

permitted by this Deed. Grantor shall not pave or otherwise surface a Road with any impervious surface, except for the Road providing access to the Building Envelope or any other Road if Grantee determines the paving of the Road is consistent with the Purpose.

(3) Trails. Grantor shall not construct or establish any new Trail on the Property except for new Trails to be constructed as mutually agreed upon by Grantor and Grantee that are consistent with the Deed and do not adversely affect the Conservation Values.

f. Fences. Existing fences may be maintained, repaired and replaced, and new fences may be built anywhere on the Property. The location and design of any fencing located outside the Building Envelope shall facilitate and be compatible with the movement of wildlife across the Property and otherwise consistent with the Purpose.

g. Utility Improvements. If otherwise permitted in an instrument recorded as of the Effective Date, or approved by Grantor after notice to Grantee in accordance with **Section 7** of this Deed, existing energy generation or transmission infrastructure and other existing utility improvements, if any, may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility improvements include but are not limited to: (i) natural gas distribution pipelines, electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) septic systems; (iv) water wells, domestic water storage and delivery systems; and (v) renewable energy generation systems including but not limited to wind, solar, geothermal, or hydroelectric for use on the Property ("**Utility Improvements**"). Utility Improvements may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with the Purpose.

(1) Within the Building Envelope. Grantor may enlarge or construct Utility Improvements within the Building Envelope for the uses permitted on the Property without further permission of Grantee, provided that no Utility Improvement exceeds 35 feet in height.

(2) Outside of the Building Envelope. Grantor shall not enlarge or construct any Utility Improvements outside of the Building Envelope without Grantee's approval. However, Grantor reserves the right to construct Utility Improvements outside the Building Envelope solely to provide utility services to the improvements permitted by this Deed, provided that no Utility Improvement exceeds 35 feet in height. Utility Improvements outside of the Building Envelope shall be located underground to the extent practicable.

(3) Additional Requirements. Prior to the enlargement or construction of any Utility Improvements on the Property, Grantor shall provide notice to Grantee in accordance with **Section 7** of this Deed. Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose.

(4) Alternative Energy.

(i) Wind, solar, and hydroelectric generation facilities that are primarily for the generation of energy for use on the Property in conjunction with those activities permitted by this Deed (collectively “Alternative Energy Generation Facilities”) may be constructed in accordance with this **Section 4.g(4)**. Notwithstanding the foregoing, no approval of Grantee shall be required if the Alternative Energy Generation Facilities permitted by this **Section 4.g(4)** are located within a Building Envelope or if the facilities are installed in conjunction with the operation of an agricultural improvement as described in **Section 4.d** above. Any other Alternative Energy Generation Facilities may only be constructed with the prior written approval of Grantee in Grantee’s sole discretion. Without limiting Grantee’s right to withhold such approval in its sole discretion, factors that Grantee may consider in determining whether to grant such approval shall include but not be limited to (a) whether the installation and siting would substantially diminish or impair the Conservation Values, (b) the physical impact of the proposed facility on the Conservation Values, (c) the feasibility of less impactful alternatives, and (d) such other factors as Grantee may determine are relevant to the decision. The construction of Alternative Energy Generation Facilities that are not for use primarily in conjunction with those activities permitted by this Deed are prohibited anywhere on the Property. Nothing in this **Section 4.g(4)** shall be construed as permitting the construction or establishment of a wind farm or commercial solar energy production facility.

(ii) Any energy generated by Alternative Energy Generation Facilities constructed in accordance with this **Section 4.g(4)** that is incidentally in excess of Grantor’s consumption may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

(iii) In the event of technological changes or legal changes that make “expanded” Alternative Energy Generation Facilities more compatible with I.R.C. Section 170(h) or any applicable successor law, Grantee in its sole discretion may approve expanded Alternative Energy Generation Facilities that would not substantially diminish or impair the Conservation Values. Prior to approving any expanded Alternative Energy Generation Facilities, Grantee shall submit an Alternative Energy Development Plan to the Board for its review. If the Board deems that the facilities proposed in the Alternative Energy Development Plan are inconsistent with the Board’s Grant or the Purpose, or that the Alternative Energy Development Plan does not contain sufficient information, Grantee shall not permit any expanded Alternative Energy Generation Facilities on the Property. For the purposes of this **Section 4.g(4)(iii)**, the term “expanded” shall mean the development of Alternative Energy Generation Facilities to an extent that is greater than the level permitted by **Sections 4.g(4)(i) and 4.g(4)(ii)**.

5. Prohibited and Restricted Uses. Any activity on or use of the Property inconsistent with the Purpose is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted as set forth below:

a. Development Rights. To fulfill the Purpose, Grantor conveys to Grantee all development rights, except those expressly reserved by Grantor in this Deed, deriving from, based upon or attributable to the Property in any way, including but not limited to all present and future rights to divide the Property for the purpose of development into residential, commercial or industrial lots or units or to receive density or development credits for the same for use off of the Property (“**Grantee’s Development Rights**”). The Parties agree that Grantee’s Development Rights shall be held by Grantee in perpetuity in order to fulfill the Purpose, and to ensure that such rights are forever released, terminated and extinguished as to Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating density credits or permissible lot yield of the Property or any other property.

b. Non-Residential and Minor Non-Residential Improvements. Grantor shall not construct or place any, Non-Residential Improvements or Minor Non-Residential Improvements on the Property except in accordance with **Section 4.d** of this Deed.

c. Recreational and Commercial Improvements. Grantor shall not construct or place any new recreational improvement on the Property, including but not limited to athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or shooting ranges. Grantor shall not construct or place any new commercial improvement on the Property.

d. Subdivision. The Parties agree that the division, subdivision, de facto subdivision or partition in kind of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including but not limited to condominium interests or the partition of undivided interests) is prohibited. At all times Grantor shall own and convey the Property as a single parcel, which shall be subject to the provisions of this Deed, regardless of whether the Property now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes. Grantor may own the single parcel by joint tenancy or tenancy in common. However, Grantor shall not undertake any legal proceeding to partition, subdivide, or partition in kind in any manner such undivided interests in the single parcel.

e. Removal of Vegetation and Timber Harvesting. Except as otherwise set forth in this Deed, Grantor shall not remove any vegetation, including shrubs and trees, or harvest any timber from the Property except in accordance with **Section 4.b(3)**.

f. Mineral Extraction. As of the Effective Date, Grantor owns all of the coal, oil, gas, hydrocarbons, sand, soil, gravel, rock and other minerals of any kind or description (the “**Minerals**”) located on, under, or in the Property or otherwise associated with the Property. This Deed expressly prohibits the mining or extraction of Minerals using any surface mining method. Notwithstanding the foregoing, Grantor and Grantee may permit mineral extraction utilizing methods other than surface mining if the method of extraction has a limited, localized impact on the Property that is not irretrievably destructive of the Conservation Values. However, Grantor and Grantee agree that the

following provisions shall apply to any such proposed mineral extraction by Grantor or any third party, as applicable.

(1) Soil, Sand, Gravel and Rock. Grantor may extract soil, sand, gravel or rock without further permission from Grantee so long as such extraction: (i) is solely for use on the Property for non-commercial purposes; (ii) is in conjunction with activities permitted in this Deed, such as graveling roads and creating stock ponds; (iii) is accomplished in a manner consistent with the preservation and protection of the Conservation Values; (iv) does not involve disturbing by such extraction more than one half-acre of the Property at one time, and uses methods of mining that may have a limited and localized impact on the Property but are not irretrievably destructive of the Conservation Values; and (v) is reclaimed within a reasonable time by refilling or some other reasonable reclamation method for all areas disturbed. This provision shall be interpreted in a manner consistent with I.R.C. § 170(h), as amended, and the Treasury Regulations adopted pursuant thereto.

g. Trash. The dumping or accumulation of any kind of trash or refuse on the Property, including but not limited to household trash and hazardous chemicals, is prohibited. Limited dumping or accumulation of other farm-related trash and refuse produced on the Property is permitted, provided that such dumping does not substantially diminish or impair the Conservation Values and is confined within a total area less than one-quarter acre at any given time. This **Section 5.g** shall not be interpreted to prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

h. Water Rights Included. The Parties agree that it is appropriate to encumber certain water rights beneficially used on the Property with this Deed pursuant to C.R.S. § 38-30.5-102, including all of Grantor's right, title, and interest in and to the water and water rights described in **Exhibit E**, together with all associated canals, ditches, laterals, headgates, springs, wells, ponds, reservoirs, water shares and stock certificates, water allotments, contracts, units, permits, easements and rights of way, and irrigation equipment affixed to the Property (collectively, the "**Water Rights**").

(1) Permitted Water Uses. The Parties agree that the Water Rights will be used according to their decreed terms. The Parties further agree that the Water Rights are dedicated and restricted exclusively for conservation purposes, including but not limited to the Conservation Values of the Property, agricultural, wildlife habitat, horticultural, wetlands, recreational, forest, or other uses consistent with the protection and restoration of open land, environmental quality, or life-sustaining ecological diversity (the "**Permitted Water Uses**"). The Permitted Water Uses specifically include:

(i) Historical Use. The Parties agree that Grantor shall have the paramount right to use and enjoy the Water Rights on the Property consistent with recent historical practices, including continued irrigation or other historical use of the Water Rights. In the event that Grantor can no longer use the Water Rights in accordance

with recent historical practices, the Water Rights shall be used for other Permitted Water Uses;

(ii) Instream Flow Use. The Parties agree that Grantor may enter into temporary legally enforceable water leases, contracts, emergency water loans, or similar agreements for conservation purposes, not to exceed three consecutive years or five out of every ten years, to increase instream flows and/or water levels in streams, rivers, lakes, and reservoirs to preserve or improve the natural environment of such water body(s), provided that: (1) Grantee has given its prior written consent to such arrangements; (2) that such use, in the opinion of Grantee, would not jeopardize the long-term Conservation Values of the Property; (3) that such arrangements do not permanently separate the Water Rights from the Property; (4) that such arrangements comply with current law; and (5) that Grantee has provided written notice to the Board;

(iii) Restoration/Enhancement Use. Grantor may propose projects on the Property, including the riverbed of the Property, that prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, wildlife habitat, and ecological health of the Property. These may include a change of Water Rights pursuant to C.R.S. § 37-92-302 or any successor statute (a “**Change**”) or water infrastructure construction. Such Change or construction shall be undertaken only after creation of a site-specific plan for restoration/enhancement, which has been submitted to and approved by Grantee.

Grantor shall have the right to install, construct, maintain, repair, and, if destroyed, reconstruct any facilities related to the Water Rights (such as gages, ditches, wells, reservoirs, recharge ponds, etc.), unless the Conservation Values of the Property would be unreasonably damaged thereby, as determined by Grantee in its reasonable discretion.

(2) Restrictions on Water Rights. Except as permitted by **Section 5.h(1)**, the Parties agree that Grantor may not: (i) Change the Water Rights to or use the Water Rights for municipal, industrial, commercial, or any other new uses; (ii) Change the Water Rights for use other than on the Property; (iii) sell or lease the Water Rights, or encumber them separately from the Property or otherwise legally separate them from the Property; or (iv) have the points of diversion, or the type or the place of use within or without the Property, changed except after Grantor’s receipt of written determination by Grantee that such changes are consistent with the Permitted Uses or will not materially impair the Conservation Values of the Property. Grantor shall not, without the prior written approval from Grantee, which approval shall not be unreasonably withheld, construct, or permit others to construct, any new diversion, storage, or other water structures upon the Property; develop any conditional water rights for use on the Property; or otherwise undertake any new development of water resources for use on the Property.

(3) Change of Conditions. Grantor expressly waives any claim to use, change or transfer all or any part of the Water Rights other than as provided in this Deed, regardless of any future change in circumstances, change in values, or other reasons,

based on any theory of reasonable accommodation or other theory that would release any or all of the Water Rights from the provisions of this Deed without Grantee's and the Board's express written consent, which can be granted, withheld, or conditioned by each in its sole discretion.

(4) Protection of Water Rights. In order to preserve and protect the Conservation Values of the Property, Grantor shall not abandon or allow the abandonment of any of the Water Rights, by action or inaction. Grantor shall annually report to Grantee the nature and extent of use of the Water Rights during the prior year, which report need not be in writing, and shall provide copies of any reports Grantor submitted to the State or Division Engineer or Water Commissioner. Grantor shall provide Grantee a copy of any written notice received by Grantor from any state water official concerning the use, or possible abandonment, of the Water Rights.

If the Water Rights appear on the decennial abandonment list as provided by C.R.S. § 37-92-401 or any successor statute, or Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, Grantee shall give Grantor written notice of such abandonment or threat of abandonment and shall meet with Grantor to discuss the matter. If, and only if, Grantor fails to cure the threat of abandonment within 90 days of receiving such notice from Grantee, Grantee shall, in addition to any other remedies available to Grantee under this Deed or law, have the right to (1) enter the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights, if desired by Grantee; and (2) seek removal of the Water Rights from the decennial abandonment list. If the Water Rights remain subject to abandonment, Grantee may, after consultation with Grantor, seek to Change the Water Rights to another Permitted Water Use. Grantor agrees to cooperate in any manner necessary to accomplish such changes, and authorizes and appoints Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate such changes.

i. Motorized Vehicles. Motorized vehicles may be used only in conjunction with activities permitted by this Deed and in a manner that is consistent with the Purpose. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

j. Commercial or Industrial Activity.

(1) No industrial uses shall be allowed on the Property. Commercial uses are allowed, as long as they are conducted in a manner that is consistent with I.R.C. § 170(h) and the Purpose. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:

(i) Producing, processing or selling plants, animals, or other farm or ranch products that are predominantly grown or raised outdoors on the Property, including forages, sod crops, grains, feed crops, field crops, berries, herbs, flowers, seeds,

grasses, nursery stock, fruits, vegetables, aquaculture, trees, and other similar uses and activities;

(ii) Breeding and grazing livestock, such as cattle, horses, sheep, swine, and similar animals;

(iii) Customary rural enterprises, such as farm machinery repair or livestock veterinary services, conducted within the Building Envelope; and

(iv) Wildlife viewing activities, such as guided walks, photography, and environmental education.

(2) The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots and other intensive growth livestock farms, such as dairy, swine, or poultry farms, are inconsistent with the Purpose and are prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the commercial business of the reception and feeding of livestock.

k. Signage or Billboards. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or lease, "no trespassing" signs, signs regarding the private leasing of the Property for hunting, fishing or other low-impact recreational uses, and signs informing the public of the status of ownership. Any such signs shall be located and designed in a manner consistent with the Purpose. Grantee shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Board, identifying the Board's Grant and investment in this Property to the public.

6. Land Management / Management Plan.

To facilitate periodic communication between Grantor and Grantee about management issues that may impact the Conservation Values, the Property shall be operated and managed in accordance with a "**Management Plan**" jointly prepared and agreed upon by Grantor and Grantee within one year of the Effective Date. The Parties shall review the Management Plan at least every ten years and update it if either Party determines an update is necessary. The Management Plan shall include provisions to perform a Preble's Meadow Jumping Mouse habitat survey, cap and abandon the existing unregistered water well, eradicate the Russian Olives around the buildings, and restore the site of the disturbances.

7. Grantor Notice and Grantee Approval. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the Purpose. Whenever notice is required, Grantor shall notify

Grantee in writing within a reasonable period of time prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose. Where Grantee's approval is required, Grantor shall not undertake the requested activity until Grantor has received Grantee's approval in writing. Grantee shall grant or withhold its approval in writing within a reasonable period of time within receipt of Grantor's written request and sufficient supporting details as described above. Grantee's approval may be withheld only upon Grantee's reasonable determination that the activity as proposed is not consistent with the Purpose or the express terms of this Deed, unless this Deed provides that approval for a particular request may be withheld in the sole discretion of the Grantee.

