acre and 16.057 acre parcels are currently used for agricultural purposes – irrigated corn and cattle grazing.*

*The Land Use category DR Development Reserve "includes lands designated for future urban development. Development of these lands would likely occur beyond 15-20 years, however, the market may drive development of a portion these lands sooner. The delivery of urban level services shall be determined by the functional master plans for public infrastructure."*

*The Comprehensive Land Use Plan Map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. The land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels to achieve the intent of the Comprehensive Master Plan." It is not intended to be zoning. Inclusion of the original 17.524 acres of DR zoned property in the current LDR Land Use Designation is not in direct conflict with any of the philosophies, goals, policies or strategies of the 2005 Comprehensive Plan.*

However, by amending the Comprehensive Land Use Plan Map to categorize the 32.784 acres (which are proposed to be zoned DR) from LDR Low Density Residential to DR Developing Reserve this implements the following Goals and Objectives of the 2005 Comprehensive Plan:

Goal 9.1 – Review and periodically update the Land Use Plan.

Objective 9.1.1 – Update and amend the Land Use Plan as appropriate.

Objective 9.1.2 – Seek additional Land Use opportunities related to Land Use.

Goal 9.2 – Provide a general pattern for the location, distribution and character of the future land uses within Loveland's GMA.

Objective 9.2.1 – Emphasize flexibility within the Land Use Plan while building on the existing land use pattern.

This amendment seeks to update the Comprehensive Land Use Plan Map so it aligns with the rezoning and boundary line adjustments, in keeping with the above Goals and Objectives.

- B. Will the amendment request interfere with the existing, emerging, proposed or future land use patterns and/or densities/intensities of the surrounding neighborhood as depicted on the Land Use Plan Map and as contained within the 1994 Comprehensive Master Plan? Explain

Surrounding and adjacent Land Use Designations demonstrate a variety of land uses and include LDR Low Density Residential to the north, south, and west. The City's Service Center is located directly to the east and is designated E Employment. Adjacent to the north, the Loveland Ready Mix Concrete, Inc. concrete plant and property is located in Larimer County in the Flood Plain. This is an 'infill' property, with the surrounding Land Use patterns clearly developed. The DR Development Reserve does not interfere with those existing, emerging or proposed future land use patterns.

- C. Will the amendment request interfere with, or prevent, the provision of any of the area's (neighborhood's) existing, planned, or previously committed services? Explain.

There is an existing sewer line with corresponding easement that crosses the property. It will not be affected. All water, power, and gas lines serving surrounding facilities and homes are located either in the street or in easements along the right of way. As the surrounding land areas are currently developed, it is not anticipated any existing, planned, or previously committed services will be impacted by this amendment.

- D. Will the amendment request interfere with, or prevent, the provision of any of the area's (neighborhood's) existing or planned transportation system services as contemplated by the 2030 Transportation Plan? Explain.

This property is located on the north west corner of Wilson Avenue and 1st Street. The 2035 Transportation Plan map shows the following Roadway Designations: Wilson Avenue, Major Arterial; 1st Street west of Wilson, Minor Arterial; 1st Street east of Wilson, Major Arterial; Namaqua Avenue/County Road 19E, Major Collector.

The following Transportation Goals and Objectives are provided in the 2005 Comprehensive Plan:

Goal 10B.3 – Maintain the overall ease of travel as the City grows while meeting or exceeding the level-of-service expectations.

Objective 10B.3.1 – Provide a street network necessary or desirable to meet the future needs of the Community.

Objective 10B.3.2 – Evaluate the established street levels-of-service to make sure they meet the needs of the community.

The first 2035 Transportation Plan Goal is to "recognize the important relationship between land use and transportation and develop appropriate policies that promote a long-term sustainable transportation system." The existing Land Use category, LDR-Low Density Residential, aligns with R1 and PUD zoning and other complimentary uses such as churches and parks. There is no inherent increase in vehicle trips by changing

*32.784 acres from LDR-Low Density Residential to DR-Development Reserve, and therefore no evidence the amendment will exceed the established levels-of-service expectations or prevent the existing transportation system services to operate as planned.*

- E. Does the amendment request implement, or further, any specific proposals for community facilities, including transportation facilities, or other specific public or private actions contemplated and contained within the *1994 Comprehensive Master Plan*? Explain.

*The following Community Facilities are listed in the 2005 Comprehensive Plan: General Government Facilities, Water, Power, Waste Water, Storm Water, and Communications Technology. There are no known proposals for community facilities or other public or private projects related to this property.*

*There are no inherit increases in facility needs with the proposed change from LDR Low Density Residential to DR Development Reserve, and therefore no evidence the amendment will affect the established levels-of-service expectations for the current Facilities Master Plan, Master Drainage Plan, or the Telecommunications Plan, the Community Water Facilities, Power Facilities, or Wastewater Facilities.*

Tracts A & B, Big Thompson Farms Addition  
**REZONE ASSESSMENT**  
**REV - JUNE 2013**

**Project Description**

The subject property is a 48.841 acre portion of the Big Thompson Farms Addition, that currently has 31.317 acres zoned R-1 Low Density Residential, and 17.524 acres zoned DR Developing Resource. This project proposes to rezone 15.260 acres from R-1 Low Density Residential to DR Developing Resource, bringing the overall acreage for the R-1 zoning district to 16.057 acres and the DR zoning district to 32.784 acres. The property being rezoned is adjacent to the existing DR zoned parcel.

The property is located on the north side of 1st Street, between Namaqua Avenue and Wilson Avenue. Undeveloped right-of-way for 3rd Street is located on the north side of the property.

The 48.8 acre overall property is currently used for agricultural purposes - irrigated corn, and cattle and horse grazing. The DR zone district does not outline any permitted uses, thus the existing agricultural uses are proposed to remain, and be will used as the basis for this Rezone Assessment until such time alternative uses are submitted, reviewed and approved by the City.

**Rezone Assessment:**

- (i) The purposes set forth in Section 18.04.010 outline the conditions under which zoning should be established such that the most appropriate uses for that parcel are able to be developed. By rezoning a portion of R-1 zoning to DR, this project seeks to increase opportunities to appropriately develop a larger portion of land within the framework of the Zoning Code. While the current agricultural uses are anticipated to remain for the time being, at such time alternate uses (uses by Special Review) are proposed, the appropriate City codes, guidelines and requirements will be evaluated.
- (ii) The adjacent properties demonstrate a variety of land uses. Residential uses are found to the west and south, industrial zoned property (in the form of the City Service Center) is located to the east, and Larimer County FA zoned property (in the form of the Loveland Ready-Mix Concrete Plant) is located to the north.

Any new development that ultimately occurs on the property will need to comply with City Codes, go through the proper City review processes, and mitigate any perceived negative impacts that might be brought about due to incompatible uses.

- (iii) Impacts to the existing City infrastructure and service lines is expected to be minimal. At this time, no new development on the property is proposed, thus no vehicle trips to and from the site onto Namaqua Avenue, Wilson Avenue or 1st Street will be generated. Additionally, no new buildings are anticipated, which will not place any stresses on utility services (water, sewer and power).
- (iv) Section 4 of the Loveland Comprehensive Master Plan speaks to the land uses outlined for development within the City. Currently, this property is located within the Low Density Residential Land Use Designation of the Comprehensive Master Plan, which suggests a focus on

residential development. While this project is proposing to expand the existing DR zone on the site by 15 acres, it is in no way seeking to eliminate the remaining R-1 zoned property, which would remain to be a consistent type of development as compared to the Comprehensive Master Plan designation.

- (v) Any future development on this property would be designed such that the public health, safety and welfare of the development and adjacent properties is not impacted in a detrimental way. This will be achieved by creating development that meets the intent of the Code, or is presented in such a way that any adverse impacts can be mitigated and/or buffered.

**Legal Description  
Zoning D-R District**

Legal description of a parcel of land being a portion of Tract A, Big Thompson Farms Addition, located in the Southeast Quarter of Section 16, Township 5 North, Range 69 West of the 6<sup>th</sup> P.M., City of Loveland, Larimer County, Colorado being more particularly described as follows:

Beginning at the Southwest corner of said Tract A, thence along the West line of said Tract A, North 04°18'26" East 810.11 feet to the Northwest corner of said Tract A; thence along the North line of said Tract A, South 89°18'13" East 470.99 feet to the True Point of Beginning; thence continuing along the North line of said Tract A, South 89°18'13" East 1041.65 feet; thence departing said North line South 41°59'12" East 88.73 feet; thence South 47°18'07" East 570.00 feet; thence South 42°41'53" West 210.00 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 71°53'00" and a radius of 230.00 feet; thence Southwesterly along the arc of said curve 288.56 feet to the end of said curve; thence tangent from said curve North 65°25'07" West 300.00 feet; thence South 24°34'53" West 225.00 feet; thence South 03°38'24" West 59.22 feet thence North 42°27'25" West 1,100.03 feet to the True Point of Beginning.

The above described Tract of land contains 15.260 acres more or less and is subject to all easements, agreements, and rights-of-way of record.



**Chapter 18.38****DR DISTRICT-DEVELOPING RESOURCE DISTRICT****Sections:**

- 18.38.010**      **Uses permitted by right.**  
**18.38.020**      **Uses permitted by special review.**

**18.38.010**      **Uses permitted by right.**

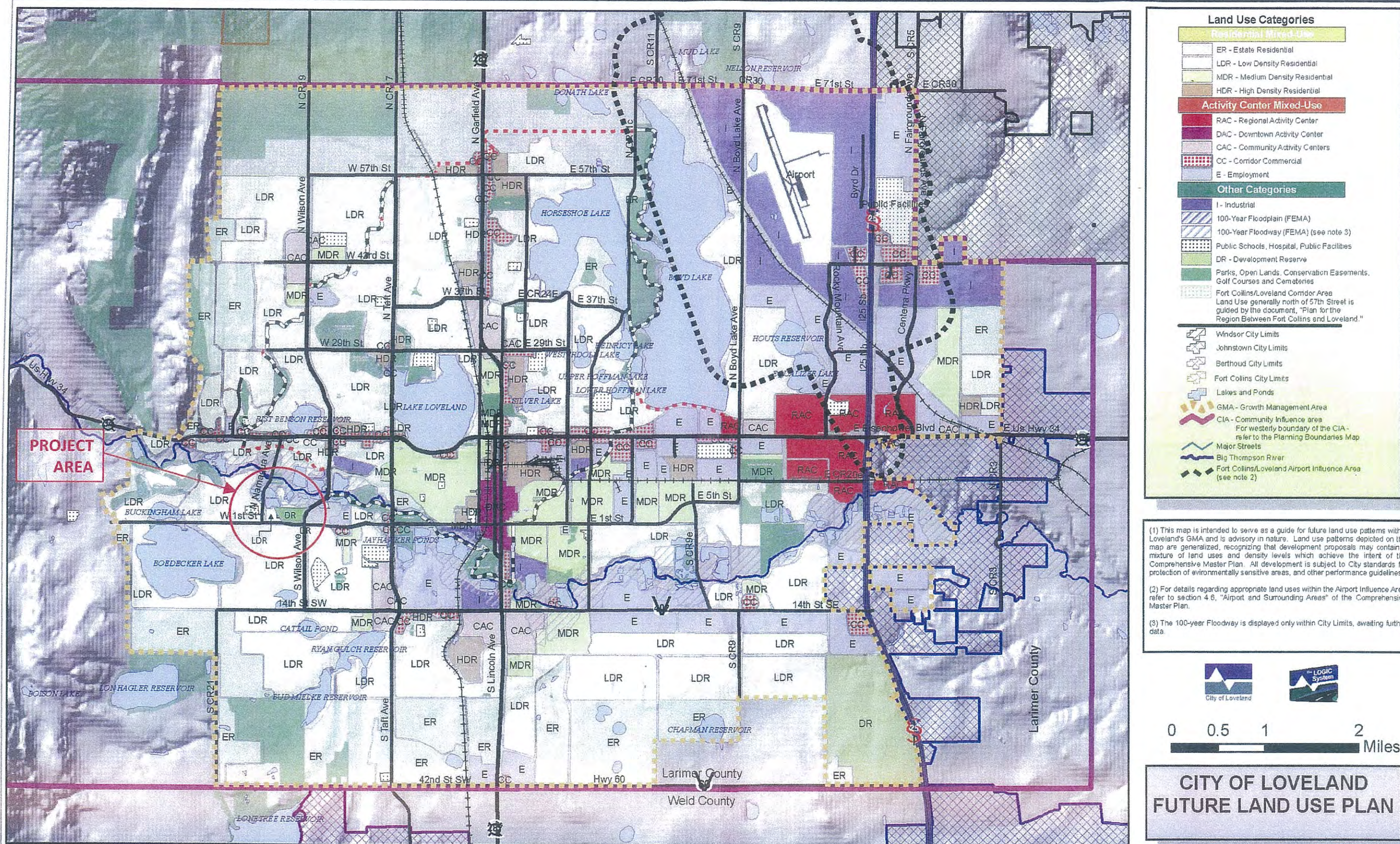
There are no uses permitted by right in a DR district. (Ord. 1392 § 1 (part), 1974; Ord. 1004 § 24.1)