8. Enforcement. If Grantee finds what it believes is a violation of this Deed, Grantee shall immediately notify Grantor and the Board in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either:

- a. Restore the Property to its condition prior to the violation; or
- b. Provide a written explanation to Grantee of the reason why the alleged violation should be permitted, in which event the Parties agree to meet as soon as possible to resolve their differences. If a resolution cannot be achieved at the meeting, the Parties may meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity that could increase or expand the alleged violation during the mediation process. If Grantor refuses to undertake mediation in a timely manner or should mediation fail to resolve the dispute, Grantee may, at its discretion, take appropriate legal action. Notwithstanding the foregoing, when Grantee, in its sole discretion, determines there is an ongoing or imminent violation that could irreversibly diminish or impair the Conservation Values, Grantee may, at its sole discretion, take appropriate legal action without pursuing mediation, including but not limited to seeking an injunction to stop the alleged violation temporarily or permanently or to require the Grantor to restore the Property to its prior condition. The Board shall in no event be required to participate in any mediation.

9. Costs of Enforcement. Grantor shall pay any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including without limitation costs and expenses of suit, attorney fees and any costs of restoration necessitated by Grantor's violation of the terms of this Deed. If the deciding body determines that Grantor has prevailed in any such legal action, then each Party shall pay its own costs and attorney fees. However, if the deciding body determines that Grantee's legal action was frivolous or groundless, Grantee shall pay Grantor's costs and attorney fees in defending the legal action.

10. No Waiver or Estoppel. If the Grantee does not exercise, or delays the exercise of, its rights under this Deed in the event of a violation of any term, such inaction or delay shall not be deemed or construed to be a waiver by Grantee of such term or of any

subsequent violation of the same or any other term of this Deed or of any of Grantee's rights under this Deed. Grantor waives any defense of laches, estoppel, or prescription, including the one-year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. § 38-41-119, *et seq.*

11. Acts Beyond Grantor's Control. Nothing contained in this Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall be responsible for preventing activities by third parties on or affecting the Property that may violate the terms of this Deed.

12. Access. The general public shall have access to the Property, subject to any regulations by Grantor necessary and appropriate to protect public health and safety.

13. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication and maintaining adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

14. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "**Taxes**"), including any Taxes imposed upon, or incurred as a result of, this Deed, and shall furnish Grantee with satisfactory evidence of payment upon request.

15. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and the Board and the members, directors, officers, employees, agents, and contractors and the heirs, representatives, successors, and assigns of each of them (collectively "**Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in **Section 8**; and (3) the presence or release of hazardous or toxic substances on, under or about the Property. For the purpose of this **Section 15**, hazardous or toxic substances shall mean any hazardous or toxic substance that is regulated under any federal, state or local law. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee or the Board, nor shall Grantee or the Board have any right or ability, to exercise physical or

managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any similar law or regulation.

16. Condemnation. Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking or condemnation affecting the Property, and Grantee shall notify the Board and have the right to participate in any proceedings as a real property interest holder. Grantee may pursue any remedies in law or in equity, including opposition to the condemnation of the Property. If the Property or any part thereof or interest therein is sold or conveyed to a condemning authority under threat of condemnation or taken through condemnation or other involuntary conversion, Grantee shall be entitled to compensation determined as provided in **Section 19** of this Deed.

17. Termination or Extinguishment of Deed. Except as provided in **Section 16** of this Deed, this Deed or any part hereof may only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The only ground upon which this Deed can be terminated or extinguished is the total loss of all Conservation Values. If termination or extinguishment occurs, Grantee shall be entitled to compensation determined as provided in **Section 19** of this Deed.

18. Real Property Interest. This Deed constitutes a real property interest immediately vested in Grantee, the value of which has not been determined as of the Effective Date. Should the Deed be taken for the public use or otherwise terminated according to **Sections 16 and 17** above, Grantee shall be entitled to compensation for its interest, which shall be determined by a qualified appraisal that establishes the ratio of the value of the Deed interest to the value of the fee simple interest in the Property, expressed as a percentage, as of the date of the taking or termination (the "Easement Value Percentage"). The Easement Value Percentage shall be used to determine Grantee's compensation according to the following **Section 19**.

19. Compensation upon Condemnation, Termination, or Extinguishment

- a. If the Property, in whole or in part, is condemned pursuant to **Section 16** or if this Deed, is terminated or extinguished pursuant to **Section 17**, Grantee shall be entitled to a share of the proceeds of such action at least equal to the Easement Value Percentage multiplied by the value of the unencumbered fee simple interest (excluding the value of any improvements) in the portion of the Property that will no longer be encumbered by this Deed as a result of condemnation or termination, pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii). Grantor shall not voluntarily accept less than full fair market value for the property rights represented by its interest in this Deed without Grantee's approval. The Board shall be entitled to receive eighteen and eight tenths percent (18.8%) of Grantee's share of the proceeds. Upon Grantee's receipt of its

share of the proceeds, Grantee shall promptly remit to the Board its respective share of these proceeds.

- b. Grantee's use of its share of such proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6).
- c. Grantee's remedies described in this **Section 19** shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. §38-30.5-108.

20. Assignment.

a. This Deed is transferable, but Grantee may assign its rights and obligations under this Deed only to an organization that:

(1) is a qualified organization at the time of transfer under I.R.C. § Section 170(h) as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder;

(2) is authorized to acquire and hold conservation easements under Colorado law;

(3) agrees in writing to assume the responsibilities imposed on Grantee by this Deed; and

(4) is approved in writing as a transferee by the Board and Larimer County in the sole and absolute discretion of each entity. Grantee shall provide the Board and Larimer County with a written request to assign the Deed at least 45 days prior to the date proposed for the assignment transaction.

b. The Board and Larimer County shall each have the right to require Grantee to assign its rights and obligations under this Deed to a different organization if Grantee ceases to exist; is unwilling, unable, or unqualified to enforce the terms and provisions of this Deed; or is unwilling or unable to effectively monitor the Property for compliance with this Deed at least once every calendar year. Prior to any assignment under this **Section 20.b**, the Board and Larimer County shall consult with Grantee and provide Grantee an opportunity to address the Board's and Larimer County's concerns. If the Board's or Larimer County's concerns are not addressed to the satisfaction of the Board or Larimer County, the Board or Larimer County may require that Grantee assign this Deed to an organization designated by the Board and Larimer County that complies with **Section 20.a(1), (2), and (3)** above.

c. If Grantee desires to transfer this Deed to a qualified organization having similar purposes as Grantee, but Grantor, the Board or Larimer County has refused to approve the transfer, Grantee may seek an order by a court with jurisdiction to transfer this Deed to another qualified organization having similar purposes that agrees to assume

the responsibility imposed on Grantee by this Deed, provided that Grantor, the Board, and Larimer County shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.

d. Upon compliance with the applicable portions of this **Section 20**, the Parties shall record an instrument completing the assignment in the property records of Larimer County and provide a copy of the recorded assignment to the Board. Assignment of the Deed shall not be construed as affecting the Deed's perpetual duration and shall not affect the Deed's priority against any intervening liens, mortgages, easements, or other encumbrances.

21. Subsequent Transfers. Grantor shall incorporate by reference the terms and conditions of this Deed in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property. Grantor further agrees to give written notice to Grantee and the Board of the transfer of any interest at least 45 days prior to the date of such transfer and may be required to pay the Board an Additional Board Refund under **Section 22** below. The failure of Grantor to perform any act required by this **Section 21** shall not impair the validity of this Deed or limit its enforceability in any way.

22. Additional Board Refund. The Board's Grant has provided partial consideration for Grantor's acquisition of fee title to the Property, associated water rights, and/or partial real estate interest in the Property above and beyond this Deed; therefore, any voluntary sale, conveyance, transfer, or other disposal of all or any portion of Grantor's interest in the Property or associated water rights ("**Sale**"), excluding any lease of the Property or the water rights to a third party in the ordinary course of using the Property for permitted purposes, shall constitute a material change to the Grant that shall require prior written Board approval and may require a separate refund to the Board of an amount to compensate the Board for use of the Board's Grant, plus administrative costs (the "**Additional Board Refund**"), in addition to any payment that the Board may be entitled to receive under **Section 19** above. In the event of any condemnation of the fee title, the requirements of this section shall continue to apply with the exception of the need for prior written Board approval.

a. Amount. The amount of the Additional Board Refund shall be based upon a percentage of Grantor's net proceeds from the Sale or condemnation of the fee title (which shall be defined as the fair market value of the property being sold in the Sale or condemnation of the fee title, minus direct transaction costs) ("**Net Proceeds**"). The Additional Board Refund shall be determined by: a) first dividing the Board's Grant amount by the original purchase price for fee title to the Property; b) then by multiplying the resulting ratio by the Net Proceeds; and c) adding interest figured from the Grant payment date at the Prime Rate listed by the Federal Reserve Bank of Kansas City, Missouri that is most current on the effective date of the Sale or condemnation of the fee title. The Board may, in its sole discretion, waive the requirement for payment of interest or reduce the amount of interest due at the time of the Sale or condemnation of the fee title. The Additional Board Refund shall be paid to the Board in cash or certified funds on or before the effective date of the Sale or condemnation of the fee title.

b. Possible Exception to Refund Requirement. If a Sale or condemnation of the fee title occurs to a third party that is eligible to receive open space funding from the Board, and the Board has provided written confirmation of the third party's eligibility, Grantor shall not be required to pay the Board an Additional Board Refund, unless the Board determines in its sole discretion that one or more aspects of the Grant have changed that reduce the Grant project's scope from that of the original Grant as approved by the Board.

23. Notices. Any notice, demand, request, consent, approval, or communication that either Party or the Board is required to give to the other in writing shall be either served personally or delivered by (a) certified mail, with return receipt requested; or (b) a commercial delivery service that provides proof of delivery, addressed as follows:

To Grantor:	Open Lands Manager City of Loveland 500 E. 3 rd Street Loveland, CO 80537
To Grantee:	Open Lands Manager Larimer County 1800 S. County Road 31 Loveland, CO 80537
To the Board:	Executive Director State Board of the Great Outdoors Colorado Trust Fund 303 E. 17 th Avenue, Ste 1060 Denver, CO 80203

or to such other address as either Party or the Board from time to time shall designate by written notice to the other.

24. Grantor's Title Warranty. Grantor warrants that Grantor has good and sufficient title to the Property and Grantor has access to the Property for the purposes granted or permitted to Grantee in this Deed, and Grantor promises to defend the same against all claims whatsoever.

25. Subsequent Liens on the Property. No provisions of this Deed shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing shall be subordinate to this Deed for all purposes so that any such instrument expressly shall be deemed to have been recorded after this Deed and so that any foreclosure of such deed of trust, mortgage or lien shall not affect any provision of this

Deed, including without limitation its perpetual nature, the payment of proceeds as described in **Section 19** above, and the limitation of **Section 5.d**.

26. Recording. Grantee shall record this Deed in a timely fashion in the official records of Larimer County, and may re-record it at any time as may be required to preserve its rights in this Deed.

27. Environmental Attributes. Unless otherwise provided in this Deed, Grantor reserves all Environmental Attributes associated with the Property. “**Environmental Attributes**” shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Deed. Nothing in this **Section 27** shall modify the restrictions imposed by this Deed or otherwise be inconsistent with the Purpose.

28. Tax Benefits. Grantor acknowledges that Grantor is responsible for obtaining legal and accounting counsel to advise Grantor regarding the applicability of federal or state tax benefits that might arise from the bargain sale (sale at less than fair market value) or donation of the Deed. Grantee makes no representation or warranty that Grantor will receive tax benefits for the bargain sale or donation of the Deed.

29. Deed Correction. The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits), including typographical, spelling, or clerical errors. The Parties shall make such corrections by written agreement, which the Board must first approve in writing.

30. Effective Date. The Effective Date of this Deed shall be the date and year first written above.

31. General Provisions.

a. Controlling Law. The interpretation and performance of this Deed shall be governed by the laws of the State of Colorado.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in favor of the grant to effect the Purpose and the policy and purpose of C.R.S. § 38-30.5-101, *et seq.* If any provision in this Deed is found to be ambiguous, an interpretation consistent with the Purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, it shall be deemed severed from this Deed, and the balance of this Deed shall otherwise remain in full force and effect.

d. Entire Agreement. The Recitals above are a material part of this Deed and are incorporated into this Deed. This Deed sets forth the entire agreement of the Parties with respect to the grant of a conservation easement over the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the grant, all of which are merged in this Deed.

e. Joint Obligation. The obligations imposed upon Grantor and Grantee in this Deed shall be joint and several in the event that more than one entity or individual holds either interest at any given time.

f. Non-Merger. A merger of this Deed and the fee title to the Property cannot occur by operation of law because, in addition to Grantee's rights and interest under this Deed, the Board has rights under this Deed. Under Colorado law, the existence of these rights precludes unity of title. If the Grantee wishes to acquire fee title to the Property or any additional interest in the Property (such as a leasehold), Grantee must first obtain the written approval of the Board. As a condition of such approval, the Board may require that Grantee first transfer the Deed to another qualified organization consistent with **Section 20** above. In the event Grantee acquires fee title interest or any other interest in the Property without Grantee's prior knowledge (e.g. receiving real property by will), Grantee must immediately provide notice of its acquisition to the Board, and the Board may require that Grantee transfer this Deed to another qualified organization consistent with **Section 20** above.

g. Successors. The covenants, terms, conditions, and restrictions of this Deed shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

h. Termination of Rights and Obligations. Provided a transfer is permitted by this Deed, a Party's rights and obligations under the Deed terminate upon transfer of the Party's interest in the Deed or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. Captions. The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

j. No Third Party Beneficiaries. This Deed is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor, Grantee, and the Board and Larimer County and their respective successors and assigns for the purposes set forth in this Deed. This Deed does not create rights or responsibilities in any third parties beyond Grantor, Grantee, the Board, and Larimer County.

k. Amendment. If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, Grantor and Grantee may jointly amend this Deed so long as the amendment (i) is consistent with the Conservation Values and Purpose of this Deed (ii) does not affect the perpetual duration

of the restrictions contained in this Deed, (iii) does not affect the qualifications of this Deed under any applicable laws, (iv) complies with Grantee's and the Board's procedures and standards for amendments (as such procedures and standards may be amended from time to time), and (v) receives the Board's prior written approval. Any amendment must be in writing, signed by the Parties, and recorded in the records of the Clerk and Recorder of Larimer County. A copy of the recorded amendment shall be provided to the Board. In order to preserve the Deed's priority, the Board may require that Grantee obtain subordinations of any liens, mortgages, easements, or other encumbrances, and the Board may require a new title policy. For the purposes of the Board's approval under item (v) above, the term "amendment" means any instrument that purports to alter in any way any provision of or exhibit to this Deed. Nothing in this **Section 31.k** shall be construed as requiring Grantee or the Board to agree to any particular proposed amendment.

l. Change of Conditions or Circumstances. A change in the potential economic value of any use that is prohibited by or inconsistent with this Deed, or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions or circumstances that make it impossible for continued use of the Property, or any portion thereof, for conservation purposes and shall not constitute grounds for terminating the Deed in whole or in part. In conveying this Deed, the Parties have considered the possibility that uses prohibited or restricted by the terms of this Deed may become more economically valuable than permitted uses, and that neighboring or nearby properties may in the future be put entirely to such prohibited or restricted uses. It is the intent of Grantor, Grantee and the Board that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Deed, in whole or in part. In addition, the inability of Grantor, or Grantor's heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Deed, or the unprofitability of doing so, shall not impair the validity of this Deed or be considered grounds for its termination or extinguishment, in whole or in part.

m. Termination of the Board. In the event that Article XXVII of the Colorado Constitution, which established the Board, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board under this Deed shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor.

n. Authority to Execute. Each Party represents to the other that such Party has full power and authority to execute, deliver, and perform this Deed, that the individual executing this Deed on behalf of each Party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of each Party enforceable against each Party in accordance with its terms.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Deed of Conservation Easement as of the Effective Date.