**18.38.020**      **Uses permitted by special review.**

The following uses are permitted by special review in a DR district:

- A. Farm and garden uses only for the raising of crops; provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- B. Stands for the sale of agricultural products produced on the premises; provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- C. Greenhouses, turf and sod farms, and nurseries; provided, sales are limited to products produced on the premises; and further provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- D. Garden supply centers operated in conjunction with a nursery or greenhouse; provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- E. The extraction of limestone used for construction purposes, coal, sand, gravel and quarry aggregate; provided, all mining, extracting and quarrying is in conformance with any master plan for extraction adopted by the city; and further provided, dust, fumes, odors, smoke, vapor, noise and vibration shall be confined within the property boundary lines;
- F. Essential public utility and public service installations and facilities for the protection and welfare of the surrounding areas; provided, business offices or repair facilities are not included; and further provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- G. Publicly owned parks, recreation areas, golf courses and storm water detention facilities, provided no structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- H. Oil, gas and other hydrocarbon well drilling and production;
- I. Personal wireless service facilities, as defined in § 18.55.020(G), in compliance with Chapter 18.55 of this title. (Ord. 4236 § 12, 1997; Ord. 3720 § 1, 1991; Ord. 2034 § 1, 1982; Ord. 1392 § 1 (part), 1974; Ord. 1004 § 24.2, 1968)





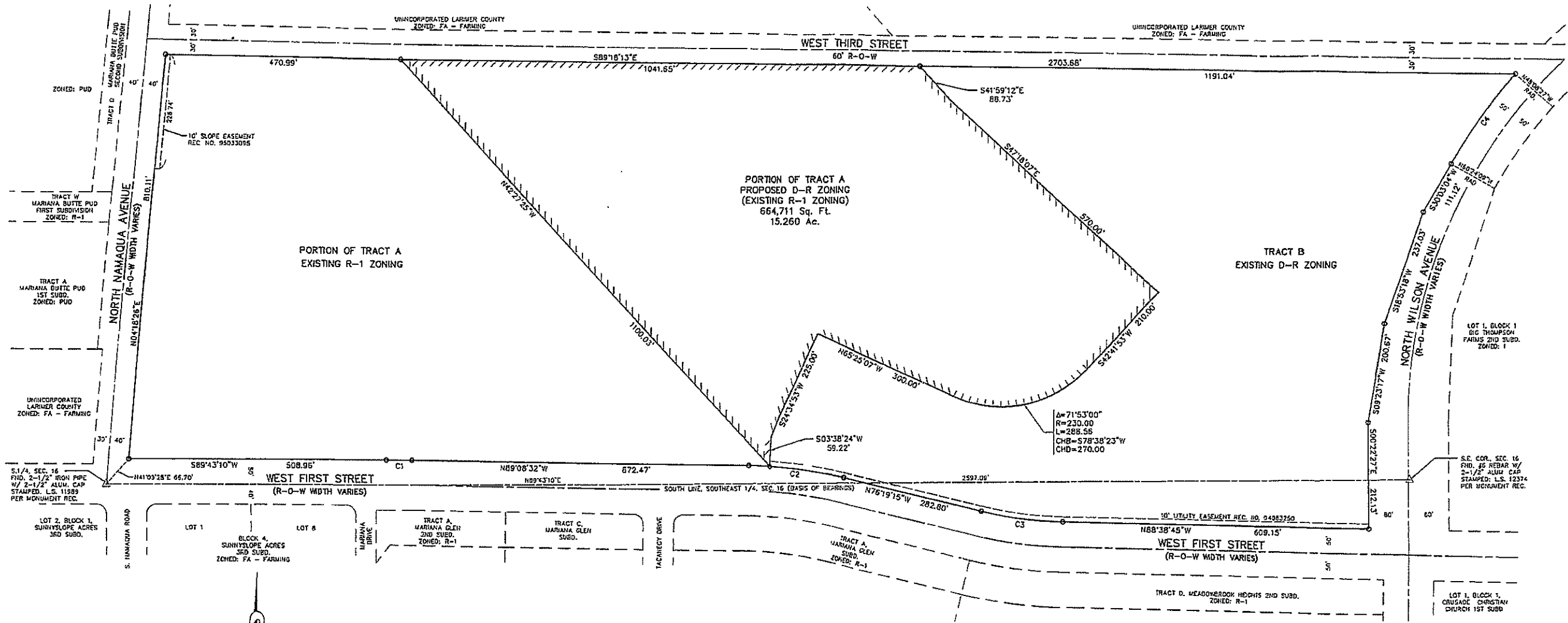


BIG THOMPSON FARMS REZONING MAP

BIG THOMPSON FARMS ADDITION  
REZONING MAP

REZONING NO. 313

BEING A PORTION OF TRACT A, BIG THOMPSON FARMS ADDITION, LOCATED IN THE SOUTHEAST  
QUARTER OF SECTION 16 AND THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 5 NORTH,  
RANGE 69 WEST OF THE 6TH P.M., CITY OF LOVELAND, LARIMER COUNTY, COLORADO.



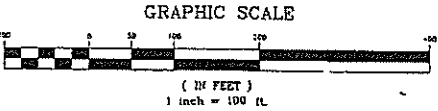
LEGAL DESCRIPTION: D-R DISTRICT

Legal description of a parcel of land being a portion of Tract A, Big Thompson Farms Addition, located in the Southeast Quarter of Section 16, Township 5 North, Range 69 West of the 6th P.M., City of Loveland, Larimer County, Colorado being more particularly described as follows:

Beginning at the Southwest corner of said Tract A, thence along the West line of said Tract A, North 04°18'28" East 210.11 feet to the Northwest corner of said Tract A; thence along the North line of said Tract A, South 05°18'13" East 470.95 feet to the True Point of Beginning; thence continuing along the North line of said Tract A, South 09°18'13" East 1041.65 feet; thence departing said North line South 41°59'12" East 38.73 feet; thence South 77°18'07" East 570.00 feet; thence South 42°41'53" West 210.00 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 71°53'00" and a radius of 230.00 feet; thence Southwesterly along the arc of said curve 288.56 feet to the end of said curve; thence tangent from said curve North 65°25'07" West 340.00 feet; thence South 24°34'53" West 225.00 feet; thence South 03°35'24" West 59.22 feet; thence North 42°27'25" West 1100.03 feet to the True Point of Beginning.

This above described Tract of land contains 15.269 acres more or less and is subject to all easements, agreements, and rights-of-way of record.

CURVE TABLE					
CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
C1	258.57'	50.64'	50.64'	N89°42'31"W	105°18'
C2	258.56'	193.92'	193.41'	N89°43'34"W	172°41'
C3	768.00'	165.22'	164.90'	S89°26'00"W	121°30'
C4	1035.50'	221.10'	221.10'	S35°43'42"W	121°34'42"
C5	886.12'	42.06'	42.05'	N87°45'04"W	245°56'
C6	886.12'	151.78'	151.56'	N81°20'28"W	100°21'



REVISIONS

Description	By	Date
RESPONSE TO STAFF COMMENTS	M.L.	11/11/15

Landmark Engineering

Engineers Planners Surveyors Architects Geotechnical  
3625 West Elmwood Avenue, Loveland, Colorado 80537  
(970) 667-0337 or (970) 667-0338  
www.landmarkeng.com

DATE: FEB. 2013

SCALE: 1"=100'

DRAWN: P.A.H.

CHECKED: E.J.S.

APPROVED: P.A.H.

CLIENT: LOVELAND READY-MIX

TITLE: BIG THOMPSON FARMS REZONING MAP  
CITY OF LOVELAND, COLORADO

JOB NO.: LOV16A

I, the undersigned, being a duly licensed Professional Engineer in the State of Colorado, do hereby certify that I am the author of the foregoing map and that it was prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer in the State of Colorado.

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

MARIANNA FARMS, INC., A COLORADO CORPORATION

William L. Bray, Secretary - Onier

The foregoing instrument was acknowledged before me this 10 day of August, 1978, by Cecil Swanda as President and William L. Bray as Secretary of Marloma Farm, Inc. a Colorado Corporation.

Witness my hand and official seal.

1016 | *Journal of Management Education* 43(8)

Margaret A. Kester, Owner

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 1976, by George A. Fancher and Harold O. Nestor.  
 Witness my hand and official seal.  
 My commission expires \_\_\_\_\_

உலக அமைதிக்கான

This foregoing instrument was acknowledged before me this 12 day of June 1954, by Frank G. Coffington, Jr.  
Witness my hand and official seal.  
My Commission expires \_\_\_\_\_

STATE OF WYOMING.

The "original instrument" was introduced before an officer of the \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Witness my hand and official seal.