GRANTOR:

ATTEST

THE CITY OF LOVELAND, COLORADO
a Municipal Corporation

City Clerk

By: _____

APPROVED AS TO FORM

The foregoing instrument was acknowledged before me this ____ day of _____ 2016, by _____ as City Manager of the City of Loveland, and Terry Andrews as City Clerk of the City of Loveland.

GRANTEE:

LARIMER COUNTY

By: _____

APPROVED AS TO FORM

The foregoing instrument was acknowledged before me this ____ day of _____ 2016, by _____ as _____, and _____ as _____ of Larimer County.

EXHIBIT A

Legal Description of the Property

That portion of the Northeast Quarter of Section 18, 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 North line of the South Half of the Northeast Quarter of said Section 18 as bearing North 89°12'24" West and with all bearings contained herein relative thereto: Beginning at the Northeast corner of the South Half of the Northeast Quarter of said Section 18; thence along said North line of the South Half of the Northeast Quarter of said Section 18 North 89°12'24" West 683.28 feet to the True Point of Beginning; said True Point of Beginning also being the Southwest corner of that certain parcel of land known as Parcel 2 as described in Deed recorded at Reception No. 20120004829, records of said County; thence continuing along said North line of the South half of the Northeast Quarter of said Section 18 North 89°12'14" West 1332.43 feet, more or less, to a point on the Southeasterly line of that certain parcel of land known as Parcel 2 as described in Deed recorded at Reception No. 94091796, records of said County; said point being the beginning of a tangent curve concave to the Southeast having a central angle of 13°03'24" and a radius of 280.00 feet, the long chord of which bears South 84°15'54" West a distance of 63.67 feet; thence departing said North line of the South Half of the Northeast Quarter of said Section 18 and Southwesterly along the arc of said curve and along said Southeasterly line of that certain parcel of land known as Parcel 2 as described in Deed recorded at Reception No. 94091796 63.81 feet; thence tangent from said curve and continuing along said Southeasterly line of that certain parcel of land known as Parcel 2 as described in Deed recorded at Reception No. 94091796 South 77°44'12" West 511.85 feet to the beginning of a tangent curve concave to the Northeast having a central angle of 42°22'23" and a radius of 220.00 feet, the long chord of which bears North 81°04'37" West a distance of 159.02 feet; thence Northwesterly along the arc of said curve and continuing along said Southeasterly line of that certain parcel of land known as Parcel 2 as described in Deed recorded at Reception No. 94091976 162.70 feet; thence tangent from said curve and continuing along said Southeasterly line of that certain parcel of land known as Parcel 2 as described in Deed recorded at Reception No. 94091796 North 59°53'25" West 30.71 feet, more or less, to a point on the West line of the South Half of the Northeast Quarter of said Section 18; thence departing said Southeasterly line of that certain parcel of land known as Parcel 2 as described in Deed recorded at Reception No. 94091796 and along said West line of the South Half of the Northeast Quarter of said Section 18 South 02°13'24" East 1235.86 feet, more or less, to the Southwest corner of South Half of the Northeast Quarter of said Section 18; thence departing said West line of the South Half of the Northeast Quarter of said Section 18 and along the South line of the South Half of the Northeast Quarter of said Section 18 South 89°23'51" East 2723.28 feet, more or less, to the Southeast corner of South Half of the Northeast Quarter of said Section 18; thence departing said South line of the South Half of the Northeast Quarter of said Section 18 and along the East line of the South Half of the Northeast Quarter of said Section 18 North 00°21'59" West 721.77 feet to the beginning of a non-tangent curve concave to the Northeast having a central angle of 16°03'39" and a radius of 430.00 feet, the long chord of which bears North 44°38'59" West a distance of 120.14 feet; thence departing said East line of the South Half of the Northeast Quarter of said Section 18 and Northwesterly along the arc of said curve 120.54 feet; thence tangent from said curve North 36°37'10" West 421.31 feet to the beginning of a tangent curve concave to the Southwest having a central angle of 52°35'14" and a radius of 280.00 feet, the long chord of which bears North 62°54'47" West a distance of 248.06 feet; thence Northwesterly along the arc of said curve 256.99 feet; thence tangent from said curve North 89°12'24" East 131.23 feet; thence North 00°47'36" East 60.00 feet, more or less, to the Southwest corner of said certain parcel of land known as Parcel 2 as described in Deed recorded at Reception No. 20120004829; said Southwest corner of said certain parcel of land known as Parcel 2

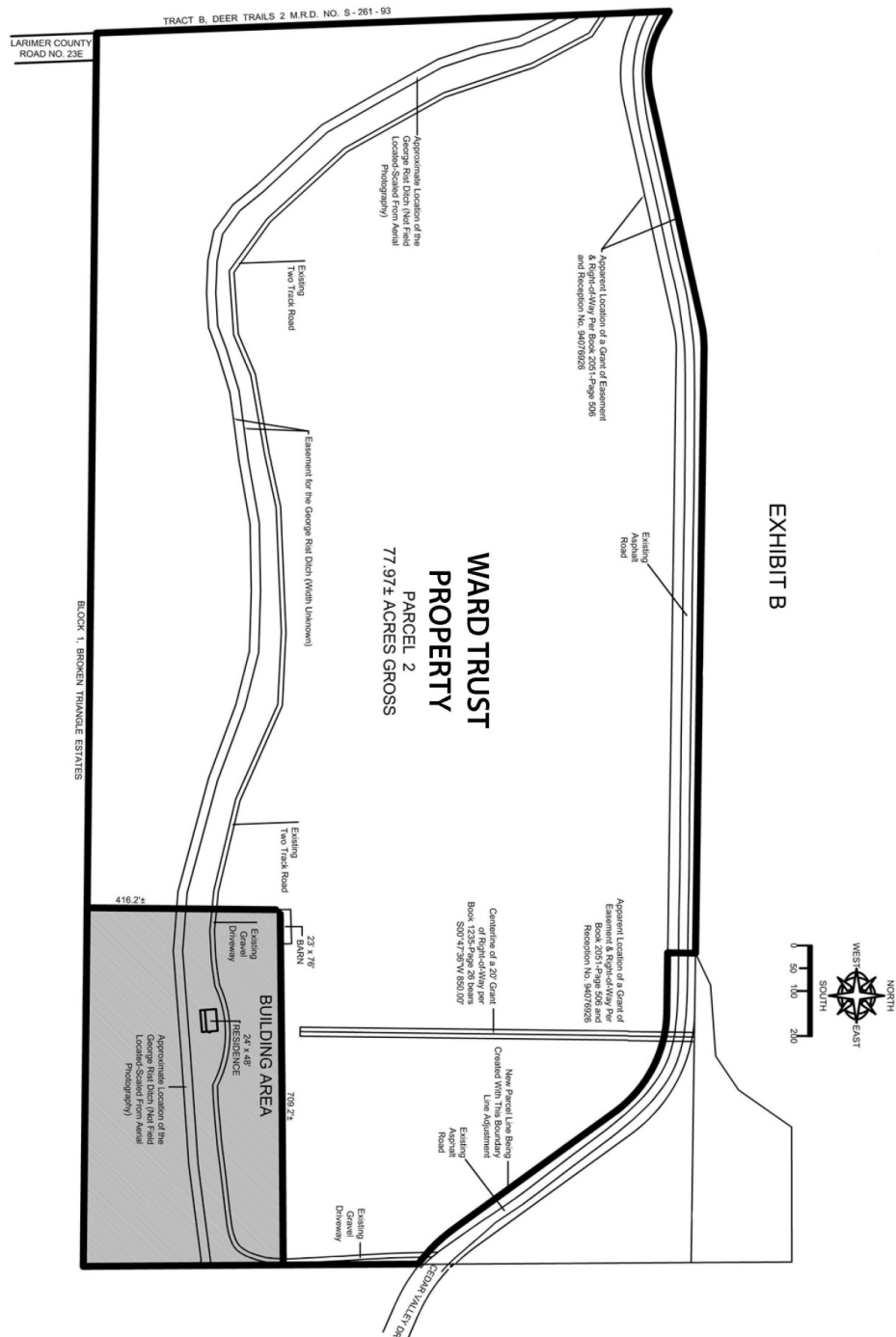


EXHIBIT C**OWNER ACKNOWLEDGEMENT STATEMENT**

Grantor	Grantee
City of Loveland 500 E. 3 rd Street Loveland, CO 80537 Telephone:970-962-2443	Larimer County 1800 S. County Road 31 Loveland, CO 80537 970-679-4577

LAND TYPE

The property consists of one parcel of land totaling approximately 78 acres. Vegetation communities on the property include approximately 36.8 acres of irrigated pasture, 13.9 acres of introduced grassland, 12.6 acres of wetlands, 1.2 acres of cottonwood stands, 6.1 acres of disturbed grassland, 3.2 acres of disturbed/weedy areas, and 1.8 acres of landscaped/ornamental areas, and 2.4 acres of unvegetated/developed areas.

CONDITION OF LAND

The property is in Section 18, Township 5 North, Range 69 West of the 6th Principal Meridian in Larimer County, Colorado (Figure 1). Elevations on the property range from 5,120 feet along the south side of the property to 5,080 feet along the north side near Cedar Valley Drive. Historically, the property has been single-family residential agricultural used for livestock grazing and hay production.

In compliance with Title 26 of the Internal Revenue Code [§1.170A-14(g)(5)], and to the best of my knowledge, this Baseline Inventory Report, including text, maps, and photographs, is an accurate representation of the Ward Trust property on _____, the time of the conveyance of the conservation easement.

Grantor Signature

Date

Grantee Signature

Date

EXHIBIT D-Notice of Building Envelope Designation Form**NOTICE OF SELECTION OF THE BUILDING ENVELOPE**

Pursuant to Section 4.d(1) of that certain DEED OF CONSERVATION EASEMENT (the "Easement") dated the ____ day of _____, 2016, by and between THE CITY OF LOVELAND, COLORADO ("Grantor"), and LARIMER COUNTY, COLORADO ("Grantee"), which Easement was recorded in the real property records of the Larimer County Clerk and Recorder on the ____ day of _____, 2016, at Reception No. _____, the current Grantor/Landowner of the real property that is burdened by the Easement hereby requests approval of the permitted 2.5-acre Building Envelope. Grantor/Landowner has selected a location for the Building Envelope within the Building Area, which is illustrated on a revised Exhibit B to the Deed of Conservation Easement and attached to this notice. Once Grantee has approved the revised Exhibit B in writing, the designated location hereby becomes the Building Envelope for the purposes of the terms and conditions of the Easement.

Attachments

Revised Exhibit B to the Deed of Conservation Easement – Map of Property

CURRENT LANDOWNER / LANDOWNER

(NAME)

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me the _____ day
of _____
20____, by _____, Current Landowner /
Landowner.

Witness my hand and official seal.

(Seal)

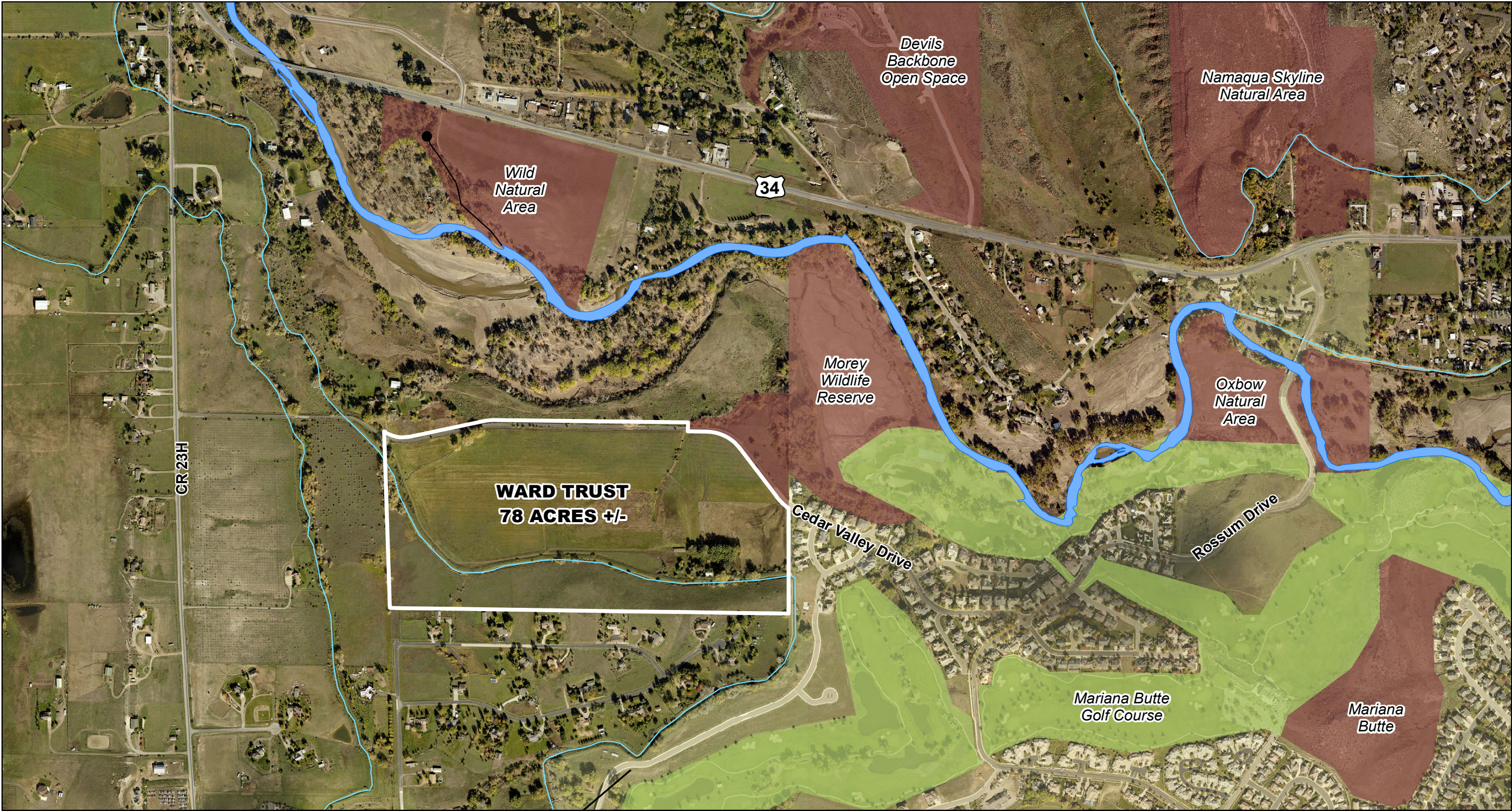
NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT E
Water Rights

The Property includes a contractual water right to the George Rist Ditch based on a document entitled, "Confirmation of Water Rights" filed on February 9, 1893. The document states that on February 7, 1893 Home Supply entered into an agreement with Edwin D. Clark for the "perpetual right-to carry water each year through said ditch and from the said river, in sufficient quantity each year to irrigate that portion of the land above described lying below the line of the said ditch, which right – the said party of the first part recognizes and confirms now. Therefore it is agreed between the parties hereto, that the amount of water so necessary for the use of said described land, by said second party his heirs and assignees is Eighty statutory inches each year that the said party of the second part his heirs and assignees shall have the right perpetually hereafter under and by virtue of his prior appropriation thereof to carry through said ditch from said river said quantity of water whenever necessary to irrigate said land and take the same from said ditch on said land to be used for the irrigation thereof only..."