By \_\_\_\_\_ and \_\_\_\_\_

George S. Fancher  
1819 West 12th Street  
Loveland, Colorado 80537

## Attachment 7

EXHIBIT 7

CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD
A	05°05'43"	1289.44'	115.56'	115.52'
A-1	05°05'43"	1349.44'	120.00'	119.97'
B	04°59'02"	1413.67'	122.97'	122.93'
B-1	04°59'02"	1463.67'	127.32'	127.28'
C	00°24'21"	1859.85'	13.17'	13.17'
C-1	05°37'09"	1859.85'	182.40'	182.33'
C-2	06°01'30"	1969.89'	200.83'	200.74'
C-3	06°01'30"	1959.89'	206.09'	206.00'
D	12°19'30"	768.03'	165.22'	154.90'
D-1	12°19'30"	818.03'	175.58'	175.64'
D-2	12°19'30"	868.06'	186.73'	186.37'
E	12°49'17"	766.12'	171.44'	171.03'
E-1	12°49'17"	816.12'	182.63'	182.25'
E-2	10°11'11"	866.12'	191.76'	191.56'
E-3	02°06'56"	866.12'	42.05'	42.05'
F	01°08'11"	2566.57'	51.00'	50.95'
F-1	01°03'18"	2515.57'	50.00'	50.00'
F-2	01°00'11"	2496.57'	49.00'	49.00'
G	12°15'42"	1035.50'	221.60'	221.18'
G-1	17°19'12"	985.50'	297.95'	296.81'
G-2	32°04'54"	985.50'	44.42'	44.42'
G-3	23°32'12"	935.50'	384.32'	381.62'

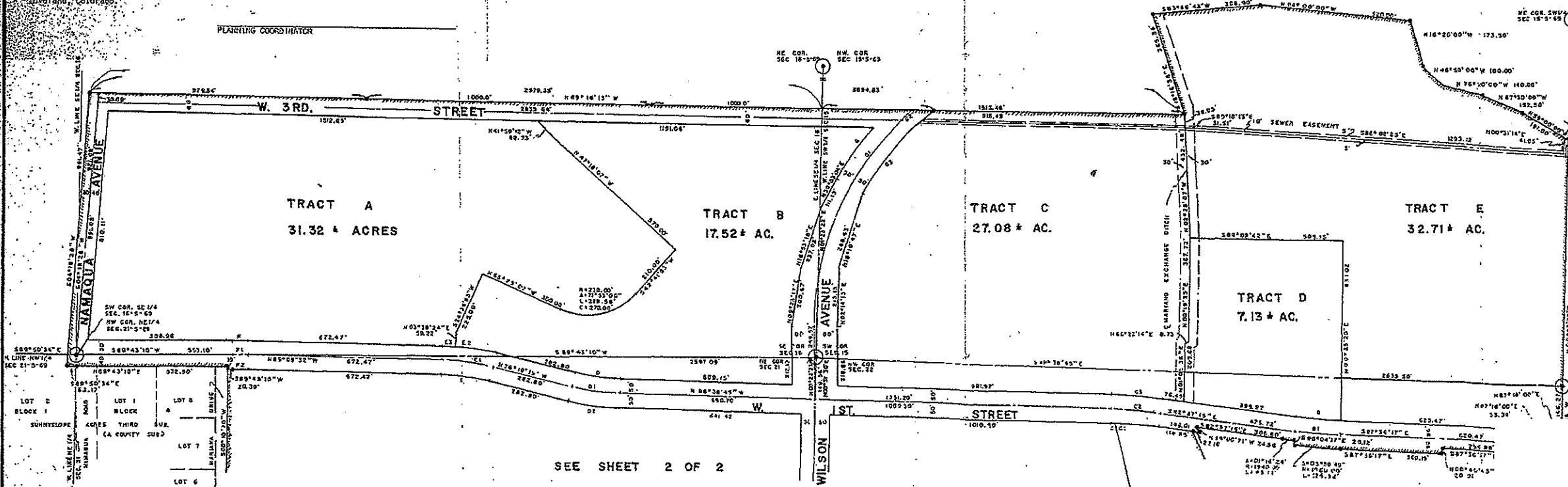
All that portion of Sections 15, 16, 21 and 22, Township 5 North, Range 69 West of the Sixth Principal Meridian, Larimer County, Colorado, more particularly described as follows:

Considering the West line of said Section 22 and the East line of said Section 21 as bearing North 00°33'38" East and with all bearings contained herein relative thereto:

Beginning at the Southwest corner of the Southwest Quarter of said Section 15; thence along the East line of said Southwest Quarter North 09°58'00" East 857.75 feet; thence leaving said East line North 59°00'00" West 191.00 feet; thence North 60°00'00" East 152.50 feet; thence North 60°00'00" East 148.00 feet; thence North 60°00'00" East 109.00 feet; thence North 60°00'00" East 173.50 feet; thence North 04°00'00" West 530.00 feet; thence South 60°00'00" East 366.90 feet to the center line of the Maricao Exchange Ditch; thence along said centerline South 18°16'34" East 158.38 feet; thence leaving said centerline North 85°19'13" West 131.48 feet to the West line of said Southwest Quarter of Section 15 and the East line of the Southwest Quarter of said Section 16; thence continuing North 58°16'34" West 254.76 feet to the West right-of-way line of County Road #9; thence along said West line and its Southerly prolongation South 05°18'20" East 113.39 feet to the West line of the Northeast Quarter of said Section 16; thence along said South line South 05°50'34" East 33.17 feet to the West line of the Northeast Quarter of said Section 16; thence continuing along said South right-of-way line of West 1st Street North 85°43'10" East 532.40 feet to the East line of said Sunnyslope Acres Third Subdivision; thence along said East line and its Southerly prolongation South 36°10'10" West 2154.56 feet; thence leaving said East line and its Southerly prolongation South 89°49'10" West 147.39 feet; thence South 09°28'50" East 327.96 feet; thence South 85°03'50" East 492.00 feet; thence South 61°56'50" East 209.56 feet; thence South 46°57'50" East 492.40 feet; thence South 32°58'10" East 358.00 feet; thence South 70°47'50" East 35.00 feet; thence South 60°00'00" East 152.50 feet; thence North 60°00'00" West 530.00 feet; thence North 18°16'34" East 113.39 feet to the center line of the Maricao Exchange Ditch; thence along said centerline the following 121 courses and distances: South 60°00'00" East 278.53 feet; South 82°46'56" East 308.47 feet to the West line of the Ponds Addition to the City of Loveland; County of Larimer, State of Colorado; thence continuing along said centerline of the Maricao Exchange Ditch and along the North line of said Ponds Addition the following line (5) courses and distances: North 87°29'15" East 75.53 feet; North 74°27'00" East 70.71 feet; North 82°35'00" East 156.00 feet; North 75°50'45" East 129.99 feet; North 87°00'00" East 67.06 feet to the Southerly prolongation of the West line of Sweetwater Addition to the City of Loveland; County of Larimer, State of Colorado; thence along said West line North 00°31'39" East 3218.03 feet to the North line of said Sweetwater Addition; thence along said North line South 58°38'45" East 100.00 feet to the East right-of-way line of Wilson Avenue; thence along said right-of-way line North 00°31'39" East 464.00 feet to the South right-of-way line of West 1st Street; thence along said South right-of-way line South 88°39'45" East 742.66 feet; thence leaving said South right-of-way line South 02°31'51" East 1236.08 feet; thence North 88°38'45" West 330.71 feet to the East line of said Sweetwater Addition; thence along said East line South 75°51'15" East 129.99 feet to the North line of Tract A, Loch 13th Addition to the City of Loveland, County of Larimer, State of Colorado; thence along said North line North 29°47'00" East 49.90 feet; thence continuing along said North line of Tract A and the North line of Sweetwater Addition to the City of Loveland, County of Larimer, State of Colorado; North 00°39'50" East 748.05 feet; thence continuing along said North line of Sweetwater Addition the following six (6) courses and distances: North 08°33'10" East 230.10 feet; North 60°36'30" East 321.59 feet; South 36°58'40" East 234.00 feet; North 72°05'50" East 4.19 feet; North 28°23'00" East 66.30 feet; North 42°25'00" East 31.16 feet; thence leaving said North line of the First Subdivision of Somerset Addition to the City of Loveland, County of Larimer, State of Colorado; thence along said North line the following five (5) courses and distances: North 42°46'39" East 36.75 feet; North 23°30'00" East 27.78 feet; North 14°24'00" West 35.51 feet; North 38°34'10" East 40.67 feet; North 34°22'00" West 165.12 feet; North 36°37'10" West 975.10 feet; North 74°33'40" West 66.41 feet to the South right-of-way line of West 1st Street; thence along said right-of-way line the following eleven (11) courses and distances: South 07°37'15" East 27.16 feet; North 34°06'17" West 74.56 feet; South 82°36'17" East 305.60 feet to the beginning of a tangent curve concave to the Northeast having a central angle of 01°16'24" and a radius of 1960.00 feet; thence tangent from said curve South 87°36'12" East 366.19 feet; thence along said curve South 87°36'12" East 366.19 feet to the end of said curve; thence tangent from said curve South 87°36'12" East 366.19 feet; thence North 00°40'43" East 20.01 feet; thence South 07°36'17" East 254.88 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 05°08'00" and a radius of 1482.05 feet; thence Northeastly along the arc of said curve 130.99 feet to the end of said curve; thence tangent from said curve North 87°15'43" East 43.15 feet to the East line of the Northwest Quarter of said Section 22 and the West line of Thompson Valley Estates First Addition to the City of Loveland, County of Larimer, State of Colorado; thence along said West line of Thompson Valley Estates First Addition along said East-West line of the Northwest Quarter of said West line of Thompson Valley Estates First Addition North 22°26'54 feet to the point of beginning.

do hereby subdivide the aforesaid lots, blocks, recreation areas, passageways, streets, future streets, utility and other easements as shown on this map; and do hereby designate and dedicate all such recreation areas, parks, passageways, streets, future streets and easements, other than utility easements, to and for public use. All such utility easements to and for public use for the installation and maintenance of utility, irrigation and drainage facilities; and do hereby designate the same as BIG THOMPSON PARKS ADJUTING to the City of Loveland, County of Larimer, State of Colorado.

All expenses involving necessary improvements for a water system, sanitary sewer system, storm sewer system, curb and gutters, sidewalks, street improvements, street signs, traffic control signs, alley grading and surfacing, gas service, electric service, grading and landscaping shall be paid by George A. Fancher and Jerald O. Kuster.



SEE SHEET 1 OF 2

TRACT H  
143.50+ AC.

TRACT G  
21.40+ AC.

TRACT F  
22.18+ AC.

# BIG THOMPSON FARMS ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

CURVE	DELTA	RADIUS	LENGTH	CHORD
A	05°05'43"	1209.44'	115.56'	115.52'
A-1	05°05'43"	1349.44'	120.00'	119.97'
B	04°50'02"	1415.67'	122.07'	122.63'
B-1	04°50'02"	1463.67'	127.32'	127.28'
C	20°24'21"	1859.55'	15.17'	15.17'
C-1	20°24'21"	1859.55'	152.40'	152.33'
D	06°31'10"	1909.85'	200.83'	200.74'
D-1	06°31'10"	1959.85'	206.09'	206.00'
E	12°10'30"	768.08'	165.27'	164.90'
E-1	12°10'30"	812.08'	175.98'	175.64'
F	12°10'30"	858.08'	186.73'	186.57'
G	10°40'17"	765.12'	171.34'	171.08'
G-1	10°40'17"	816.12'	182.63'	182.29'
H	10°02'21"	868.12'	151.76'	151.56'
H-1	02°16'56"	968.12'	42.06'	42.05'
I	01°08'18"	2565.57'	51.00'	50.99'
I-1	01°08'18"	2516.57'	50.09'	50.00'
J	01°08'18"	2466.57'	49.00'	49.00'
K	12°15'43"	1035.50'	221.60'	221.18'
K-1	12°15'43"	995.50'	213.51'	213.61'
L	02°34'19"	905.50'	64.62'	64.42'
L-1	23°32'17"	935.50'	384.32'	381.62'

LOVELAND READY-MIX CONCRETE, INC., A COLORADO CORPORATION.

*Harold G. Kester*  
Harold G. Kester, President

*George A. Fancher*  
George A. Fancher, Secretary-Treasurer

STATE OF COLORADO,  
COUNTY OF LARIMER, ss.

The foregoing agreement was acknowledged before me this 6th day of March, 1979 by Harold G. Kester as President and George A. Fancher as Secretary-Treasurer of Loveland Ready-Mix Concrete, Inc., a Colorado Corporation. Witness by hand and official seal.

My commission expires March 23, 1982

*Regina G. Williams*  
Regina G. Williams, Notary Public

FIRST NATIONAL BANK IN LOVELAND, A NATIONAL BANKING ASSOCIATION

*Donald L. Churchwell*  
Donald L. Churchwell, Vice-President

*James R. Voggesper*  
James R. Voggesper, Assistant Cashier

STATE OF COLORADO,  
COUNTY OF LARIMER, ss.