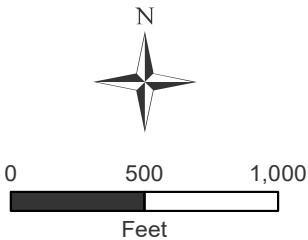
Together with of all of Grantor's right, title, and interests in any and all water and water rights of any kind or nature historically used on the Property, together with all canals, ditches, laterals, headgates, springs, ponds, reservoirs, water allotments, water shares and stock certificates, contracts, units, permits, wells, easements and rights of way, and irrigation equipment associated therewith.



LEGEND

-  Loveland Open Lands & Conservation Easements
-  Other Open Lands & Conservation Easements
-  Loveland Parks & Golf Courses

Section 18, Township 5 North,
Range 69 West of the 6th PM
Larimer County, Colorado



**CITY OF LOVELAND
OPEN LANDS**

AUGUST 2016

AGENDA ITEM: 2.10
MEETING DATE: 8/16/2016
TO: City Council
FROM: Terry Andrews, City Clerk's Office
PRESENTER: Terry Andrews, City Clerk



TITLE:

A Resolution Approving And Authorizing The Execution Of An Intergovernmental Agreement Between The City Of Loveland And The Larimer County Clerk And Recorder Concerning The Coordinated Mail Ballot Election To Be Held On November 8, 2016

RECOMMENDED CITY COUNCIL ACTION:

Approve the resolution.

OPTIONS:

1. Approve the resolution and IGA to ensure the November 8, 2016 is conducted as a coordinated election with Larimer County.
2. Denial of the IGA will prohibit the City from coordinating with the County for the November 8, 2016 regular election.

SUMMARY:

This resolution authorizes the execution of an agreement between the City of Loveland and the Larimer County Clerk and Recorder concerning the coordinated election to be held on November 8, 2016.

BUDGET IMPACT:

- ☐ Positive
☒ Negative
☒ Neutral or negligible

The IGA attachment estimates the cost to conduct the Loveland Downtown Development Authority at approx. \$2,800, funds that have been appropriated in 2016. The cost for an election citywide could exceed the funds budgeted and Staff would need to come back to Council for a supplemental appropriation.

BACKGROUND:

On June 7, 2016, City Council adopted Resolution #R-38-2016 authorizing the City Clerk to notify the Larimer County Clerk and Recorder ("County Clerk") of the City's intention to participate in the November 8, 2016 election and to coordinate the City's participation in that election with the County Clerk.

The County Clerk has presented the City with an "Agreement Concerning Election Services", a copy of which is attached as Exhibit "A" to the proposed Resolution ("the Election Agreement"). CRS Section 1-7-116(2) provides that when the County Clerk is conducting a coordinated election with a municipality, the County Clerk is required to enter into an agreement with that municipality concerning the conduct of the election. Therefore, in order for the City to participate in a coordinated election with the County Clerk on November 8, 2016, it is necessary for the City to enter into the Election Agreement. The estimated costs include conduct of the election as well as production and distribution of the Downtown Development Authority (DDA) TABOR notice.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Resolution
2. IGA

RESOLUTION NO. R-76-2016

**A RESOLUTION APPROVING AND AUTHORIZING THE
EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF LOVELAND AND THE LARIMER
COUNTY CLERK AND RECORDER CONCERNING THE
COORDINATED GENERAL ELECTION TO BE HELD ON
NOVEMBER 8, 2016**

WHEREAS, on June 7, 2016, the Loveland City Council adopted Resolution #R-38-2016 authorizing the Loveland City Clerk (“City Clerk”) to notify the Larimer County Clerk and Recorder (“County Clerk”) of the City of Loveland’s intention to participate in the November 8, 2016, election and to coordinate the City’s participation in that election with the County Clerk; and

WHEREAS, on July 5, 2016, the Loveland City Council adopted Ordinance No. 6023 authorizing that the City’s November 8, 2016, special municipal election be governed by the Colorado Uniform Election Code of 1992 to the extent necessary in order to conduct the election as a coordinated election with the County Clerk held on November 8, 2016; and

WHEREAS, C.R.S. §1-7-116(2) of the Uniform Election Code provides that when the County Clerk is conducting a coordinated election with a municipality, the County Clerk is required to enter into an agreement with that municipality concerning the conduct of that election; and

WHEREAS, the County Clerk has presented to the City an “Intergovernmental Agreement For Coordinated Election,” a copy of which is attached hereto as **Exhibit “A”** and incorporated by reference (“the Election Agreement”); and

WHEREAS, in order for the City to participate in the coordinated election with the County Clerk, it is therefore necessary for the City to enter into the Election Agreement.

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

Section 1. The Election Agreement is hereby approved and the Mayor is authorized to enter into it on behalf of the City.

Section 2. The City Clerk shall comply with the provisions of the Election Agreement and shall act as the City’s designated local election official in all matters related to the November 8, 2016, special municipal election. The City Clerk shall also comply with the applicable provisions of the City Charter, of the Municipal Election Code of 1965 and, to the extent required by Ordinance No. 6023, with the applicable

provisions of the Uniform Election Code of 1992 in conducting the November 8, 2016, special municipal election as a coordinated general election with the County Clerk.

Section 3. This Resolution shall go into effect as of the date of its adoption.

SIGNED this 16th day of August, 2016.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

Exhibit A

INTERGOVERNMENTAL AGREEMENT FOR 2016 GENERAL ELECTION

This Intergovernmental Agreement ("Agreement") is entered into by and between the Larimer County Clerk and Recorder ("County Clerk") and City of Loveland ("Entity"). Agreement is made effective upon the signature of Entity and County Clerk.

Amendments or strikethroughs to Agreement are not allowed without consent of County Clerk.

Pursuant to C.R.S. §1-7-116(2), an agreement concerning the preparation, conduct and actual cost of an Election is required. Agreement shall be signed no later than August 30, 2016.

WITNESSETH

WHEREAS, pursuant to C.R.S. §1-7-116(2), as amended, County Clerk and Entity shall enter into an agreement for the administration of their respective duties concerning the conduct of the General Election to be held on November 8, 2016, ("Election"); and

WHEREAS, County Clerk and Entity are authorized to conduct elections as provided by law; and

WHEREAS, County Clerk will conduct Election as a "Mail Ballot Election" as such term is defined in the Uniform Election Code of 1992, C.R.S. Title 1, as amended ("Code") and current Colorado Secretary of State Election Rules, as amended ("Rules"); and

WHEREAS, Entity has certain ballot race(s), ballot question(s) and/or ballot issue(s) to present to its eligible electors and shall participate in Election.

NOW, THEREFORE, for and in consideration of the promises herein contained, the sufficiency of which is hereby acknowledged, County Clerk and Entity agree as follows:

**ARTICLE I
PURPOSE AND GENERAL MATTERS**

A. Goal.

The purpose of Agreement is to set forth the respective tasks in order to conduct Election and to allocate the cost thereof.

B. Coordinated Election Official.

County Clerk shall act as the "Coordinated Election Official" ("CEO") in accordance with Code and Rules and shall conduct Election for Entity.

County Clerk designates Doreen Bellfy, whose telephone number is 970.498.7941, to act as the primary liaison ("Contact Officer") between County Clerk and Entity. Contact Officer shall act under the authority of County Clerk and shall have primary responsibility for the coordination of Election with Entity.

C. Designated Election Official.

Entity designates Teresa G. Andrews/Beverly Walker as its "Designated Election Official" ("DEO"), whose phone is 970-982-2712/970-982-2343 cell is 303-651-1057 email is terry.andrews@cityofloveland.com and fax is 970-982-2901, to act as primary liaison between Entity and Contact Officer. DEO shall have primary responsibility for Election procedures to be handled by Entity. DEO shall act in accordance with Code and Rules. DEO shall be readily available and

accessible during regular business hours, and at other times when notified by Contact Officer in advance, for the purposes of consultation and decision-making on behalf of Entity. In addition, DEO is responsible for receiving and timely responding to inquiries made by its voters or others interested in Entity's election.

D. Jurisdictional Limitation.

Entity encompasses territory within Larimer County, Colorado. Agreement shall be construed to apply only to that area of Entity situated within Larimer County.

E. Term.

The term of Agreement shall be through December 31, 2016, and shall apply only to Election.

**ARTICLE II
DUTIES OF COUNTY CLERK**


A. Voter Registration.

Supervise, administer and provide necessary facilities and forms for all regular voter registration sites.

B. Ballot Preparation.

1. Lay out the text of the ballot in a format that complies with Code and Rules. To avoid ballot space issues, County Clerk requests each ballot question and ballot issue be not more than 250 words.
2. County Clerk will assign the letter and/or number of Entity's ballot question(s) or ballot issue(s) which will appear on the ballot, and provide this assignment to Entity.

Sign on the line provided below to indicate acknowledgement.


Signature



3. Provide ballot printing layouts and text for Entity's review and signature. If Entity fails to provide approval by the required deadline, the content is to be considered approved.
4. Certify the ballot content to the printer(s).
5. Contract for ballots.

C. Voter Lists.

Upon request of Entity, create and certify a list of registered voters containing the names and addresses of each elector registered to vote in Entity.

D. Property Owners.

Provide that mail ballot packets be mailed to every eligible elector certified by Entity as stipulated in the "Duties of Entity", Article III(G).

E. Election Judges.

Appoint and compensate a sufficient number of election judges to conduct Election.

F. Mail Ballot.

1. Provide that mail ballot packets be mailed to every active registered elector and that Election be conducted in accordance with C.R.S. Title 1, Article 7.5.
2. Establish drop-off locations in accordance with C.R.S. §1-5-102.9(4) for the purposes of allowing electors to drop-off their completed mail ballots.

G. Voter Service and Polling Center ("VSPC") sites.

1. Establish VSPCs in accordance with C.R.S. §1-5-102.9, coordinate the location and operation of the VSPC sites and conduct all accessibility site surveys.
2. Obtain and provide all ballots, forms, equipment and supplies necessary for mail and accessible voting.
3. Obtain and provide all ballots, forms, equipment and supplies necessary to issue ballots to property owners who do not reside/are not registered to vote in Entity.
4. Provide all necessary Election personnel to conduct Election.

H. Voting Jurisdiction.

Pursuant to C.R.S. §1-5-303 and subject to Entity providing the information referenced in Article III(C)(1) below, County Clerk shall provide an Address Library Report from the Statewide Colorado Voter Registration and Election database ("Address Library Report") no later than July 29, 2016, which will list the street addresses located in both Entity and Larimer County according to the statewide voter registration system. In order to create this Address Library Report, County Clerk must first receive from Entity the information referenced in Article III(C)(1).

I. Election Day Preparation.

1. Provide, no later than twenty days before Election, notice by publication of a mail ballot election in accordance with C.R.S. §1-7.5-107(2.5). Such notice shall satisfy the publication requirement for all entities participating in Election pursuant to C.R.S. §1-5-205(1.4).
2. Prepare and conduct pre-election logic and accuracy testing in accordance with C.R.S. §1-7-509 and Rules.
3. Provide necessary electronic voting equipment together with personnel and related computer equipment for pre-election logic and accuracy testing and Election Day needs.
4. Prepare and conduct post-election audit of voting equipment in accordance with C.R.S. §1-7-509 and Rules.

J. TABOR Notice.

1. Coordinate the printing and labeling of the TABOR notice and mail it to all registered voters within Entity not less than thirty days prior to Election in compliance with Article X, Section 20 of the Colorado Constitution and any applicable Code and Rules.
2. Entity will be responsible for mailing the TABOR notice to each address of one or more eligible non-resident property owner electors as referenced in the "Duties of Entity", Article III(G).

3. Charge Entity for all expenses associated with printing, labeling and mailing (postage) for the TABOR notice. Said expenses shall be prorated among all Entities participating in the TABOR notice. Such proration shall be based, in part, upon the number of addresses where one or more active registered voters of Entity reside.
4. County Clerk shall determine the least cost method for mailing the TABOR notice and address the TABOR notice to "All Registered Voters" at each address in Larimer County where one or more active registered voters of Entity reside.
5. Nothing herein shall preclude County Clerk from sending the TABOR Notice of Entity to persons in addition to the electors of Entity, if such sending arises from County Clerk's efforts to mail the TABOR Notice at the least cost.

K. Counting Ballots.

1. Conduct and oversee the ballot counting process and report the results by Entity.
2. Establish backup procedures and backup sites for ballot counting should counting equipment and/or building facilities fail. In such event, counting procedures will be moved to a predetermined site.

L. Certifying Results.

1. Appoint, instruct and oversee the Board of Canvassers.
2. Certify the results of Entity's Election within the time required by law and provide Entity with a copy of all Election statements and certificates required under Code and Rules.
3. If a recount is called for, conduct a recount in accordance with Code and Rules.

M. Recordkeeping.

1. Pursuant to C.R.S. §1-7-802, retain all Election records as required.
2. Keep an accurate account of all Election costs.

N. No Expansion of Duties.

Nothing contained in Agreement is intended to expand the duties of County Clerk beyond those set forth in Code or Rules.

ARTICLE III DUTIES OF ENTITY

A. Authority.

Provide County Clerk with a copy of the ordinance or resolution stating that Entity will participate in Election in accordance with the terms and conditions of Agreement. The ordinance or resolution shall further authorize the presiding officer of Entity or other designated person to execute Agreement.

B. Call and Notice.

1. Publish all notices relative to Election which Entity is required to provide pursuant to Code, Rules, Entity's Charter and any other statute, rule or regulation.
2. Entity shall be responsible for mailing the required ballot issue notice to each address of one or more eligible electors who own property in Entity but do not reside within Entity in accordance with C.R.S. §1-7-906(2).

C. Voting Jurisdiction – Certifying Entity Address Boundaries.

1. If Entity is not already identified by a tax authority code in the County Assessor's records, Entity shall:
 - Provide County Clerk with a legal description, map and listing of street addresses located within Entity in Larimer County no later than July 1, 2016, at 5:00 p.m.
 - This information shall be provided to County Clerk in Microsoft Excel and shall include "high/low" street address ranges for both "odd/even" sides of each street.
 - Certify the accuracy of such information.
2. County Clerk will deliver Address Library Report to Entity as referenced in Article II(H), along with an Address Library Report Sign-Off Form ("Sign-Off Form").
3. Entity shall review all information in Address Library Report and indicate on Sign-Off Form whether any changes are needed, or whether the report is complete and accurate.
4. It is Entity's responsibility to ensure that the information contained in Address Library Report is an accurate representation of the streets contained within Entity's legal boundaries.
5. If Entity requests any changes to Address Library Report on Sign-Off Form, County Clerk will make the requested changes and return the amended Address Library Report to Entity along with a second Sign-Off Form no later than 5:00 p.m. on August 12, 2016.
6. Entity must return the final certified Sign-Off Form to County Clerk no later than 5:00 p.m. on August 19, 2016.
7. After Entity has certified Address Library Report, no later than 5:00 p.m. on September 26, 2016, Entity shall certify a list of registered electors who are eligible to receive ballots regarding the <District Name> Ballot Issue. This list will contain a date, the names, and the mailing addresses of each voter.

D. Petitions, Preparation and Verification.

Perform all responsibilities required to certify any candidate or initiative petition to the ballot.

E. Ballot Preparation.

1. Be solely responsible for determining whether a ballot race, ballot question, or ballot issue is properly placed before the voters.