The foregoing agreement was acknowledged before me this 6th day of March, 1979 by Donald L. Churchwell as Vice-President and James R. Voggesper as Assistant Cashier of the First National Bank in Loveland, a National Banking Association. Witness by hand and official seal.

My commission expires 10-23-82

*Shirley R. Reed*  
Shirley R. Reed, Notary Public

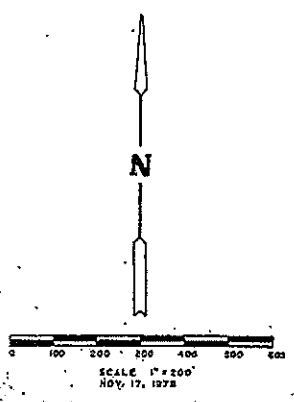


EXHIBIT 7

Attachment 7

BEING A RESUBDIVISION OF TRACT A BIG THOMPSON FARMS ADDITION TO THE CITY OF LOVELAND, COUNTY OF  
LARIMER, STATE OF COLORADO.

LARIMER, STATE OF COLORADO.  
APPROVED this 14 day of Sept, 1979, by the City Engineer of the City of Loveland, Colorado.

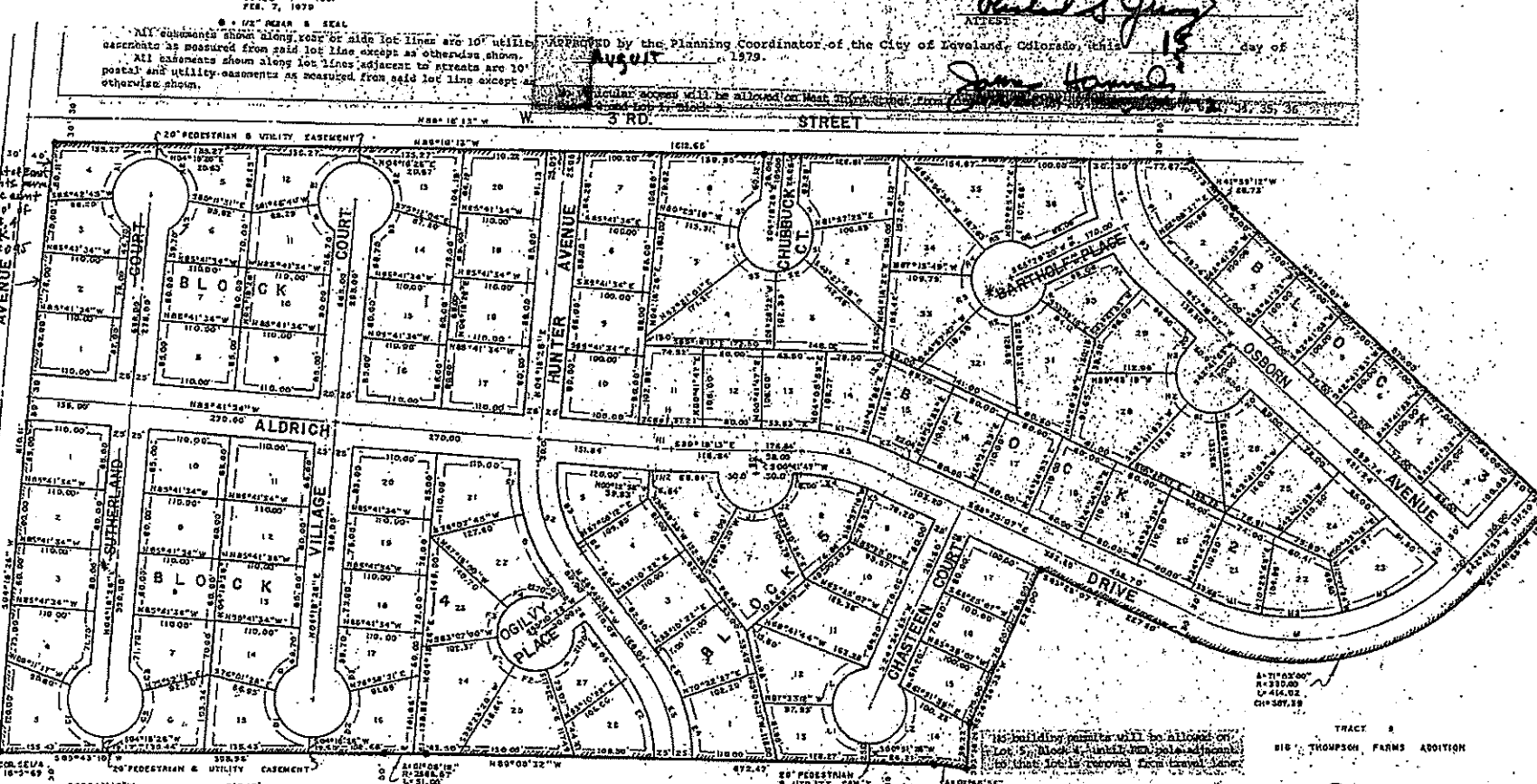
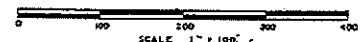
APPROVED this 27th day of March, 1975, by the City Planning Commission to the City of  
Loveland, Colorado.

APPROVED by the City Council of the City of Loveland, Colorado this 17<sup>th</sup> day of April 1979.

APPROVED by the Planning Coordinator of the City of Loveland, Colorado, this 13 day  
of July, 1979.

Particular access will be allowed on West Third Street from 7:00 a.m. to 7:00 p.m.

All easements shown along rear or easements as measured from said lot line.



AVENUE

30° 16' 24" W  
70° 09' 40" E

LOT 2		LOT 3		LOT 4		LOT 5		LOT 6		LOT 7		LOT 8		LOT 9		LOT 10		LOT 11		LOT 12		LOT 13		LOT 14		LOT 15		LOT 16		LOT 17		LOT 18		LOT 19		LOT 20		LOT 21		LOT 22		LOT 23		LOT 24		LOT 25		LOT 26		LOT 27		LOT 28		LOT 29		LOT 30		LOT 31		LOT 32		LOT 33		LOT 34		LOT 35		LOT 36		LOT 37		LOT 38		LOT 39		LOT 40		LOT 41		LOT 42		LOT 43		LOT 44		LOT 45		LOT 46		LOT 47		LOT 48		LOT 49		LOT 50		LOT 51		LOT 52		LOT 53		LOT 54		LOT 55		LOT 56		LOT 57		LOT 58		LOT 59		LOT 60		LOT 61		LOT 62		LOT 63		LOT 64		LOT 65		LOT 66		LOT 67		LOT 68		LOT 69		LOT 70		LOT 71		LOT 72		LOT 73		LOT 74		LOT 75		LOT 76		LOT 77		LOT 78		LOT 79		LOT 80		LOT 81		LOT 82		LOT 83		LOT 84		LOT 85		LOT 86		LOT 87		LOT 88		LOT 89		LOT 90		LOT 91		LOT 92		LOT 93		LOT 94		LOT 95		LOT 96		LOT 97		LOT 98		LOT 99		LOT 100		LOT 101		LOT 102		LOT 103		LOT 104		LOT 105		LOT 106		LOT 107		LOT 108		LOT 109		LOT 110		LOT 111		LOT 112		LOT 113		LOT 114		LOT 115		LOT 116		LOT 117		LOT 118		LOT 119		LOT 120		LOT 121		LOT 122		LOT 123		LOT 124		LOT 125		LOT 126		LOT 127		LOT 128		LOT 129		LOT 130		LOT 131		LOT 132		LOT 133		LOT 134		LOT 135		LOT 136		LOT 137		LOT 138		LOT 139		LOT 140		LOT 141		LOT 142		LOT 143		LOT 144		LOT 145		LOT 146		LOT 147		LOT 148		LOT 149		LOT 150
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\* BARTHOLOMEW PLACE has been changed to  
BRANDT PLACE and SUTHERLAND COURT  
has been changed to KILBOURNE COURT  
per RESOLUTION NO. R-272-79

NOTICE OF HEARING TO BE SENT TO:

George Fancher  
1511 West 12th  
Loveland, CO 80537

(OFFICE OF CHIEF OF POLICE)  
 CITY OF CHICAGO  
 DEPT. OF POLICE  
 DIVISION OF INVESTIGATION  
 CHICAGO, ILL.

The foregoing instrument was acknowledged and signed by before me  
 on this 10th day of January, 1978, by William J. Pappas  
 known to me and as official seal  
 by commission expires March 22, 1980

\_\_\_\_\_  
 Notary Public  
 My Comm. Expires \_\_\_\_\_

ALL MEN BY THESE PRESENTS ARE the undersigned, being all the owners and lienholders of the following described property except any existing public streets, roads or highways, located in Section 16, Township 6, Range 69 West of the 6th P.M., Larimer County, Colorado, being more particularly described as follows:

ALL of tract A of said Thompson Farms Addition to the City of Loveland,  
County of Larimer, State of Colorado,  
do hereby subdivide the same into lots, blocks, recreation areas, passageways, streets, future streets,  
utility and other easements as shown on this map; and do hereby designate and dedicate all such recreation  
areas, passageways, streets, future streets, utility and other easements to the City of Loveland, and to and  
for public use; all such utility easements to and for the installation and maintenance of utility,  
irrigation and drainage facilities; and do hereby designate the same as BIG THOMPSON FARMS FIRST  
SUBDIVISION to the City of Loveland, Larimer County, Colorado.  
(All expenses involving necessary improvements for a water system, sanitary sewer system, storm sewer  
system, streets, sidewalks, streets lighting, traffic control signs, alley  
grading and surfacing, gas, electric service; grading and landscaping shall be paid by: Robert M. Fancher, Vivian Ann Fancher, George S. Fancher, Sidney A. Fancher, Margaret J. Kontour, Melvin D.  
Kontour, Patricia Ann Mueller, Edwin A. Mueller, Rebecca Lynn Weisort and Robert A. Weisort.

STATE OF COLORADO )  
 ) ss. Edwin A. Mueller  
 )  
 COUNTY OF JIMMER )  
 ) Patricia Ann Mueller  
 )  
 The foregoing instrument was acknowledged before me this 1st day of March, 1979  
 by Patricia Ann Mueller and Edwin A. Mueller.  
 My hand and seal official such.  
 My Commission expires June 30

Notary Public  
 Rebecca Lynn Heisett  
 STATE OF COLORADO, )  
 ss.  
 COUNTY OF GARFIELD, )  
 Robert A. Heisett

The foregoing instrument was acknowledged before me this 16 day of February, 1979  
 by John Weisert and Robert A. Weisert  
husband and wife  
 My commission expires 8-4-79  
Margaret D. Shady  
 Notary Public  
 THE FIRST NATIONAL BANK IN LOVELAND; A NATIONAL BANKING ASSOCIATION, TRUSTEE OF GEORGE A. AND JEAN M.

Morrison L. Heath

The foregoing instrument was acknowledged before me this 28th day of April, 1979 by Morrison L. Heath, Vice President and Trust Officer of the First National Bank in Cleveland, a National Banking Association chartered under the laws of the State of Ohio, as authorized signatory and officer of said bank, and as such duly qualified to execute and acknowledge the foregoing instrument.

My commission expires 11-21-68  
5  
 Notary Public  
 THE FIRST NATIONAL BANK IN LOVELAND, A NATIONAL BANKING ASSOCIATION, TRUSTEES OF HAROLD O. KESTER AND  
 BONNIE JANE KESTER TRUST FOR GRANDCHILDREN.

Harrison L. Ruth  
Harrison L. Ruth, Vice President and Trust Officer  
The foregoing agreement was acknowledged before me this 14th day of February, 1979  
by Harrison L. Ruth as Vice President and Trust Officer of the First National Bank in Loveland, a  
National Banking Association, of which Harold O. Kester and Berne Jane Kester Trust for Grandchildren  
Witness my hand and official seal this 14th day of February, 1979.