Prepare a list of candidates and the ballot title and text for each ballot question and ballot issue. To avoid space issues on the ballot, County Clerk requests each ballot question and issue be not more than 250 words.

Each ballot issue or ballot question submitted shall be followed by the words "yes/for" and "no/against".

Sign on the line provided below to indicate acknowledgement.

Teresa S. Andrews
Signature



2. Pursuant to C.R.S. §1-5-203(3)(a), provide a certified copy of the ballot content (race(s), question(s) and issue(s)) to County Clerk as an email attachment to elections@co.larimer.co.us or on compact disc (650 MB or higher), at the earliest possible time and in any event no later than sixty days before Election, no later than 5:00 p.m. on September 9, 2016.

The ballot content must be certified exactly in the order in which it is to be printed on the ballot pages and sample ballots in the following format:

Microsoft Word
Font Type: Arial
Font Size: 8 point
Justification: Left
All Margins: 0.5 inches

3. The certified list of ballot race(s), ballot question(s) and/or ballot issue(s) submitted by Entity shall be final.
4. Proofread and approve Entity's ballot content for printing immediately upon receipt from County Clerk. Entity shall provide an email address and designate a person to be available for proofing and approving ballot content for printing.

Due to time constraints, Entity must provide contact information for someone who is available from 8:00 a.m. to 10:00 p.m. from September 9, 2016, until September 19, 2016, or until final approval of printing of ballots has been reached. County Clerk agrees to keep all contact personnel informed of ballot printing status. Entity has designated Terry Andrews, whose phone is 970-962-2717, cell is 303-6511057, email is Terry.Andrews@cityoflouisville.org and fax is 970-962-2901.

5. Once approval has been received, County Clerk will not make any changes to the ballot content. If Entity fails to provide approval by the required deadline, the content will be considered approved.
6. It is the responsibility of Entity to ensure that all candidates seeking election in Entity file all necessary forms required by the Campaign Finance rules outlined at www.tracer.sos.colorado.gov.

7. It is the responsibility of Entity to ensure an audio pronunciation is provided for each candidate as it is certified to County Clerk no later than September 9, 2016. See Exhibit B for details.

Sign on the line provided below to indicate acknowledgement.

Luisa S. Andrews
Signature



8. Entity shall defend and resolve at its sole expense all challenges relative to the ballot race(s), ballot question(s) and/or ballot issue(s) as certified to County Clerk for inclusion in Election.

F. Election Participation.

If requested by County Clerk, provide person(s) to participate and assist in Election process. The person(s) provided by Entity must be registered to vote in Larimer County.

G. Property Owners.

1. Notify and provide information and materials to property owners regarding the location(s) which an eligible elector may vote at any VSPC site. C.R.S. §1-7-104.
2. Entity shall be responsible for obtaining its property owner list(s) from the County Assessor's office in accordance with C.R.S. §1-5-304. Property owners listed in the County Assessor's property records may not be eligible electors of Entity. Entity must review and verify the eligibility of property owners to receive ballots regarding Entity's Ballot Issue(s).
3. No later than October 3, 2016, Entity shall certify to County Clerk an initial voter list of property owners who are eligible to receive ballots regarding Entity's Ballot Issue(s). The list shall not include eligible electors who already reside within Entity. The list shall be in the following format:
Excel (.xls/.xlsx) or Text (comma separated .txt) format (Excel is preferred)
Each eligible elector must be listed as a separate entry
Separate columns with the following information:
Name of Elector
Mailing Address
Mailing City
Mailing State
Mailing Zip
4. Beginning on October 14, 2016, and for each business day thereafter until the day of election, Entity shall certify a supplemental voter list of property owners who are eligible to receive ballots regarding Entity's Ballot Issue(s). If there is a day(s) for which there are no supplemental names to report, Entity shall still send a list that contains the date and states "There is no supplemental list for this date".
5. Once Entity certifies a list of eligible property owners to County Clerk, a mail ballot packet containing the question(s) or issue(s) certified by Entity will be mailed to each eligible elector as required by "Duties of Clerk", Article II(D).

H. TABOR Notice.

1. For any ballot issue(s) of Entity that require a TABOR notice, Entity is responsible for preparing such TABOR notice in compliance with Article X, Section 20 of the Colorado Constitution and any pertinent Code and Rules.

2. Entity shall be solely responsible for timely providing to County Clerk a complete TABOR notice. County Clerk shall in no way be responsible for Entity's compliance with TABOR or the accuracy or sufficiency of any TABOR notice.
3. The process of receiving written comments relating to ballot issue(s) and summarizing such comments, as required by TABOR, is the sole responsibility of Entity.
4. Entity shall be solely responsible for the preparation, accuracy, and contents of its TABOR notice(s), if any, and shall submit such notice, including pro and con summaries and fiscal information, to County Clerk no later than 5:00 p.m. on September 27, 2016, pursuant to C.R.S. §1-7-904. Such notice shall be provided to County Clerk as an email attachment to elections@co.larimer.co.us or on compact disc (650 MB or higher) in the following format:

Microsoft Word
 Font Type: Arial
 Font Size: 8 point
 Justification: Left
 All Margins: 0.5 inches

5. The certified TABOR notice, including all text, summary of comments and fiscal information shall be final.
6. Proofread and approve Entity's TABOR content for printing. Entity shall provide an email address and designate a person to be available for proofing and approving TABOR content for printing. Due to time constraints, Entity must provide contact information for someone who is available from 8:00 a.m. to 10:00 p.m. from September 27, 2016 until September 30, 2016, or until final approval of the TABOR has been reached. County Clerk agrees to keep all contact personnel informed of TABOR printing status. Entity has designated Tim Andrews, whose phone is 970-962-2712, cell is 303-651-1097, email is Tim.Andrews@cityoflouisburg.org and fax is 970-962-2901.
7. Once approval has been received, County Clerk will not make any changes to the TABOR content. If Entity fails to provide approval by the required deadline, the content will be considered approved.
8. Pursuant to C.R.S. §1-7-906(2), Entity shall be responsible for mailing the TABOR notice to each address of one or more eligible electors who own property in Entity but do not reside within Entity .

I. Cancellation of Election by Entity.

If Entity resolves not to participate in Election, Entity shall immediately deliver to Contact Officer written notice that it is withdrawing one or more ballot questions or ballot issues; provided, however that Entity may not cancel after the 25th day prior to Election, October 14, 2016, pursuant to C.R.S. §1-5-208(2).

Entity shall reimburse County Clerk for the actual expenses incurred in preparing for Election. If cancellation occurs after the certification deadline, full election costs may be incurred. Entity shall publish all notices relative to Election which Entity is required to provide pursuant to Code, Rules, Entity's Charter and any other statute, rule or regulation.

ARTICLE IV COSTS

A. Election Costs.

The minimum fee for election services is \$650.00.

1. Entity's proportional share of costs shall be based on County expenditures relative to Election and the number of eligible electors per Entity. Costs include, but are not limited to, supplies, printing, postage, legal notices, temporary labor, rentals, and other expenses attributable to County Clerk's administration of Election for Entity. Entity shall be charged its prorated share of Election costs for any software programs used to count voted ballots as well as pre-election and post-election maintenance and on-site technical support.
2. Entity affirms that it has sufficient funds available in its approved budget to pay its prorated Election expenses.
3. If it is determined that counting must be moved to an established backup site, Entity shall be charged its prorated share.
4. The cost of any recount(s) will be charged to Entity, or if more than one Entity is involved in the recount, the cost will be prorated among the Entities participating in the recount.
5. Upon receipt of the invoice, pay to County Clerk within thirty days costs in an amount determined in accordance with the formula set forth in Exhibit A. If Exhibit A cannot be completed at the time of the mailing of Agreement, it will be provided as soon as possible.
6. Entity shall pay any additional or unique election costs resulting from Entity delays and/or special preparations or cancellations relating to Entity's participation in Election. Special preparations can include, but are not limited to; ballot addendums, affidavits, ballot language length exceeding 250 words, or multiple page ballot.

B. TABOR Costs.

The minimum fee for TABOR services is \$350.00.

Entity shall pay a prorated amount for the costs to coordinate, label and print the TABOR notice, and for the mailing of the notice. Such proration to be based, in part, on addresses where one or more active registered electors of Entity reside.

C. Invoice.

County Clerk shall submit to Entity an itemized invoice for all costs incurred under Agreement and Entity shall remit to County Clerk the total due upon receipt. Any amount not paid within 30 days after receipt will be subject to an interest charge at the lesser of 1 ½% per month or the highest rate permitted under law.

ARTICLE V MISCELLANEOUS

A. Entire Agreement.

Agreement and its Exhibits constitute the entire agreement between County Clerk and Entity as to the subject matter hereof and supersede all prior or current agreements, proposals, negotiations, understandings, representations and all other communications, both oral and written.

B. Indemnification.

County Clerk and Entity agree to be responsible and assume liability for its own wrongful or negligent acts and omissions, and those of its officers, agents and employees to the extent required by law. No term or condition of Agreement shall be construed or interpreted as a waiver, either express or implied, of the notice requirements, immunities, rights, benefits, defenses, limitations and protections available to Customer under the Colorado Governmental Immunity Act as currently written or hereafter amended.

In the event a court of competent jurisdiction finds Election for Entity was void or otherwise fatally defective as a result of the sole breach or failure of County Clerk to perform in accordance with Agreement or laws applicable to Election, Entity shall be entitled to recover expenses or losses caused by such breach or failure up to the maximum amount paid by Entity to County Clerk. County Clerk shall in no event be liable for any expenses, damages or losses in excess of the amounts paid under Agreement. This remedy shall be the sole and exclusive remedy for the breach available to Entity.

C. Conflict of Agreement with Law, Impairment.

Should any provision of Agreement be determined by a court of competent jurisdiction to be unconstitutional or otherwise null and void, it is the intent of County Clerk and Entity hereto that the remaining provisions of Agreement shall be of full force and effect.

D. Time of Essence.

Time is of the essence in the performance of Agreement. The time requirements of Code and Rules shall apply to completion of required tasks.

E. No Third Party Beneficiaries.

Enforcement of the terms and conditions of Agreement and all rights of action relating to such enforcement shall be strictly reserved to County Clerk and Entity, and nothing contained herein shall give or allow any such claim or right of action by any other person or Entity.

F. Governing Law; Jurisdiction & Venue.

Agreement, the interpretation thereof, and the rights of County Clerk and Entity under it will be governed by, and construed in accordance with, the laws of the State of Colorado. The courts of the State of Colorado shall have sole and exclusive jurisdiction of any disputes or litigation arising under Agreement. Venue for any and all legal actions arising shall lie in the District Court in and for the County of Larimer, State of Colorado.

G. Headings.

The section headings in Agreement are for reference only and shall not affect the interpretation or meaning of any provision of Agreement.

H. Severability.

If any provision of Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, such provision shall be deemed to be severable, and all other provisions of Agreement shall remain fully enforceable, and Agreement shall be interpreted in all respects as if such provision were omitted.

LARIMER COUNTY NOVEMBER 8, 2016 - GENERAL ELECTION COST PRORATION SUMMARY ESTIMATED COSTS EXHIBIT A												
PARTICIPATING JURISDICTION	ELECTION	TABOR	TABOR COSTS				ELECTION COSTS				TOTAL	
			NUMBER OF HOUSEHOLDS MAILED	COST SUBJECT TO MINIMUM CHARGE \$350.00	% OF TOTAL HOUSEHOLDS FOR GENERAL COST PRORATION	BALANCE OF COSTS X % OF HOUSEHOLDS INCL. MIN	NUMBER OF REGISTERED VOTERS	COST SUBJECT TO MINIMUM CHARGE \$650.00	% OF TOTAL REGISTERED VOTERS FOR GENERAL COST PRORATION	BALANCE OF COSTS X % OF REG VOTERS INCL. MIN & SOS	TOTAL ELECTION COST PER PARTICIPANT	
				\$42,559						\$1,354,000		
State of Colorado (Active voters @ .28 ea.)	YES	NA	NA	NA		NA	204,515	NA	NA		\$163,612.00	\$163,612.00
Larimer County	YES	YES	124,081	NA	75.80614%	\$30,670.40	204,515	NA	73.22859%		\$870,276.38	\$900,946.78
Town of Berthoud	YES	NO	0	\$0.00	0.000000%	\$0.00	3,921	NA	1.40395%		\$16,685.10	\$16,685.10
City of Loveland	YES	YES	28,000	NA	17.10634%	\$8,921.05	45,595	NA	16.32573%		\$194,021.23	\$200,942.28
Town of Estes Park	YES	YES	2,672	\$350.00	0.000000%	\$350.00	4,124	NA	1.47884%		\$17,548.93	\$17,898.93
St Vrain Valley School District RE-1J	YES	YES	280	\$350.00	0.000000%	\$350.00	585	NA	0.20230%		\$2,404.25	\$2,754.25
Loveland Rural Fire Protection District	YES	YES	7,279	NA	4.44704%	\$1,790.23	13,058	NA	4.67554%		\$55,595.94	\$57,365.17
Estes Valley Fire Protection District	YES	YES	4,322	NA	2.64049%	\$1,060.31	6,945	NA	2.48672%		\$29,553.18	\$30,621.50
Loveland Downtown Development Authority	YES	YES	402	\$350.00	0.000000%	\$350.00	580	NA	0.20051%		\$2,382.88	\$2,732.88
Horseshoe View Estates North PUD No 53	YES	YES	65	\$350.00	0.000000%	\$350.00	200	\$650	0.000000%		\$650.00	\$1,000.00
Terry Shores PUD No 54	YES	YES	86	\$350.00	0.000000%	\$350.00	200	\$650	0.000000%		\$650.00	\$1,000.00
River Glen LUD No 2812-1	YES	YES	64	\$350.00	0.000000%	\$350.00	200	\$650	0.000000%		\$650.00	\$1,000.00
TOTAL			167,251	\$2,100.00	100%	\$42,559.00	279,883	\$1,950	100.000000%		\$1,354,000.00	\$1,396,559.00
PLEASE NOTE: THIS IS AN ESTIMATION BASED ON ENTITIES THAT MAY OR MAY NOT PARTICIPATE IN THE 2016 GENERAL ELECTION												
Cost subject to minimum charge (\$42,559 cost to print/mail Tabors) less the total of all minimum charges to entities (\$2,100) X percentage of total households for general cost proration for your district.							Cost subject to minimum charge (\$1,354,000) less the total balance of cost subject to minimum charge (\$1,950) less the total elections costs of State of Colorado (\$163,612) X percentage of total registered voters for general costs proration for your district.					

EXHIBIT B
AUDIO FOR ACCUVOTE TSX UNIT

In accordance with Secretary of State Rule 4.6.2, all candidates shall provide an audio recording of their name to County Clerk no later than the last day upon which Entity certifies the ballot content (September 9, 2016), pursuant to C.R.S. §1-5-203(3)(a).

It is the responsibility of Entity to ensure an audio pronunciation is provided for each candidate as it is certified to County Clerk. The purpose of the audio recording is to be compliant with disability and accessibility laws providing voting equipment pursuant to C.R.S. §1-5-704.

To be in compliance with the above Code and Rule, County Clerk's office is providing a voice mailbox at **970.498.7946** that candidates are required to call to provide the correct pronunciation of their name.

Upon calling the voice mailbox, they will receive instructions on recording their information, as well as, options for listening, deleting, re-recording and saving their message. **Please inform candidates within your district of the necessity of recording the correct pronunciation of their name.**

County Clerk's office will contact Entity if pronunciation guidelines on any ballot race(s), ballot question(s) and/or ballot issue(s) are needed.

Please contact County Clerk's office at 970.498.7820 if you have any questions or need additional information.

IN WITNESS WHEREOF, the parties hereto have executed Agreement to be effective upon the date signed by both parties.