My commission expires 12-15-1974

Robert D. Pancher  
Notary Public

Robert D. Pancher  
Notary Anna Pancher

George S. Fancher  
STATE OF COLORADO,  
COUNTY OF LARIMER;

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of October, 1979  
by Robert E. Fancher, Vivian Ann Fancher, George S. Fancher and Sydney A. Fancher  
Witness my hand and official seal.  
My commission expires Oct 22 - 1982  
William D. Shady  
Notary Public  
Notary

Notary Public in and for the State of Colorado,  
Margaret J. Kontour  
STATE OF COLORADO,  
COUNTY OF LINCOLN.  
ss.  
I, the foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 1979,  
by Margaret J. Kontour and Melvin D. Kontour.

I have signed my hand and official seal.  
 My commission expires 5-24-74  
 \_\_\_\_\_  
 Notary Public

SURVEYOR'S CERTIFICATE

Neil M. Kruback, being first duly sworn on his oath, deposes and says: that he is a registered land surveyor under the laws of the State of Colorado, that this survey of Big Thompson Farms First Subdivision to the City of Loveland, County of Larimer, State of Colorado, was made by him or under his supervision; that the survey is accurately represented on this map by him and the same are true of his own knowledge.



**CITY OF LOVELAND  
PLANNING COMMISSION MINUTES  
September 9, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on September 9, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Krenning, and Prior. Members absent: Commissioners Crescibene and Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

*These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.*

**CITIZEN REPORTS**

There were no citizen reports.

**STAFF MATTERS**

1. **Mr. Bob Paulsen, Current Planning Manager**, explained that **Ms. Kimber Kreutzer, Planning Commission Secretary**, would be sending out an email each Friday prior to Planning Commission meetings, and encouraged the Planning Commissioners to contact Planning if they see an item on the agenda that might require other city staff to attend. **Mr. Paulsen** stated that if needed, arrangements could be made as late as 5:00 p.m. on meeting days to have a city staff representative available.

**COMMITTEE REPORTS**

There were no committee reports.

**COMMISSIONER COMMENTS**

There were no comments.

**APPROVAL OF THE MINUTES**

**Chair Meyers** asked if there were any corrections needed in the August 26, 2013 meeting minutes. Needing no amendments, **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Prior**, the meeting minutes were approved unanimously.

**CONSENT AGENDA**

**St. John Parish Vacation of ROW**

1. This is a legislative matter and public hearing to consider a request to vacate a public right-of-way within the St. John Addition and Hill Top Addition. The right-of-way to be vacated consists of a remnant portion of Truman Avenue that is no longer in use as a public street.

The subject portion of right-of-way does have public utilities within it and will need to be retained as a public utility easement. If the Commission recommends granting the request for vacation, Loveland Municipal Code Section 16.36.010.C.3 also calls for the Commission to recommend a form of ordinance to Council. The proposed ordinance is attached to this staff report as Attachment 3. City development review offices have reviewed this application and supports approval with the recommended condition.

**Chair Meyers** asked for a motion to approve the St. John's Vacation of ROW.

**Commissioner Middleton** moved to make the findings listed in Section VIII of the Planning Commission staff report dated September 9, 2013 and, based on those findings, recommend that City Council approve the requested vacation of public rights-of-way subject to the condition listed in Section IX, as amended on the record. **Mr. Middleton** further moved to recommend to the City Council the form of vacation ordinance attached to the staff report dated September 9, 2013. Upon a second from **Commissioner Dowding**, the motion was passed 5-0 with **Commissioner Molloy** recusing himself from the vote.

## **REGULAR AGENDA**

### **Big Thomson Farms**

2. This is a public hearing to consider a parcel-specific Comprehensive Plan amendment to amend the recommended land use category of property within the Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR), followed by a rezoning from R1-Developing Low Residential District to DR-Developing Resource District.

Staff supports the requested Comprehensive Plan amendment and rezoning because information has been submitted to demonstrate that there are Economically Viable Mineral Resources underlying the site. CRS 35-1-305 (1) and (2), as well as Sub-section 18.52.040 of the Municipal Code stipulate that the City may not zone any property in a manner that interferes with the extraction of a commercial mineral deposit. At the time of annexation and initial zoning, a report was provided to the City indicating that there were no commercial mineral resources underlying the site. However, with changes in the market, the existing mineral resources have now been determined as economically viable.

**Mr. Brian Burson, Senior Planner**, addressed the Commission and explained that the item before the Commission was a proposed Comprehensive Plan and rezoning for the Big Thompson Farms Addition, tracts A and B, located northwest of Wilson St. and 1<sup>st</sup> Avenue. Tract A is currently zoned R1, and tract B is currently zoned DR—Developing Resources. The request asks for consideration of a parcel-specific Comprehensive Plan amendment to amend the land use category of the property from Low Density Residential (LDR) to Development Reserve (DR), followed by a rezoning from R1-Developing Low Density Residential District to DR—Developing Resource District.

**Mr. Burson** stated that there are no uses by right in the DR zone. Certain uses that can be approved by Special Review include farming, greenhouses, garden supply, public utility, public parks, storm water detention areas, and extraction of commercial minerals.

**Mr. Burson** went on to explain that City Municipal Code 18.52.040 precludes the city from applying zoning to property in a manner that interferes with extraction of identified economically viable minerals. When the property was originally annexed back in the 1980's, it was determined that it was not economically viable to extract the minerals. However, with the change in the economy, the applicant has presented the city with an updated extraction report indicating that the minerals are now, in fact, economically viable for extraction. It was noted that mining has been ongoing in the adjacent area for many years.

The policies currently in the Comprehensive Plan specifically address issues related to "growth" and "development". The definition of growth and development does not include the extraction of minerals. Staff concluded that the rezoning findings in city policy either do not apply or have been already met.

Staff is recommending the approval of both the Comprehensive Plan Amendment and the Rezoning. **Mr. Burson** clarified that staff does not currently have a Special Review application, but anticipates one in the future if the requests are eventually approved by City Council. A Special Review requires a neighborhood meeting and allows for an appeal process.

**Ms. Kim Lambrecht, Landmark Engineering**, stated she is representing Big Thompson Farms. She reiterated that adjacent uses allow for mining at the site. She stated that Big Thomson Farms Addition consists of 302 acres and was annexed in 1979 with R1-Developing Residential, and DR-Developing Resource zoning. At the time there were no commercial mineral deposits found on site that could be economically extracted. Subsequently in 1979, tract A was subdivided and platted into a 108 unit residential subdivision.

In 1996, the city vacated the plat as an obsolete subdivision; however the original R1 zoning remained. Currently, the entire property is being used for agricultural purposes. Viable mineral deposits are located under the eastern 2/3rds of the site. Of this, approximately 15.26 acres falls under the portion of the site zoned R1, which does not allow for the extraction of minerals. The proposal requests 15.26 acres be rezoned from R1 to DR resulting in 15.93 acres zoned R1 and 32.91 acres zoned DR.

In order for the property to be rezoned, an assessment of the land use map of the Comprehensive Master plan was conducted. The rezoning is intended to "align" with land uses designated in the Comp Plan. The Comp Plan is intended to forecast desired development in the city, with an outlook of 15-20 years into the future. **Ms. Lambrecht** clarified that the applicant's plans are more interim in nature.

Future development, more in line with a typical urban development pattern in the 15-20 year time frame, will be assessed at such time an application is put forth.

**Ms. Dowding** asked if this particular property is rezoned to DR, would a Special Review be required to allow farming. **Mr. Burson** responded that typically when property is annexed into the city, there is an assumption, an operation of law, which states existing legal uses can

continue unless the city comes to an agreement with the landowner to do something different. **Ms. Judy Schmidt, Deputy City Attorney**, clarified that there are parts of the code that allow for legal, non-conforming use at the time of annexation.

**Commissioner Prior** asked that based on the proposal of tract A, why the line for the rezoning was drawn the way it was. **Ms. Lambrecht** responded that last fall, several core drillings were conducted across the site to determine the location of the economically viable minerals. **Mr. Prior** asked what the size of the mineral deposit was determined to be. **Ms. Lambrecht** replied that the exact size of the deposit wasn't entirely known, however future analysis with specifics would be included in the Special Review application.

**Commissioner Krenning** questioned why the applicant did not request the entire two parcels be zoned as DR. **Ms. Lambrecht** responded that she wasn't sure that option was completely analyzed as a possibility.

**Mr. Molloy** stated that he understood the need for mineral extraction; however he asked the applicant what the definition of "interim use" would entail. **Ms. Lambrecht** explained that the DR assignment would allow for a "holding pattern". She explained that extraction of minerals would not be long term, much less in fact than the timeframe outlined in the Comp Plan of 15-20 years. Following the extraction of minerals, future use would be evaluated for a longer, more permanent solution.

**Mr. Molloy** questioned if reclamation plans would be included in a Special Review application. **Ms. Lambrecht** stated that all reclamation plans would definitely be required in the Special Review application process. Reclamation plans would also be required in conjunction with applications to the state bureau of land mining.

**Mr. Molloy** went on to question if the minerals were not "viable" in 1980's, why are they considered to be so now. **Ms. Lambrecht** explained that not only are the minerals more cost effective to mine now; they are considerably higher in value.

**Chair Meyer** stated that given the fact that an elementary school is in close proximity, would the security screen provided around the site ensure the safety of students and children. **Ms. Lambrecht** assured the Commission that the highest safety standards would be imposed.

**Mr. Middleton** asked if any part of the site was located in the FEMA flood plain. **Ms. Lambrecht** stated that while it was close to the flood plain, the site itself was not.

**Mr. Middleton** asked for an explanation of the Special Review process, for the benefit of the audience. **Mr. Paulsen** stated that the Special Review is a process that an applicant needs to go through to allow designated uses to occur within specific zoning districts. The process is designed to ensure compatibility between uses. It allows the applicant to choose among the Special Review uses and apply to for permission to do those uses through the city. The process requires notification to surrounding neighbors, posting signs at the proposed sites, and a neighborhood meeting whereby the applicant and owner must attend the meeting and

describe the intended use. City staff then works with the applicant to either approve or deny the request.

**Chair Meyers** opened the meeting for public hearing.

**Mr. David Hollingsed, 5241 Cedar Valley Drive, Loveland, CO** stated that there are residences to the south and west of the property in question, and he is concerned what the parcels will look like both during the mineral extraction process, and after it is complete. He questioned what would happen if the applicant abandoned plans mid-way through the project. **Mr. Burson** explained that the concerns **Mr. Hollingsed** raised would be addressed during the Special Review process which would focus on screening, dust control, hours of operation, and land reclamation once the project is complete. In addition, mining plans must always include reclamation plans along with any application.

**Ms. Schmidt** added that the Mined Land Reclamation Board would not provide a permit for mining until a local jurisdiction has zoned and allowed the land for use.

**Mr. Krenning** stated that the Mined Land Reclamation Board also requires the applicant to post a substantial bond to ensure reclamation activities are completed, regardless of when the project stops.

**Mr. Molloy** questioned if the Special Review is a formality since the state can supersede decisions regarding mining. **Mr. Burson** replied that the city will still have discretionary power through the Special Review, and would have the ability to deny the Special Review request if deemed appropriate. **Ms. Schmidt** stated that in order to receive a permit to mine, the applicant must satisfy local requirements.

**Ms. Francine Webb, 377 Rossum Drive, Loveland, CO** voiced apprehension about the reclamation process. She expressed concern that mining would occur in close proximity to a public school. She asked what reclamation plans might be done, other than just filling the area with water. She questioned how reclamation plans might impact potential future development.