Date: _____

ANGELA MYERS
LARIMER COUNTY, COLORADO
CLERK AND RECORDER

ENTITY:


NAME OF ENTITY:

Date: _____

By: _____

Entity phone number

Title of Authorized Representative
Signing on behalf of Entity

DATE: 7-13-16
APPROVED AS TO FORM:


DEPUTY COUNTY ATTORNEY

AGENDA ITEM: 2.11
MEETING DATE: 8/16/2016
TO: Mayor and City Council
FROM: Rod Wensing, Assistant City Manager and
Mindy McCloughan, President & CEO
PRESENTER: Rod Wensing



TITLE:

A Resolution Approving A Lease Agreement Between The City Of Loveland, Colorado And The Loveland Chamber Of Commerce For A Portion Of The Building Located At 5400 Stone Creek Circle In Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Adopt the attached resolution authorizing the City Manager to sign the attached Building Lease between the City and the Loveland Chamber of Commerce. The Chamber Board of Directors voted unanimously to approve this Lease with the City.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration.

SUMMARY:

The City originally leased this building to the Loveland Chamber of Commerce in 1995 for construction, occupancy, and use of the building by the Chamber for office and conference space and for the operation of a local Visitor's Center. In 2011, the City and the Chamber entered into a new Lease that only involved a portion of the building for office and conference space, while the City took over the remaining portion of the building for the operation of the Visitor's Center. This latest Lease Agreement will continue this same arrangement and begin on January 1, 2017 and expire on December 31, 2021 with the option of three additional five-year terms at the option of the Chamber.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

Current monthly lease rate since 2011 has been \$1,314 and will be increasing to \$1,491. A monthly utility and service fee of \$637 will also be paid by the Chamber. Both of these numbers also have the opportunity to be reviewed annually to allow for any needed cost adjustments.

BACKGROUND:

This building sits on a 5 acre parcel that was dedicated as a Conservation Easement to the Larimer Land Trust by Derek McWhinney in 1995 for the specific use of a sculpture park, Loveland Chamber offices, and a visitor's center. The built environment of the sculpture park and the improvements on the property are owned and maintained by the City. The approval of

this Building Lease will continue the original vision regarding the use of this property by Mr. McWhinney, the City of Loveland and the Loveland Chamber of Commerce.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Resolution
2. Building Lease

RESOLUTION #R-77-2016

A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE LOVELAND CHAMBER OF COMMERCE FOR A PORTION OF THE BUILDING LOCATED AT 5400 STONE CREEK CIRCLE IN LOVELAND, COLORADO

WHEREAS, the City of Loveland (the “City”) is the owner of that certain building located on a portion of Lots 2 and 3, Block 1, McWhinney Second Subdivision, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 5400 Stone Creek Circle, Loveland, Colorado 80538 (“Building”); and

WHEREAS, the City and the Loveland Chamber of Commerce (the “Chamber of Commerce”) entered into that certain Lease Agreement dated December 6, 2011 (the “2011 Lease Agreement”) for occupancy and use of a portion of the Building by the Chamber of Commerce for office and conference space and for operation of a visitor’s center; and

WHEREAS, the 2011 Lease Agreement will expire on December 31, 2016; and

WHEREAS, the City and the Chamber of Commerce desire to enter into a new lease beginning on January 1, 2017 (the “2017 Lease Agreement”) for occupancy and use of a portion of the Building by the Chamber of Commerce for office and conference space; and

WHEREAS, the 2017 Lease Agreement will have an initial term of five years and provide the Chamber of Commerce with the option to extend the lease term for up to three additional five-year periods.

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

Section 1. That the 2017 Lease Agreement, attached hereto as **Exhibit “A”** and incorporated herein by reference, is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the 2017 Lease Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the 2017 Lease Agreement on behalf of the City.

Section 4. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 16th day of August, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE LOVELAND CHAMBER OF COMMERCE
FOR A PORTION OF THE BUILDING LOCATED AT 5400 STONE CREEK CIRCLE IN LOVELAND, COLORADO

LEASE AGREEMENT

This Lease Agreement ("Lease") is entered into this ____ day of _____, 2016, by and between the **City of Loveland**, a Colorado municipal corporation ("City"), and the **Loveland Chamber of Commerce**, a Colorado nonprofit corporation ("Chamber").

Whereas, the City is the owner of that certain building located on a portion of Lots 2 and 3, Block 1, McWhinney Second Subdivision, City of Loveland, County of Larimer, State of Colorado, also known by the mailing address of 5400 Stone Creek Circle, Loveland, Colorado 80538 ("Building"); and

Whereas, the City and the Chamber entered into that certain Lease Agreement dated December 6, 2011 ("2011 Lease") for the lease of a portion of the Building by the Chamber for office; and

Whereas, the 2011 Lease Agreement will expire on December 31, 2016, and the parties desire to enter into a new lease agreement for the same portion of the Building and for the same purpose.

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

1. Term. This Lease shall commence on **January 1, 2017** and expire on **December 31, 2021**, unless sooner terminated by operation of law or in accordance with this Lease. This lease may be renewed by the Chamber for up to three additional five-year terms by providing written notice no later than 60 days prior to the expiration of the then-current five-year term.

2. Premises. The premises to be leased shall consist of a portion of the Building as depicted on **Exhibit A**, attached hereto and incorporated herein by reference ("Premises").

3. Use of Premises. The Chamber shall be permitted to use and occupy the Premises for office and conference space for the purpose of furthering its organizational goals of improving the conditions of commerce within the City of Loveland; provided, however, that such use is consistent with the covenants and easements and all other matters of record as of the date of this Lease. No additional uses shall be permitted without the City's prior written consent.

4. Use of Vestibule. The City agrees that the Chamber may place a bulletin board, a business card display, and a three-sided perimeter wall display in the Building vestibule adjacent to the Premises. The Chamber shall be solely liable for the bulletin board, displays, and their contents. The Chamber may remove or replace the bulletin board and displays with displays of like materials and sizes at any time during the term of this Lease without the City's prior permission. All other changes are subject to the City's prior approval. The Chamber may use the public restrooms located off the vestibule for the convenience of its employees and guests. However the Chamber may not place any advertisements or displays of any kind in the public restrooms.

5. **Visitor's Center.** The Chamber acknowledges that the City intends to operate and maintain the Visitor's Center within the remaining portion of the Building adjacent to the Premises. The parties agree to cooperate with one another to the extent required so that both parties may enjoy the use of their respective portions of the Building.

6. **Conference Room.** The Chamber agrees that the City may use the conference room located on the Premises for meeting purposes, without charge, on an as-needed basis when the conference room is not in use by the Chamber. The City shall schedule all such use through the Chamber's administrative office. In addition, the parties agree that the City may use the storage room for storage of small tools and materials necessary to maintain the Property as defined and required in Paragraph 12 below.

7. **Rent.**

a. In consideration for the right to use and occupy the Premises as permitted herein, the Chamber shall pay to the City **Seventeen Thousand Eight Hundred Ninety Two Dollars (\$17,892) per calendar year** during the term of this Lease ("Rent"). The Rent shall be divided into twelve equal payments of One Thousand Four Hundred Ninety One Dollars (\$1,491) with one payment due on the First (1st) day of each calendar month beginning in January 1, 2017, and payable no later than the fifth (5th) day of each calendar month.

b. Commencing on January 1, 2018, and on January 1st in each year thereafter during the term of this Lease or any renewals thereof, the annual rent shall be adjusted by multiplying the annual rent payable in the preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published as an average for the previous six-month periods from January through June and the denominator of which shall be the C.P.I. published for the average of the six-month periods from January through June that preceded the month used as the numerator. In no event shall the annual rent be increased by more than 2.5% annually or be reduced from that payable in a previous year. The term "C.P.I." as used herein shall mean the Consumer Price Index for all Urban Consumers, all items, Selected Large Cities, for the Denver-Boulder-Greeley Area as published by the Bureau of Labor Statistics of the United States Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to use the C.P.I., or this index, an equivalent or comparable economic index will be used.

8. **Utilities.**

a. The City shall provide the following utilities to the Premises for use by the Chamber: water, wastewater, electric, trash and recycling, internet and gas ("Utilities"). In consideration for the right to use the Utilities, the Chamber shall pay to the City **Six Hundred Thirty Seven Dollars (\$637.00) per month** during the term of this Lease ("Utility Fee"). The Chamber shall pay the Utility Fee, in advance, on or before the tenth (10th) day of the then-current month. The City reserves the right to make adjustments in

the Utility Fee effective January first (1st) of each calendar year during the term of this Lease. Said adjustments shall be based on the Chamber's actual usage during the preceding calendar year and any approved rate increases or decreases for the effective calendar year. The City shall notify the Chamber in writing of any such adjustments on or before December first (1st) of the preceding calendar year, and provide the Chamber with written documentation supporting such adjustments.

b. The Chamber at its sole cost and expense shall provide telephone services to the Premises for use by the Chamber.

9. Alterations. The Chamber shall not make any substantial alterations or changes to the Premises without the City's prior written consent, which shall not be unreasonably withheld.

10. Right to Inspect Premises. The City shall have the right at all reasonable times to enter the Premises for any and all purposes not inconsistent with this Lease, provided such action does not unreasonably interfere with the Chamber's use, occupancy, or security requirements of the Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property as determined by the City, the City shall provide twenty-four (24) hours' prior notice of its intent to inspect the Premises.

11. Maintenance and Repair of Premises.

a. The City shall be responsible for maintenance and repair of the Premises including, without limitation, heating and cooling, plumbing, and electrical systems and the exterior of the Premises, including the roof; provided, however, that the Chamber shall reimburse the City for costs associated with any maintenance or repair required due to damage caused by the Chamber, its employees, or agents, normal wear and tear excepted. Invoices for any such maintenance or repair shall be paid by the Chamber within thirty (30) days of invoice.

b. The Chamber shall, at all times, keep the Premises in a clean and orderly condition and shall be responsible for daily collection and dumping of its trash and recyclables into bins supplied by the City at locations designated by the City. The Chamber may contract for and provide janitorial services to the Premises, if desired, at the Chamber's sole cost and expense.

12. Maintenance of Property. The City shall be responsible for maintaining the landscaping, irrigation system, detention pond, and artwork on the real property on which the Building is located ("Property"). The City shall also be responsible for removing any snow that accumulates on the parking lot and on the sidewalks located on the Property.

13. Parking. The Chamber shall be entitled to the non-exclusive use of the parking lot located on the Property at no additional cost; provided, however, that the Chamber may not use the parking lot in any way that limits the ability of those persons using the Visitor's Center to access or use the parking lot.

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

15. Insurance.

a. During the duration of this Lease, the Chamber shall procure and keep in force a policy of workers' compensation insurance as required by Colorado law and a policy of comprehensive general liability insurance insuring the Chamber and naming the City as an additional insured with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. The general liability policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The general liability policy shall contain a severability of interests provision. The general liability policy shall be for the mutual and joint benefit and protection of the Chamber and the City and shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recover under said policy for any loss occasioned to the City, its officers, employees, and agents by reason of negligence of the Chamber, its officers, employees, agents, subcontractors, or business invitees. The general liability policy shall be written as a primary policy not contributing to and not in excess of coverage the City may carry.

b. Policies required herein shall be with companies qualified to do business in Colorado with a general policyholder's financial rating reasonably acceptable to the City. Said policies shall not be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days' prior written notice to the City. The Chamber shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the Chamber changes to "occurrence," the Chamber shall carry a six-month tail.

16. Indemnity. The Chamber shall assume the risk of all personal injuries, including death resulting therefrom, to persons and damage to or destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in connection with or arising out of the acts or omissions of the Chamber, its employees, agents, servants, subcontractors, or authorized volunteers, or by the conditions created thereby. The Chamber shall indemnify and hold harmless the City, its officers, agents, and employees from and against any and all claims, liabilities, costs, expenses, penalties, attorney's fees, and defense costs arising from such injuries to persons or damages to property based upon or arising (i) out of the acts or omissions of the Chamber, its employees, agents, servants, subcontractors, or authorized volunteers, (ii) out of any violation by the Chamber, its employees, agents, servants, subcontractors, or authorized volunteers of any law, regulation, or ordinance, or (iii) out of the provision of Utilities services by the City.

17. Governmental Immunity. Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* ("Act") and under any other applicable law. The parties understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the City, its departments, commissions, boards, officials, and employees is controlled and limited by the provisions of the Act, as now or hereafter amended. Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited, and otherwise modified so as to limit any liability of the City to the above-cited laws.

18. Sublease and Assignment. The Chamber may not assign all or any part of this Lease or sublease all or any part of the Premises to any other person or entity; provided, however, that the Chamber may sublease all or any part of the Premises to a nonprofit IRS-designated 501(c)(3), 501(c)(4), or 501(c)(6) entity, or to a local or county governmental entity. The Chamber shall promptly notify the City in writing of any such sublease.

19. Holding Over. Any holding over after the expiration of the term of this Lease or any extended term thereof, with the consent of the City, shall be construed to be a tenancy from month-to-month on the same terms and conditions, at the same Rent, and on the same Rent terms provided for herein.

20. Total or Partial Destruction. If during the term of this Lease the Premises or any part thereof is destroyed or is so damaged by fire or other casualty so as to become uninhabitable, then the City may elect to terminate this Lease. In the event the City elects to terminate this Lease, the Chamber immediately shall surrender the Premises to the City; provided, however, that the City shall exercise such option to terminate by written notice to the Chamber within thirty (30) days after such destruction or damage. In the event the City does not elect to terminate this Lease, this Lease shall continue in full force and effect, and the City shall repair the Premises with all reasonable speed, placing the same in as good a condition as it was at the time of the destruction or damage and for that purpose may enter upon the Premises. If the Premises is only slightly injured by fire or the elements so as to not render the same uninhabitable and unfit for occupancy, then the City shall repair the same as soon as practicable.

21. Termination for Default. In the event either party fails to perform according to the provisions of this Lease, such party may be declared in default. If the defaulting party does not cure said breach within thirty (30) days of written notice thereof, the non-defaulting party may terminate this Lease immediately upon written notice of termination to the other. In the event of default by the Chamber, the City shall have the right, at its election and while such event of default shall continue, to give the Chamber written notice of its intention to terminate this Lease on the date of such notice or any later date specified therein. On the specified date, the Chamber's right to possess the Premises shall cease, and this Lease shall be terminated. The City may then re-enter and take possession of the Premises or any part thereof, repossess the same, expel the Chamber and those claiming through or under the Chamber, and remove the effects of both or either (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrearages of Rent or breach of covenants.

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

To the City:

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

To the Chamber:

Loveland Chamber of Commerce
Attn: Mindy McCloughan, President/CEO
5400 Stone Creek Circle
Loveland, CO 80538
(970) 744-4791
mmccloughan@loveland.org

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

24. Miscellaneous. This Lease shall be construed according to its fair meaning and as if prepared by both parties and shall be deemed to be and contain the entire understanding and agreement between the parties. There are no other terms, conditions, promises, understandings, statements, or representations, express or implied, concerning this Lease unless set forth in writing and signed by the parties. The benefits and burdens of this Lease shall inure to and be binding upon the parties and their respective successors and permitted assigns. This Lease shall be governed by, and its terms construed under, the laws of the State of Colorado with venue exclusively in Larimer County, Colorado. Nothing contained in this Lease shall be deemed or construed by the parties or any third party as creating the relationship of principal and agent or a partnership or a joint venture between the parties, it being agreed that none of the provisions herein or any acts of the parties shall be deemed to create a relationship between the parties other than the relationship of landlord and tenant. Upon the expiration or termination of this Lease, the Chamber agrees to peaceably surrender the Premises to the City in broom-clean condition and good repair, normal wear and tear excepted.