**Mr. Burson** responded that given his previous experience in working with mining applicants, every effort is made to ensure reclamation returns the affected area to a usable, environmentally friendly condition. He added that in recent years, the water board has added a condition, stating that if ground water is exposed during extraction activities, mitigation of ground water is required.

**Chair Meyers** pointed out that concerns about reclamation would need to be addressed during the Special Review process. He added that the gravel pits have been in place since before 1982.

**Mr. Burson** explained that the majority of the gravel pits in the area are in county jurisdiction and all permits were granted by Larimer County.

**Mr. Krenning** pointed out that currently there is approved gravel mining at the site, and the request is to only get approval to mine extra acres.

**Chair Meyers** closed the public hearing.

**Mr. Brad Fancher, 6405 Windemere Rd, Loveland, CO** addressed the Commission to respond to concerns raised at the public hearing. He shared that questions about reclamation would have to be addressed during the Special Review process. He added that any mining would be closely monitored by the Mined Land Reclamation Board. He confirmed that his application for mining would require him to be fully bonded prior to the start of mining activities. The bond is required for future payment for reclamation costs. He also stated that mining activities in the area have been ongoing long before the grade school was built.

**Chair Meyers** asked if development of previously mined property is typical. **Mr. Fancher** responded that yes, development after the fact is very common. He pointed out that mining of the gravel would be shallow, going down no more than 15 feet from the surface.

**Mr. Molloy** asked if the city recreation trail would eventually travel through the area being mined. **Mr. Fancher** stated that those plans were part of an ongoing negotiation with the land owner and the city.

**Mr. Krenning** again questioned if the applicant considered zoning both parcels as Developing Resource. **Mr. Fancher** confirmed the idea was considered, but in the end it was decided not to do so in case the property owner decided to pursue development in the future.

**Ms. Dowding** shared that she also wants thoughtful reclamation, and committed to advocate that effort when and if the request comes under Special Review. She shared that she would be in support of the request.

**Mr. Middleton** communicated that he has been involved in the permitting and bonding process for mining in the past, and stated that it is very strict and arduous. He imparted that he is also in support of the request and feels it would be a good use of the land.

**Mr. Molloy** stated that given the strict Special Review and bonding process, he is comfortable with the request and will be supporting it.

**Mr. Prior** said he shared concerns regarding the reclamation process, however, he felt the Special Review process would help address and mitigate fears.

**Mr. Krenning** explained that he had no issue with the project. He added that the applicant has a strong record for mining in the area. He voiced support the request.

**Chair Meyers** agreed that the applicant has a solid track record for mining in the area, and is a long term resident of Loveland. He stated he would support the request.



**Chair Meyer** asked for a recommendation on the motion.

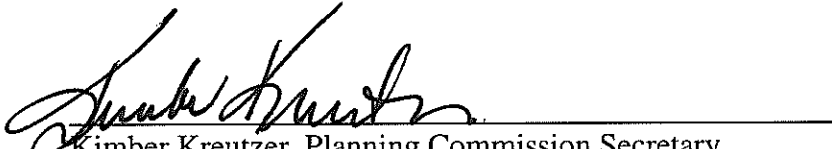
**Ms. Dowding** moved to make the findings listed in Section VI of this report dated September 9, 2013; and, based on those findings, recommend that the Future Land Use Plan, incorporated into Section 4.0 of the 2005 City of Loveland Comprehensive Plan, be amended for Tracts A and B of Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR). **Mr. Prior** seconded the motion. After **Mr. Fancher** verbally agreed to accept the conditions, or no conditions, the motion was approved unanimously.

**Mr. Middleton** moved to make the findings listed in Section VII of this report dated September 9, 2013; and, based on those findings, recommend approval of the rezoning of the land described in Attachment # 4 of this report from R1-Developing Low Density Residential District to DR-Developing Resource District. **Ms. Dowding** seconded the motion. After **Mr. Fancher** verbally agreed to accept the conditions, or no conditions, the motion was approved unanimously.

### **ADJOURNMENT**

**Commissioner Middleton** made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by:   
Buddy Meyers, Planning Commission Chairman

  
Kimber Kreutzer, Planning Commission Secretary

# Big Thompson Farms Addition

City Council  
October 15, 2013

Comprehensive Plan Amendment  
And  
Rezoning



Date: 9/9/2013



## Big Thompson Farms Addition

### Comprehensive Plan Amendment

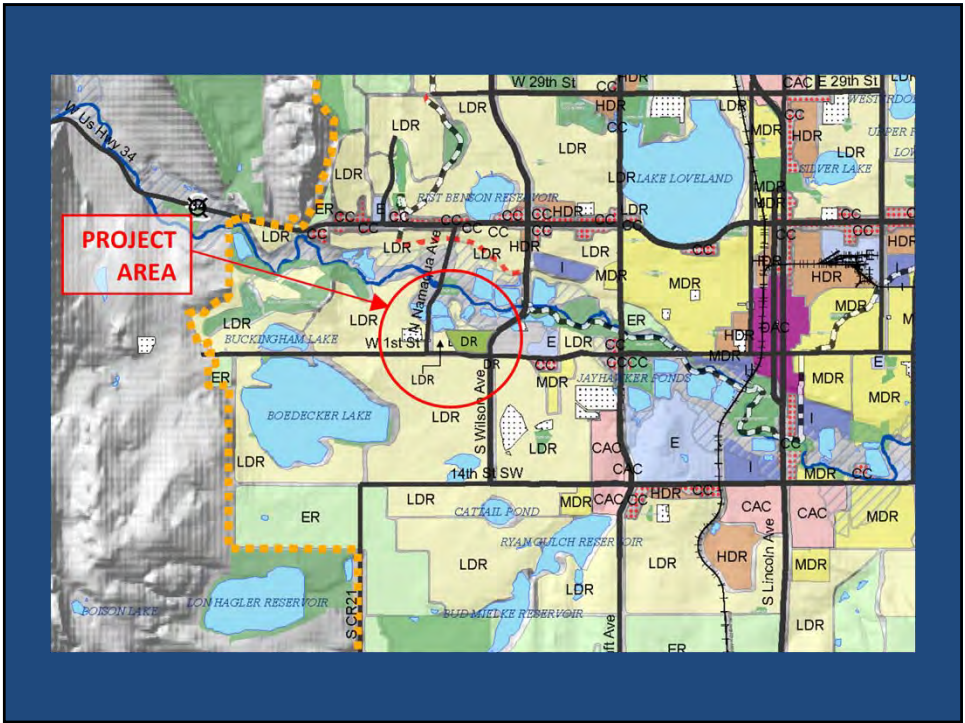
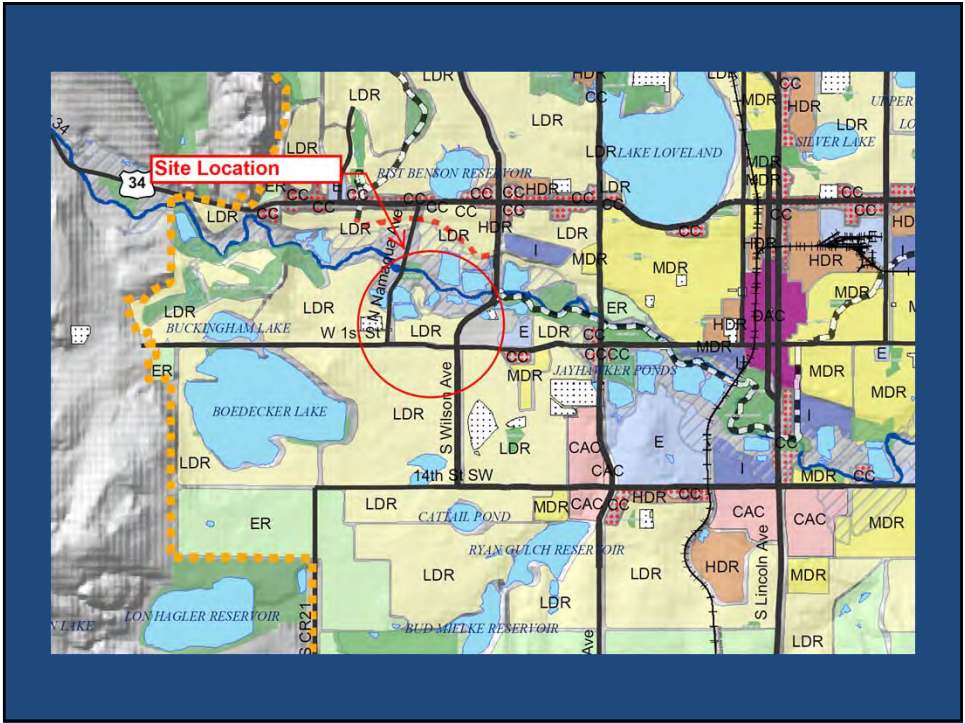
Current Designation: Low-Density Residential (LDR)

Residential development with gross density of 2-4 dwelling units /acre

Proposed Designation: Development Reserve (DR)

Development of these lands would likely occur beyond 15-20 years







## Big Thompson Farms Addition

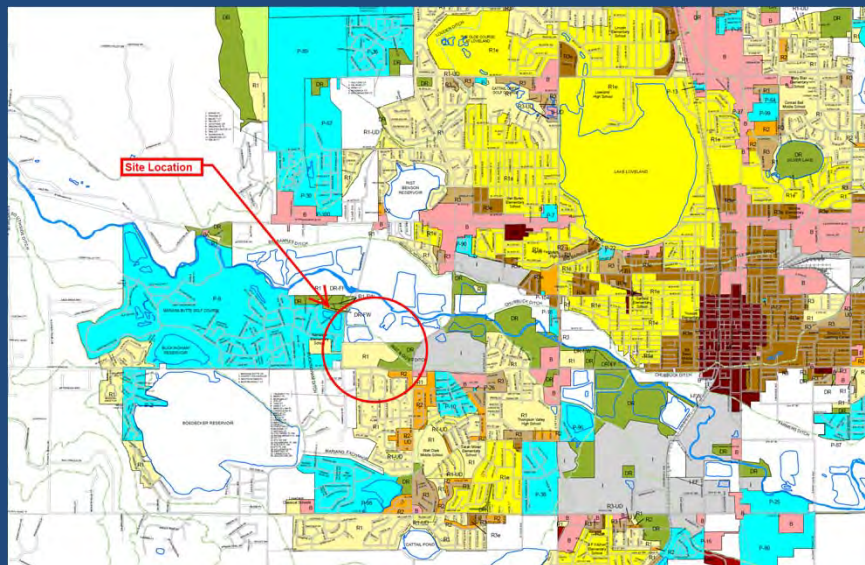
### Rezoning

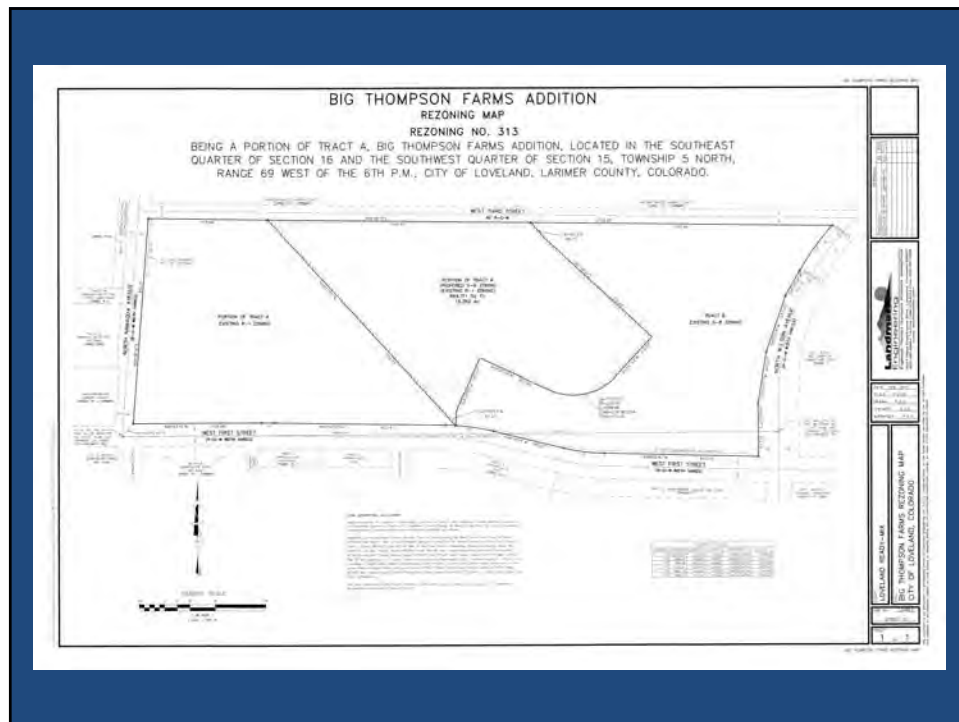
Current Zoning: R1 – Developing Low-Density Residential

Residential development with gross density of 2-4 dwelling units /acre

Proposed Zoning: Development Reserve (DR)

No uses by right





## Big Thompson Farms Addition

## Uses by right in the DR zone:

None.





## Big Thompson Farms Addition

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### Uses by special review in the DR zone:

- Farms, gardens, raising crops
- Sale of agricultural products produced on site
- Greenhouses, turf and sod farms, nurseries
- Garden supply centers
- Public utility and public service facilities
- Public parks, recreation, golf courses, storm water detention areas



## Big Thompson Farms Addition

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### Uses by special review in the DR zone:

- Oil, gas and other hydrocarbon well drilling
- Personal Wireless Service Facilities (cell towers and antennas)

ALL - no permanent structures that permanently preclude extraction of commercial minerals

- Extraction of commercial minerals



## Big Thompson Farms Addition

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### Commercial Mineral Deposit:

Natural mineral deposit of limestone used for construction purposes, coal, sand, gravel and quarry aggregate for which extraction by an extractor is, or will be, commercially feasible and regarding which it can be demonstrated by geologic, mineralogic or other scientific data that such deposit has a significant or strategic value to the area, state or nation.



## Big Thompson Farms Addition

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CRS 35-1-305 (1) and (2)

City Municipal Code 18.52.040

Precludes the City from applying zoning to property in a manner that interferes with extraction of identified commercial minerals.



## Big Thompson Farms Addition

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### Purpose of the Land Use Plan and Map in the 2005 Comprehensive Plan, as amended:

To provide:

1. A consolidated set of goals and objectives addressing growth management, annexation, activity centers and commercial and industrial **development**, **residential growth** and neighborhood preservation, and community facilities;



## Big Thompson Farms Addition

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2. A framework or “roadmap” for future **growth**;
3. Guidelines to assist in the interpretation and application of the Plan during **development** review;
4. Information to further describe and support designations of land uses and trends likely to be encountered based on the 2005 General Plan update.



## Big Thompson Farms Addition

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### Comprehensive Plan Findings

**Finding 1.** *Does the amendment implement or further, or is it otherwise consistent with, one or more of the **philosophies, goals, policies and strategies** of the Comprehensive Plan, as amended.*

**Finding 2.** *Will the amendment interfere with the existing, emerging, proposed or future land use patterns and/or densities/intensities of the surrounding neighborhood as depicted on the Land Use Plan Map as contained within the 2005 Comprehensive Plan, as amended?*



## Big Thompson Farms Addition

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### Comprehensive Plan Findings

**Finding 3.** *Will the amendment interfere with, prevent or implement the provision of any of the area's existing planned, or previously committed services or proposals for community facilities, or other specific public or private actions contemplated within the 2005 Comprehensive Plan, as amended?*

**Finding 4.** *Will the amendment interfere with, prevent, or implement the provision of any of the area's existing or planned transportation system services as contemplated by the 2030 Transportation Plan, as amended?*



## Big Thompson Farms Addition

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### Rezoning Findings

**Finding 1.** The purposes set forth in Section 18.04.010 of the Loveland Municipal Code would be met if any *use permitted by right* in the zone district being requested was *developed* on the subject property.

**Finding 2.** Development of the subject property pursuant to any of the *uses permitted by right* under the zoning district would result in *development* that is compatible with existing land uses adjacent to and in close enough proximity to the subject property to be effected by *development* of it.



## Big Thompson Farms Addition

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### Rezoning Findings

**Finding 3.** *Development* of the subject property pursuant to any of the *uses permitted by right* under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and services master plans.

**Finding 4.** *Development* of the subject property pursuant to any of the *uses permitted by right* under the zoning district being requested would result in *development* that is consistent with relevant policies contained in Section 4.0 of the 2005 Loveland Comprehensive Plan, as amended.



## Big Thompson Farms Addition

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### Rezoning Findings

**Finding 5.** *Development* of the subject property pursuant to any of the *uses permitted by right* under the zoning district being requested would result in development that would not be detrimental to the health, safety, or welfare of the neighborhood or general public.

**Finding 6. Colorado Revised Statute 34-1-305 and Municipal Code Section 18.52.040.** *The proposed location and the use of the land, and the conditions under which it would be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-302 (1), as amended. Owners of all severed mineral estates have been notified of the public hearing at least 30 days prior to the hearing date.*



## Big Thompson Farms Addition

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### Staff Recommendations:

1. Make the findings in Section VI. of the staff report and approve the proposed Comprehensive Plan amendment.
  2. Make the findings in Section VII. of the staff report and approve the proposed rezoning.
- (See formal motions in the staff report.)





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

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

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**AGENDA ITEM:** 23  
**MEETING DATE:** 10/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

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**TITLE:**

An Emergency Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Costs Related to the Response and Initial Recovery from the 2013 Flood

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first and only 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
- 

**SUMMARY:**

This is an administrative action. The Emergency Ordinance appropriates funding of \$4,872,010 for the costs of responding to and recovery from the 2013 Flood.

**BUDGET IMPACT:**

- ☐ Positive  
☒ Negative  
☐ Neutral or negligible

The appropriation is funded by unassigned fund balance which reduces the flexibility to fund other projects or programs.

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**BACKGROUND:**

The City encountered overtime and supply costs responding to the many situations resulting from the flood. Recovery has required supply and purchase costs for the repair and cleanup of City facilities. In the Water and Power Enterprise funds there are also capital costs to

reconstruct lines and repair structures damaged or destroyed by the Flood. The ordinance includes appropriations for:

- Overtime in several departments during the response stage;
- Supplies and purchased services related to the Disaster Activity Center (DAC)
- Cleanup and repair costs for City parks and ball fields;
- A transfer to the Transportation Fund for traffic control, signs and signals required during the event;
- An increase to the City contribution to the Loveland Fire Rescue Authority for response costs.

In the Water Enterprise funding is appropriated for

- Overtime and supplies for incident response;
- Repair and maintenance costs as part of the recovery stage to repair or replace damaged infrastructure;
- Capital costs for:
  - Repair an intake structure at the Water Treatment Plant;
  - A temporary diversion to supply water to the intake structure;
  - Repair and replacement of a 48" and 36" transmission line north of U.S. 34;
  - Construction of an all-weather road between the Treatment Plant and U.S. 34;
  - Replacing 36' and 20" transmission lines;
  - A new 6" water line replacement at George Rist Ditch and U.S. 34;
  - Replacing a 16" water line crossing through River's Edge Park;
  - Repairing a 8" water line crossing the Big Thompson River at Lincoln Avenue;
  - Replacing a 6" water line crossing the Big Thompson River at Fairgrounds Park;
  - Replacing meter pits damaged by the flood;
  - Replacing 20" and 36 " transmission lines for the Water Treatment Plant to U.S. 34;
  - Recovering and protecting a 24" transmission line north of the big Thomson River under Namaqua Road; and
  - Repairing large diameter waterline potholing and inspection at river crossings.

In the Wastewater Enterprise funding is appropriated for:

- Overtime and supplies for incident response;
- Repair and maintenance costs as part of the recovery stage to repair or replace damaged infrastructure;
- Capital Costs for:
  - The Southside lift station and force main at Boise Avenue;
  - A 20" force main repair at Boise Avenue and the Big Thompson River;
  - Replacing a 15" gravity sewer line at Marianna Cove;
  - An emergency sewer by-pass pumping station near Mariana Cove;
  - Manhole repair and backfill reclamation;
  - A 15" gravity sewer line at Namaqua;
  - Site repair at the Water Treatment Plant; and

- Televis and inspect 15" and 21" sewer pipe at 1<sup>st</sup> Street south of Centennial Park.

In the Power Enterprise funding is appropriated for:

- Overtime and supplies for incident response;
- Repair and maintenance costs as part of the recovery stage to repair or replace damaged infrastructure;
- Capital costs to begin restoring power from the Sylvan Dale Ranch along the Big Thompson Canyon to the Waltonia area.

In the Solid Waste Enterprise funding is appropriated for disposal cost of debris from the Flood.

The total costs to the City for responding to and recovering from the Flood will be significantly higher than the \$4,872,010 shown in this ordinance. Many of the costs are being covered by existing appropriations in the 2013 Budget. Examples include: \$120,000 in the Parks and Recreation Department for repairing parks and ball fields; \$150,000 in the Golf Enterprise for course repair; \$700,000 in the Open Space fund for repair and cleanup costs, and \$250,000 in the Storm Water Enterprise for drainage repairs.

The ordinance only covers projected total costs for the 2013 fiscal year. Staff will return with a supplemental budget early in 2014 for additional recovery costs.

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**REVIEWED BY CITY MANAGER:**

*William D. Cabell*

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**LIST OF ATTACHMENTS:**

1. Emergency Ordinance

FIRST READING

October 15, 2013

ORDINANCE NO. \_\_\_\_\_

**AN EMERGENCY ORDINANCE ENACTING A SUPPLEMENTAL  
BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND  
BUDGET FOR COSTS RELATED TO THE RESPONSE AND INITIAL  
RECOVERY FROM THE 2013 FLOOD**

**WHEREAS**, on September 12, 2013, the Loveland City Manager issued a “Declaration of Local Disaster” under C.R.S. § 24-33.5-709, which was extended by Resolution of the City Council on September 17, 2013 (the “Declaration”); and

**WHEREAS**, as stated in the Declaration, the City of Loveland, and much of the Colorado Front Range, experienced heavy rains and flash flooding that occurred beginning September 11, 2013, resulting in loss of life and injury and substantial damage and destruction to private and public property (the “2013 Flood”); and

**WHEREAS**, the 2013 Flood has caused roads to be closed in Loveland for days and caused significant damage to private and public property within the City and surrounding areas, including substantial damage to the City’s infrastructure, particularly its streets and bridges and its park and recreational areas; and

**WHEREAS**, flooding within Loveland was particularly serious in and around the Big Thompson River and significant, long-term and costly recovery efforts will be necessary in Loveland in and around the River and other parts of Loveland; and

**WHEREAS**, the City has reserved funds not 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 for operating and capital costs related to response to and recovery from the 2013 Flood.