Signed by the parties on the date written above.

City of Loveland, Colorado

By: _____

Stephen C. Adams, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:



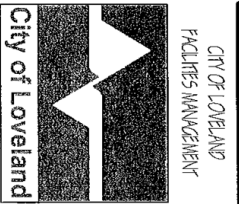
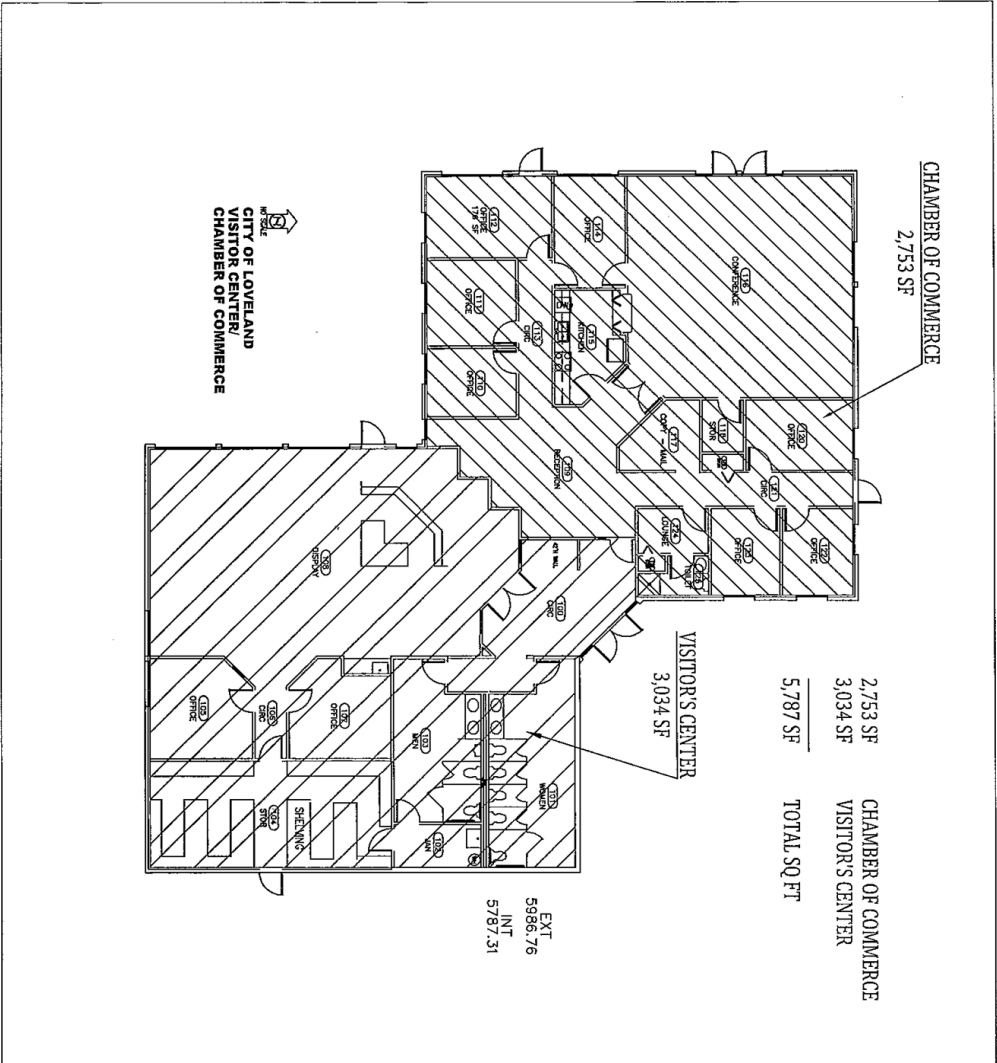
Assistant City Attorney

Loveland Chamber of Commerce

By:

Mindy McCloughan, President/CEO

EXHIBIT A



Project Title:

VISITOR'S CENTER &
CHAMBER OF COMMERCE

For owner:
\\PUBLIC\WORKS - FACILITIES MANAGEMENT\DRAWINGS\

Scale:

1/16" = 1'

Date:

10/12/2011

AGENDA ITEM: 2.12
MEETING DATE: 8/16/2016
TO: City Council
FROM: Leah Browder, Public Works
PRESENTER: Jeff Bailey, City Engineer



TITLE:

Resolution Approving An Amendment To A Reimbursement Agreement For New Street Construction Between The City Of Loveland And Bell Homes, LLC.

RECOMMENDED CITY COUNCIL ACTION:

Extend by Resolution the Existing Reimbursement Agreement for New Street Construction between the City of Loveland and Bell Homes, LLC.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action, and the Reimbursement Agreement expires, preventing the Bell family from recovering prior expenses.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration. If action to extend is not taken the agreement will expire, preventing the Bell family from recovering prior expenses.

SUMMARY:

Bell Homes LLC constructed street improvements that are a benefit to the adjacent property. The City and Bell Homes LLC entered into an agreement where the City collects those costs from the adjacent property at the time of development. This agreement has a 10-year period for collection, which expires September 6, 2016, if not extended by City Council.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

The process of reimbursement of the Developer from the adjacent property is detailed in the Larimer County Urban Area Street Standards in section 1.9.3. The Developer reimburses the City \$500 for the collection of these funds, and the City simply acts as a pass-through for the Developer.

BACKGROUND:

In 1996, Bell Homes LLC (Developer) reconstructed and widened South Taft Avenue from 28th Street Southwest north a distance of 558 lineal-feet. This work was done in conjunction with Lakeside Terrace Estates PUD. Developer, in accordance with the Larimer County Urban Area Street Standards (LCUASS), entered into a reimbursement agreement with the City of Loveland on July 5, 2000 for the collection of the monies expended by Developer from the neighboring property to the east of Taft Ave. (The amount to be collected is \$22,932 multiplied by the ratio from the Engineering News Record construction cost index for Denver for the month in which the payment is made, divided by 4074.76, which is the construction cost for February 1996 when the construction was originally paid by the Developer.)

As provided in the LCUASS, any right to reimbursement pursuant to this provision shall not exceed a period of ten years from the acceptance by the City of the street improvements. City Council may approve extensions of the reimbursement agreement for additional ten-year periods.

Per the agreement, these monies are to be collected at such time that the neighboring property develops. City Council previously granted a ten year extension on May 16, 2006. Because this property has not developed within the additional ten year time frame allowed in the LCUASS and approved by City Council, Bell Homes LLC is requesting a ten year extension of the existing agreement which is due to expire on September 6, 2016.

The City's obligation to reimburse the Developer shall be contingent upon the City's actual collection of the front footage charge from the abutting developer. The City shall have no obligation to reimburse any funds that it fails to collect, for whatever reason, provided that the City made a good faith attempt to collect such funds.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Second Amendment to Reimbursement Agreement for New Street Construction
2. Resolution
3. Location Map

City acceptance for the Completed Street Improvements: 9/5/1996
 Agreement effective until: 9/5/2016

**AMENDMENT TO REIMBURSEMENT AGREEMENT
 FOR NEW STREET CONSTRUCTION**

THIS SECOND AMENDMENT TO REIMBURSEMENT AGREEMENT FOR NEW STREET CONSTRUCTION, made and entered into this ____ day of August, 2016, by and between the CITY OF LOVELAND, COLORADO, a municipal corporation, hereinafter called the “City” and BELL HOMES, LLC, hereinafter called the “Developer”,

W I T N E S S E T H

WHEREAS, the City and the Developer entered into a “Reimbursement Agreement for New Street Construction,” dated July 5th, 2000, (the “Agreement”) pursuant to the Reimbursement Policy for New Street Construction adopted by the City; and

WHEREAS, the Agreement provides that the City will attempt to collect monies to be reimbursed to the Developer for Improvements related to the widening of South Taft Avenue, which Improvements are described in more detail in the Agreement, attached hereto; and

WHEREAS, the Agreement was extended by Resolution #R-45-2006 and shall expire on September 5, 2016, unless extended by the City Council; and

WHEREAS, the Developer has requested an extension of the Agreement to allow reimbursement from adjacent properties that have not yet developed; and

WHEREAS, the City Council a second amendment to the Agreement to provide one additional ten (10) year period within which reimbursement may be provided to the Developer, and to clarify other terms and conditions of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, it is agreed as follows:

1. Paragraph 2 of the Agreement is amended to read as follows:

TERM, EFFECT AND INTEGRATION.

It is expressly understood and agreed that the terms of this Agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, and assigns of the parties hereto; and that the reimbursement provisions of this Agreement shall be in force and effect only until September 5, 2026, or until maximum reimbursement is made prior to expiration of the term of this Agreement.

This Agreement and any rights hereunder may not be assigned without the written consent of the parties hereto, which consent shall not be unreasonably withheld.

SRA, 1 of 3

Documents attached to this Agreement are:

- 1. Exhibit A – Description of Improvements;
- 2. Exhibit B – Certified Reimbursement Costs;
- 3. Exhibit C – Description of Obligated Property and list of owners;
- 4. Exhibit D – Calculation of Reimbursement Amounts;
- 5. Exhibit E – Reimbursement Policy for New Street Construction;
- 6. Exhibit F – Construction Improvements Map.

This Agreement constitutes the entire Agreement of the parties, and may be altered, amended or revised only by written agreement of the parties hereto.

- 3. All other terms and conditions of the Agreement shall remain unchanged.

THE CITY OF LOVELAND
A Municipal Corporation

ATTEST:

City Manager

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

State of Colorado)
)
County of Larimer)

Subscribed and sworn to before me this _____ day of _____, 20____,
by _____, City Engineer and _____, City Clerk.
My commission expires _____.

S E A L

Notary Public

BELL HOMES, LLC, Developer

By: _____

Title: _____

State of Colorado)
)
County of Larimer)

Subscribed and sworn to before me this _____ day of _____, 20____,
by _____, Manager of Bell Homes, LLC.

My commission expires _____.

S E A L

Notary Public

RESOLUTION NO. R-78-2016

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF LOVELAND, COLORADO APPROVING A SECOND
AMENDMENT TO A REIMBURSEMENT AGREEMENT
FOR NEW STREET CONSTRUCTION WITH BELL
HOMES, LLC**

WHEREAS, the City and Bell Homes, LLC (the “Developer”) entered into a “Reimbursement Agreement for New Street Construction,” dated July 5th, 2000, (the “Agreement”) pursuant to the Reimbursement Policy for New Street Construction adopted by the City. By its terms, the Agreement expired on September 5, 2006, unless extended by City Council; and

WHEREAS, the Larimer County Urban Street Standards provide that a developer’s right to reimbursement shall not exceed a period of 10 years from acceptance of the improvements by the City, unless City Council approves an extension for additional 10 year periods; and

WHEREAS, on May 16, 2006, City Council approved an amendment extending the expiration of the Agreement to September 5, 2016; and

WHEREAS, the Agreement provides that the City will attempt to collect monies to be reimbursed to the Developer for Improvements related to the widening of South Taft Avenue; and

WHEREAS, the Agreement shall expire on September 5, 2016, unless extended by the City Council; and

WHEREAS, the Developer has requested a second extension of the Agreement to allow reimbursement from adjacent properties that have not yet developed; and

WHEREAS, the City Council desires to amend the Agreement to provide one additional ten (10) year period within which reimbursement may be provided to the Developer, and to clarify other terms and conditions of the Agreement.

WHEREAS, the City Council desires to approve the Second Amendment to Reimbursement Agreement for New Street Construction, attached hereto and incorporated herein as **Exhibit A**, on behalf of the City of Loveland.

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

Section 1. The Second Amendment to Reimbursement Agreement for New Street Construction (“Second Amendment”) between the City of Loveland and Bell Homes, LLC, attached hereto and incorporated herein by reference as **Exhibit A** is hereby approved.

Section 2. The City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the above referenced Second Amendment provided that such changes do not impair the intended purpose of the Second Amendment.

Section 3. The City Manager and the City Clerk are authorized and directed to execute the above referenced Second Amendment on behalf of the City of Loveland.

Section 4. This resolution shall be in full force and effect from and after its passage, approval and signature of the Mayor.

Adopted this 16th day of August, 2016.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

Street Reimbursement Agreement with Bell Homes



AGENDA ITEM: 5.2
MEETING DATE: 8/16/2016
TO: City Council
FROM: Brett Limbaugh, Development Services Director
PRESENTER: Noreen Smyth, Senior Planner



TITLES:

1. A Resolution Concerning The Annexation To The City Of Loveland, Colorado, Of A Certain Area Designated As "Gatorwest 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 Approving The Annexation Of Certain Territory To The City Of Loveland, Colorado, To Be Known And Designated As "Gatorwest Addition" To The City Of Loveland

3. An Ordinance Amending Section 18.04.060 Of The Loveland Municipal Code, The Same Relating To Zoning Regulations For "Gatorwest Addition" To The City Of Loveland

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motions for City Council action as recommended by the Planning Commission:

1. Move to adopt the resolution concerning the annexation of the Gatorwest Addition;
2. Move to adopt on first reading the ordinance annexing the Gatorwest Addition to the City of Loveland; and
3. Move to adopt on first reading the ordinance zoning the Gatorwest Addition to the City of Loveland to B-Developing Business.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. The property would remain outside city limits and the applicant could request development in unincorporated Larimer County.
3. Adopt a modified action.
4. Refer back to staff for further development and consideration. This would delay the applicant in proceeding to the additional city applications necessary for development of the property.

SUMMARY:

This is a public hearing to consider the following items on first reading:

- A legislative action to adopt a resolution and ordinance to annex 2.3 acres of property to be known as the Gatorwest Addition; and
- A quasi-judicial action to zone the 2.3 acres to B-Developing Business District.

The property is situated on the west side of N. Garfield Avenue and on the east side of N. Granite Street, roughly half way between W. 50th Street and Ranch Acres Drives. It is addressed at 5100 Granite Street. The applicant is M. Bryan Short with Gatorwest, LLC.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:

This proposal is to annex as the "Gatorwest Addition" a 2.3-acre area of land. The land consists of an undeveloped, grass-covered 1.9-acre lot plus 0.4-acre of street right-of-way that is immediately adjacent to the lot. In conjunction with the annexation, the applicant is seeking to have the property zoned B-Developing Business. After the annexation and zoning, the applicant intends to keep the property as a single lot and pursue development of a multi-tenant building for office, retail, and/or warehouse uses.

The property is contiguous to city limits on its east side, where the adjacent portion of N. Garfield Avenue had previously been annexed into the City. The property is designated as Corridor Commercial in both the newly adopted Create Loveland Master Plan and the City's previous Comprehensive Master Plan. The proposed B zoning district aligns with the Corridor Commercial designation in the Master Plan. Commercial uses dominate along N. Garfield Avenue in the vicinity of the property, with some lots situated within city limits and some remaining unincorporated.

At the neighborhood meeting, attendees inquired about anticipated traffic generated by the proposed uses, whether the traffic would consist of heavy trucks, and whether it would all enter and exit off of Granite Street or also off of Garfield Avenue. The applicant explained that CDOT will not grant access to this property off of Garfield, and that the uses anticipated to locate in the building would not be traffic intensive and would not utilize large trucks. Attendees generally supported the proposed zoning and use.

The Planning Commission is recommending approval of the annexation and zoning request by a vote of 8-0 with one member absent.