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

**Section 1.** That reserves in the amount of \$845,150 from Unassigned Fund Balance in the General Fund 100, \$80,000 from Unassigned Fund Balance in the Solid Waste Enterprise Fund 360, \$1,570,190 from Unassigned Fund Balance in the Water Enterprise Fund, \$476,670

from Unassigned Fund Balance in the Wastewater Enterprise Fund, and \$1,900,000 from the Unassigned Fund Balance in the Power Enterprise fund are available for appropriation. Revenues in the total amount of \$4,872,010 are hereby appropriated for operating and capital costs related to responding and recovery from the 2013 Flood. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
General Fund 100 - 2013 Flood Impacts**

<b>Revenues</b>		
Fund Balance		845,150
<b>Total Revenue</b>		<b>845,150</b>
<b>Appropriations</b>		
100-16-163-0000-41021-FLD913	Overtime	7,500
100-18-180-1500-42899-FLD913	Other Supplies	10,000
100-18-180-1500-43450-FLD913	Professional Services	10,000
100-19-191-0000-41021-FLD913	Overtime	720
100-19-192-0000-41021-FLD913	Overtime	450
100-19-192-0000-43270-FLD914	Travel	2,160
100-19-194-0000-41021-FLD913	Overtime	250
100-19-195-0000-42899-FLD913	Other Supplies	950
100-21-201-2101-41021-FLD913	Overtime	900
100-21-202-2102-41021-FLD913	Overtime	54,900
100-21-204-2104-41021-FLD913	Overtime	1,950
100-21-202-2107-41021-FLD913	Overtime	7,950
100-21-204-2109-41021-FLD913	Overtime	270
100-21-204-2111-41021-FLD913	Overtime	190
100-21-202-2113-41021-FLD913	Overtime	3,730
100-21-204-2114-41021-FLD913	Overtime	1,960
100-51-562-0000-43899-FLD913	Other Services	450,000
100-91-901-0000-47211-FLD913	Transfer to Transportation Fund	170,000
100-91-902-0002-43714-FLD913	Payment to Outside Agencies	121,270
<b>Total Appropriations</b>		<b>845,150</b>

**Supplemental Budget  
Transporation Fund 211**

**Revenues**

211-23-235-0000-37100-FLD913	Transfer from the General Fund	170,000
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**Total Revenue****170,000****Appropriations**

211-23-235-0000-41021-FLD913	Overtime	31,000
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211-23-235-0000-42042-FLD913	Signs	1,000
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211-23-235-0000-42317-FLD913	Traffic Signals	58,000
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211-23-235-0000-43899-FLD913	Other Services	80,000
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**Total Appropriations****170,000**



**Supplemental Budget  
Water Enterprise Fund 300**

**Revenues**

Fund Balance	1,570,190
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**Total Revenue****1,570,190****Appropriations**

330-45-301-2900-41021-FLD913	Overtime	200
330-45-301-2900-41544-FLD913	FICA	10
300-45-302-2903-41021-FLD913	Overtime	280
300-45-302-2903-41544-FLD913	FICA	20
300-45-314-2903-41021-FLD913	Overtime	3,350
300-45-314-2903-41544-FLD913	FICA	260
300-45-305-2912-41021-FLD913	Overtime	10
300-46-311-2903-41021-FLD913	Overtime	300
300-46-311-2903-41544-FLD913	FICA	30
300-46-312-2903-41021-FLD913	Overtime	200
300-46-312-2903-41544-FLD913	FICA	10
300-46-313-2903-41021-FLD913	Overtime	37,430
300-46-313-2903-41544-FLD913	FICA	2,870
300-46-316-2903-41021-FLD913	Overtime	100
300-46-316-2903-41544-FLD913	FICA	10
300-46-317-2903-41021-FLD913	Overtime	1,000
300-46-317-2903-41544-FLD913	FICA	80
300-46-318-2902-41021-FLD913	Overtime	10,500
300-46-318-2902-41544-FLD913	FICA	800
300-46-319-2903-41021-FLD913	Overtime	20,000
300-46-319-2903-41544-FLD913	FICA	1,530
300-47-330-2903-41021-FLD913	Overtime	280
300-47-330-2903-41544-FLD913	FICA	20
300-47-315-2903-41021-FLD913	Overtime	400
300-47-315-2903-41544-FLD913	FICA	30
300-45-314-2903-41021-FLD913	Overtime	950
300-45-314-2903-41544-FLD913	FICA	70
300-46-317-2902-42032-FLD913	Parts & Supplies - Wtr Qlty Lab	800
300-46-318-2902-42032-FLD913	Parts & Supplies - WTP	6,400
300-46-313-0000-42071-FLD913	W/H Issues - Water Ops	3,900
300-46-310-2903-43450-FLD913WA0304	Professional Svcs - Engineering	10,000
300-46-310-2903-43450-FLD913	Professional Svcs - Engineering	12,500
300-46-310-2903-43450-FLD913	Professional Svcs - Engineering	12,500
300-46-318-2902-43569-FLD913WAO300	Repair & Maint - WTP	20,000
300-46-318-2902-43569-FLF913WAO301	Repair & Maint - WTP	300,000
300-46-318-2902-43569-FLD913	Repair & Maint - WTP	50,000
300-46-313-2903-43569-FLD913WAO302	Repair & Maint - Water Ops	625,000
300-46-313-2903-43569-FLD913WAO303	Repair & Maint - Water Ops	50,000
300-46-313-2903-43569-FLD913WAO305	Repair & Maint - Water Ops	10,000
300-46-313-2903-43569-FLD913WAO306	Repair & Maint - Water Ops	5,000
300-46-313-2903-43569-FLD913WAO307	Repair & Maint - Water Ops	10,000
300-46-313-0000-43775-FLD913	Other Rents - Water Ops	14,550
300-46-313-0000-43775-FLD913	Other Rents - Water Ops	8,300
300-46-310-2903-43952-FLD913WA304C	Capital Design - Engineering	100,000
300-46-318-2902-43960-FLD913WA300C	Capital Constrution - Engineering	100,000
300-46-310-2903-43960-FLD913WA301C	Capital Constrution - Engineering	25,500
300-46-310-2903-43960-FLD913WA302C	Capital Constrution - Engineering	100,000
300-46-310-2903-43960-FLD913WA303C	Capital Constrution - Engineering	25,000

**Total Appropriations****1,570,190**

**Supplemental Budget  
Wastewater Enterprise Fund 315**

**Revenues**

Fund Balance	476,670
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**Total Revenue****476,670****Appropriations**

315-45-301-2900-41021-FLD913	Overtime	100
315-45-301-2900-41544-FLD913	FICA	10
315-45-302-2900-41021-FLD913	Overtime	30
315-45-302-2900-41544-FLD913	FICA	10
315-46-311-2904-41021-FLD913	Overtime	300
315-46-311-2904-41544-FLD913	FICA	30
315-46-312-2904-41021-FLD913	Overtime	100
315-46-312-2904-41544-FLD913	FICA	10
315-45-313-2904-41021-FLD913	Overtime	21,680
315-45-313-2904-41544-FLD913	FICA	1,660
315-46-316-2904-41021-FLD913	Overtime	100
315-46-316-2904-41544-FLD913	FICA	10
315-46-317-2902-41021-FLD913	Overtime	2,000
315-46-317-2902-41544-FLD913	FICA	140
315-46-318-2902-41021-FLD913	Overtime	5,000
315-46-318-2902-41544-FLD913	FICA	380
315-46-319-2904-41021-FLD913	Overtime	17,890
315-46-319-2904-41544-FLD913	FICA	1,360
315-47-330-2904-41021-FLD913	Overtime	300
315-47-330-2904-41544-FLD913	FICA	20
315-47-315-2904-41021-FLD913	Overtime	500
315-47-315-2904-41544-FLD913	FICA	40
315-46-310-2903-43450-FLD913	Professional Svcs - Engineering	12,500
315-46-310-2903-43450-FLD913	Professional Svcs - Engineering	12,500
315-46-318-2902-43569-FLD913WW0313	Repair & Maint - WWTP	20,000
315-46-318-2902-43569-FLD913	Repair & Maint - WWTP	5,000
315-46-313-2904-43569-FLD913WW0310	Repair & Maint - Water Ops	30,000
315-46-313-2904-43569-FLD913WW0309	Repair & Maint - Water Ops	20,000
315-46-313-2904-43899-FLD913WW0311	Other Services - Water Ops	75,000
315-46-313-2904-43899-FLD913WW0312	Other Services - Water Ops	10,000
315-46-313-2904-43899-FLD913WW0314	Other Services - Water Ops	5,000
315-46-319-2904-43899-FLD913WW0308	Other Services - Tech Services	100,000
315-46-310-2904-43952-FLD913WW305G	Capital Design - Engineering	135,000

**Total Appropriations****476,670**

**Supplemental Budget  
Power Enterprise Fund 330**

**Revenues**

Fund Balance	1,900,000
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**Total Revenue****1,900,000****Appropriations**

330-45-301-2900-41021-FLD913	Overtime	270
330-45-301-2900-41544-FLD913	FICA	20
330-45-302-2903-41021-FLD913	Overtime	1600
330-45-302-2903-41544-FLD913	FICA	110
330-45-314-2903-41021-FLD913	Overtime	720
330-45-314-2903-41544-FLD913	FICA	60
330-45-305-2912-41021-FLD913	Overtime	10
330-45-304-2900-41021-FLD913	Overtime	400
330-45-304-2900-41544-FLD913	FICA	30
330-46-311-2903-41021-FLD913	Overtime	550
330-46-311-2903-41544-FLD913	FICA	40
330-46-316-2903-41021-FLD913	Overtime	50
330-46-316-2903-41544-FLD913	FICA	10
330-47-330-2903-41021-FLD913	Overtime	1,000
330-47-330-2903-41544-FLD913	FICA	80
330-47-315-2903-41021-FLD913	Overtime	1,500
330-47-315-2903-41544-FLD913	FICA	110
330-47-331-2903-41021-FLD913	Overtime	2,500
330-47-331-2903-41544-FLD913	FICA	180
330-47-332-2903-41021-FLD913	Overtime	177,200
330-47-332-2903-41544-FLD913	FICA	13,560
330-47-332-0000-42422-FLD913	Food	1,000
330-47-332-2903-42032-FLD913	Parts and Supplies	1,600
330-47-332-2903-42071-FLD913	Materials - O&M	15,000
330-47-332-2903-43569-FLD913	Repair and Maint	76,500
330-47-332-2903-43899-FLD913	Other Services	2,950
330-47-332-2903-48244-FLD913	Motor Vehicle	24,000
330-47-332-2903-48240-FLD913	Equipment	200,000
330-47-332-2903-43775-FLD913	Other Rents	67,950
330-47-332-2903-49399-FLD913	Other Capital/Contractors	956,000
330-47-332-2903-49371-FLD913	Materials	355,000

**Total Appropriations****1,900,000**

**Supplemental Budget  
Solid Waste Enterprise Fund 360**

<b>Revenues</b>	
Fund Balance	80,000
<b>Total Revenue</b>	<b>80,000</b>
<b>Appropriations</b>	
360-23-270-0000-43657-FLD913 Waste Disposal	80,000
<b>Total Appropriations</b>	<b>80,000</b>

**Section 2.** That this Ordinance is adopted as an emergency ordinance pursuant to City Charter Section 4-10 on the basis that there is an immediate need to fund the operating and capital costs of responding to and beginning recovery from the 2013 Flood. Accordingly, the City Council hereby finds and determines that an emergency exists requiring the immediate passage of this Ordinance for the preservation of the public health, safety and welfare of the citizens of the City of Loveland. Therefore, as provided in City Charter Section 4-10(b), this Ordinance shall take effect upon the date of its adoption and the City Clerk shall publish this Ordinance in full after its adoption.

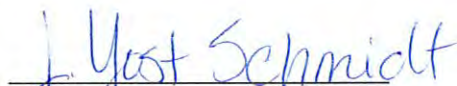
ADOPTED this 15<sup>th</sup> day of October, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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