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Ordinance approving the annexation
2. Ordinance relating to zoning
3. Resolution
4. Staff Memorandum
5. Planning Commission Minutes
6. City of Loveland B District and Larimer County B District

FIRST READING: August 16, 2016

SECOND READING: _____

ORDINANCE NO. _____

**AN ORDINANCE APPROVING THE ANNEXATION OF
CERTAIN TERRITORY TO THE CITY OF LOVELAND,
COLORADO, TO BE KNOWN AND DESIGNATED AS THE
"GATORWEST 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 copies of the map of said territory as required by law, was filed with the City on June 20, 2016, 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 August 16, 2016, 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 the **"GATORWEST ADDITION"** to the City of Loveland, Larimer County, Colorado is hereby approved:

A parcel of land being a part of Tract 1, Ranch Acres Subdivision, and portions of the vacated service road and 51st Street rights of way per Reception Number 93023187, and adjacent rights of way lying within the Northeast 1/4 section 35, Township 6 North, Range 69 West, 6th P.M., Larimer County, Colorado, more particularly described as follows:

Considering the West Line of Tract 1 Ranch Acres Subdivision as bearing N 00°19'35" W and with all bearings contained herein relative thereto;

Commencing at the Southwest corner of Tract 1 Ranch Acres Subdivision said point also being on the East right-of-way line of Granite Street,

Thence N 00°23'16" W along said right of way line for a distance of 30.00 feet to the point of beginning;

Thence S 89°28'02" W for a distance of 60.00 feet to a point on the extension of the West right of way line of Granite Street;

Thence N 00°19'35" W along said West right of way line for a distance of 270.32 feet;

Thence departing said West line S 89°40'02" E for a distance of 359.97 feet to the West right of way line of US Highway 287 per the plat of Ranch Acres Subdivision;

Thence along said West right-of-way line S 00°19'58" E for a distance of 249.36 feet to the Southwest corner of Shade Tree Fifth Addition to the City of Loveland;

Thence departing from said West right of way S 89°57'03" E for a distance of 101.09 feet to a point on the East right of way line of US Highway 287 per book 1057 page 402;

Thence S 00°12'36" E along said East right-of-way line a distance of 18.68 feet;

Thence departing from said East right of way S 89°28'02" W for a distance of 401.05 feet to the point of beginning.

Thus described tract contains 2.273 acres more or less, together with and subject to all easements and rights-of-way existing and/or of public record.

Section 3. That the annexation of said territory is subject to the 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 of said territory is subject to the conditions set forth in the annexation agreement filed with 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.

ADOPTED this 6th day of September, 2016.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



Assistant City Attorney

FIRST READING: August 16, 2016

SECOND READING: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 18.04.060 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "GATORWEST ADDITION" TO THE CITY OF LOVELAND

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

Section 1. That Section 18.04.060 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 "GATORWEST ADDITION" to the City of Loveland, Colorado, shall be included within the boundaries of the district designated as follows:

B – DEVELOPING BUSINESS:

A parcel of land being a part of Tract 1, Ranch Acres Subdivision, and portions of the vacated service road and 51st Street rights of way per Reception Number 93023187, and adjacent rights of way lying within the Northeast 1/4 section 35, Township 6 North, Range 69 West, 6th P.M., Larimer County, Colorado, more particularly described as follows:

Considering the West Line of Tract 1 Ranch Acres Subdivision as bearing N 00°19'35" W and with all bearings contained herein relative thereto;

Commencing at the Southwest corner of Tract 1 Ranch Acres Subdivision said point also being on the East right-of-way line of Granite Street,

Thence N 00°23'16" W along said right of way line for a distance of 30.00 feet to the point of beginning;

Thence S 89°28'02" W for a distance of 60.00 feet to a point on the extension of the West right of way line of Granite Street;

Thence N 00°19'35" W along said West right of way line for a distance of 270.32 feet;

Thence departing said West line S 89°40'02" E for a distance of 359.97 feet to the West right of way line of US Highway 287 per the plat of Ranch Acres Subdivision;

Thence along said West right-of-way line S 00°19'58" E for a distance of 249.36 feet to the Southwest corner of Shade Tree Fifth Addition to the City of Loveland;

Thence departing from said West right of way S 89°57'03" E for a distance of 101.09 feet to a point on the East right of way line of US Highway 287 per book 1057 page 402;

Thence S 00°12'36" E along said East right-of-way line a distance of 18.68 feet;

Thence departing from said East right of way S 89°28'02" W for a distance of 401.05 feet to the point of beginning.

Thus described tract contains 2.273 acres more or less, together with and subject to all easements and rights-of-way existing and/or of public 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.

ADOPTED the 6th day of September, 2016.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



Assistant City Attorney

RESOLUTION NO. R-79-2016

**A RESOLUTION CONCERNING THE ANNEXATION TO
THE CITY OF LOVELAND, COLORADO, OF A CERTAIN
AREA DESIGNATED AS "GATORWEST 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 20, 2016, 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-49-2016, 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 August 16, 2016, commencing at 6:00 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 of 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-49-2016, 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 this Resolution, a public hearing was held on August 16, 2016, commencing at the hour of 6:00 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 July 9, 16, 23 and 30, 2016, 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 City's master plan, Create Loveland. 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 1,460.67 linear feet, of which 350.59 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 16th day of August, 2016.

CITY OF LOVELAND, COLORADO:

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A RESOLUTION CONCERNING THE ANNEXATION TO THE CITY OF LOVELAND, COLORADO, OF A CERTAIN AREA DESIGNATED AS "GATORWEST 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

EXHIBIT A

A PARCEL OF LAND BEING A PART OF TRACT 1, RANCH ACRES SUBDIVISION, AND PORTIONS OF THE VACATED SERVICE ROAD AND 51ST STREET RIGHTS OF WAY PER RECEPTION NUMBER 93023187, AND ADJACENT RIGHTS OF WAY LYING WITHIN THE NORTHEAST 1/4 SECTION 35, TOWNSHIP 6 NORTH, RANGE 69 WEST, 6TH P.M., LARIMER COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE WEST LINE OF TRACT 1 RANCH ACRES SUBDIVISION AS BEARING N 00°19'35" W AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

COMMENCING AT THE SOUTHWEST CORNER OF TRACT 1 RANCH ACRES SUBDIVISION SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF GRANITE STREET,

THENCE N 00°23'16" W ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING;

THENCE S 89°28'02" W FOR A DISTANCE OF 60.00 FEET TO A POINT ON THE EXTENSION OF THE WEST RIGHT OF WAY LINE OF GRANITE STREET;

THENCE N 00°19'35" W ALONG SAID WEST RIGHT OF WAY LINE FOR A DISTANCE OF 270.32 FEET;

THENCE DEPARTING SAID WEST LINE S 89°40'02" E FOR A DISTANCE OF 359.97 FEET TO THE WEST RIGHT OF WAY LINE OF US HIGHWAY 287 PER THE PLAT OF RANCH ACRES SUBDIVISION;

THENCE ALONG SAID WEST RIGHT--OF--WAY LINE S 00°19'58" E FOR A DISTANCE OF 249.36 FEET TO THE SOUTHWEST CORNER OF SHADE TREE FIFTH ADDITION TO THE CITY OF LOVELAND;

THENCE DEPARTING FROM SAID WEST RIGHT OF WAY S 89°57'03" E FOR A DISTANCE OF 101.09 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF US HIGHWAY 287 PER BOOK 1057 PAGE 402;

THENCE S 00°12'36" E ALONG SAID EAST RIGHT--OF--WAY LINE A DISTANCE OF 18.68 FEET;

THENCE DEPARTING FROM SAID EAST RIGHT OF WAY S 89°28'02" W FOR A DISTANCE OF 401.05 FEET TO THE POINT OF BEGINNING.

Thus described tract contains 2.273 acres more or less, together with and subject to all easements and rights-of-way existing and/or of public record.



DEVELOPMENT SERVICES Current Planning

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

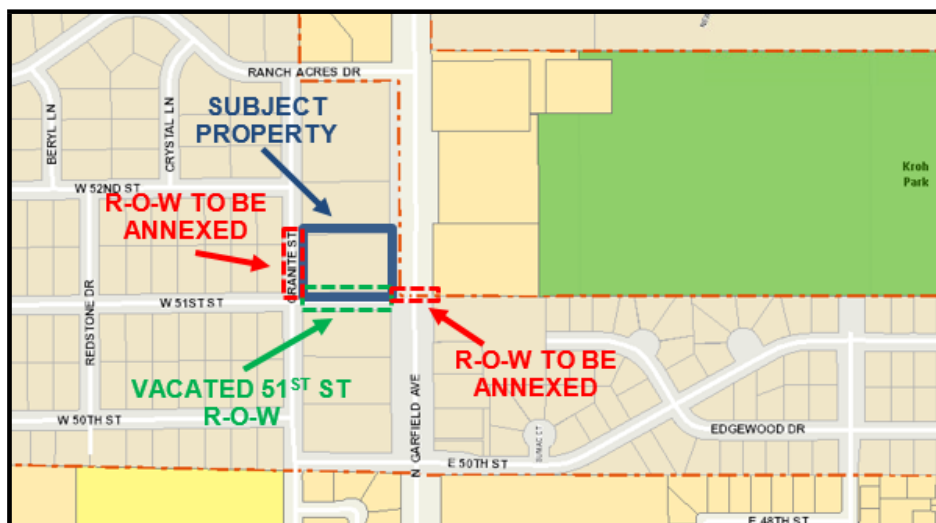
MEMORANDUM

TO: City Council
FROM: Noreen Smyth, Senior Planner
DATE: August 16, 2016
RE: Gatorwest Annexation and Zoning

I. EXECUTIVE SUMMARY

A. Proposal

The City Council public hearing is to consider the annexation and zoning of a 2.3 acre area of land at 5100 Granite Street. The property is situated on the west side of N. Garfield Avenue (State Highway 287), roughly half way between W. 50th Street and Ranch Acres Drive. The land consists of an undeveloped 1.9 acre lot plus 0.4-acre of street right-of-way that is immediately adjacent to the lot. It is within the city's Growth Management Area and is contiguous to the city along its east property line.



In conjunction with the annexation, the applicant is seeking to have the property zoned B Developing Business. After annexation and zoning, the applicant is interested in pursuing development of a single commercial building on the lot that will contain an office and warehousing for the applicant's surveying business, along with space for a few tenants of compatible uses. The proposal is in compliance with the city's Comprehensive Plan.

B. Background

The 1.9 acre lot was created in Larimer County with the Ranch Acres plat of subdivision. It fronts Granite Street to the west and Garfield Avenue/Hwy 287 to the east. There had previously been unpaved 51st Street right-of-way to the south of the lot, but this was vacated in the past. Most of the nearby properties fronting Garfield Avenue are developed with commercial uses, with a few, like the subject property, still undeveloped. Near the subject property on the west side of Garfield Avenue are a couple of office buildings, a strip commercial building, a car wash, and a gas station. Across Garfield Avenue is an empty lot, the Habitat for Humanity ReStore retail shop, a landscape supply business, and an access drive to Kroh Park, which is situated behind (east of) the commercial properties fronting Garfield. While properties on both sides of Garfield Avenue to the south of 50th Street are within city limits, properties north of 50th Street up to 71st Street are a mix of incorporated and unincorporated sites. To the west of the subject property is a single family residential subdivision, Ranch Acres, situated outside city limits.



C. City vs County Development of the Property

Annexing unincorporated properties that are adjacent to city limits and within the city's Growth Management Area meets the goals of the city's Comprehensive Plan and is encouraged by an intergovernmental agreement between the City of Loveland and Larimer County. However, the property could remain unincorporated and the owner could pursue development permits through Larimer County. As summarized below, the ultimate development on the property is not likely to be very different if permits are pursued through the county rather than the city. However, it is generally considered advantageous to have the opportunity to apply city policies and codes to the development of properties

within our Growth Management Area, as it will ensure that standards that the city supports, such as higher quality architecture along major roadways, landscape bufferyards, and parking lot screening, are included in the development plan.

Zoning

The lot is zoned B Business in Larimer County. While the allowable land uses in the county's B Business district and the requested city B-Developing Business district are not identical, the two are quite similar; see attached sections from both the county and the city zoning code. The county zoning system has three business districts, and the subject property is the medium-intensity business district. The city zoning system has only one business district, but requires a special review permit for certain uses to locate in the district. The uses the applicant anticipates locating in his proposed building are uses by right in both the county B Business District and the city B-Developing Business District.

Infrastructure

The property will have access to infrastructure whether it remains unincorporated or is annexed. City staff will be the primary reviewers of any development proposals if it is annexed, while county staff will be the primary reviewers of any development proposals if it is not.

- **Power:** The property is within Xcel's service area, but the City of Loveland can take over the service if the property is annexed. The developer would be responsible for any infrastructure costs to provide service.
- **Water:** The property is adjacent to an existing Fort Collins-Loveland Water District main. There is a planned 2026 extension of a city water main along Granite. The developer can either tap into the District water line, and possibly then tap into the city line at the time it is extended, or the developer can cover the cost of extending the city water line at the time of development, and obtain future financial reimbursement from other properties that tap into the extension. The city Water Department is agreeable with having development on the property being served water either from the District or from the city.
- **Wastewater:** The property is already within the city's service area and there is an existing wastewater main adjacent to the property along Granite Street.
- **Transportation:** Larimer County Urban Area Street Standards (LCUASS) standards will apply to the adjacent local street (Granite) and State of Colorado standards will apply to the adjacent highway (Garfield/Hwy 287) whether the property stays unincorporated and is developed through the county or is annexed and developed through the city.
- **Stormwater:** The property will need to capture stormwater runoff whether it is developed in the county or in the city.

II. PUBLIC OUTREACH AND PLANNING COMMISSION HEARING

- A. **Neighborhood Meeting:** A neighborhood meeting was held on April 28, 2016 at the Loveland Public Library. The meeting was attended by three neighbors along with city staff, the applicant, and a consultant. At the meeting, there were a variety of questions voiced about the specific development anticipated to locate on the property, anticipated traffic generation by the proposed uses, and the location of vehicular access points. There was no opposition voiced to the requested annexation or zoning, or to the description of the proposed building.

- B. Planning Commission Public Hearing:** The Planning Commission held a public hearing for the proposal on June 27, 2016. Three neighborhood residents spoke on the application at the hearing. The residents inquired about the advantages to either the applicant or the city of annexing the property instead of having it remain outside city limits, and expressed concern about traffic flow in the area. Commissioners inquired whether the building as proposed could be developed if the property remained unincorporated, and about the difference between the city Business district and the county Business district. Staff explained the limited difference between the city and the county B district, and staff and the applicant explained that annexing into the city is recommended by intergovernmental agreements between the county and the city, and advantageous for the enactment of city plans and policies. Commissioners voted 8-0, with one member absent, to recommend City Council approval of the Gatorwest Addition to the City of Loveland and to zone said land to B-Developing Business. The minutes from the hearing are included as Attachment F.

III. RECOMMENDED CONDITION

The following two conditions on the annexation and zoning have been proposed by the Planning Division and have been recommended by the Planning Commission. They will be included in an annexation agreement if the annexation is approved.

1. The policies of the Loveland 287 Plan shall be implemented in the development of the property. These include the following, unless exempted by the city during the development review process:
 - a. Construction of detached sidewalk along Highway 287.
 - b. Construction of sidewalk along Granite Street.
 - c. Installation of street trees along Highway 287.
 - d. Establishment of an east-west pedestrian easement in or near the vacated 51st Street right-of-way.
 - e. A site layout that refrains from situating parking between the building(s) on site and Highway 287.
 - f. Burial of overhead utility lines.
2. The concept plan is not vested or approved as part of the annexation and zoning of the property.

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
June 27, 2016**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on June 27, 2016 at 6:30 p.m. Members present: Co-Chairman Dowding, and Commissioners Meyers, Molloy, Forrest, Ray, McFall, Roskie, Cloutier. Members absent: Chairman Jersvig. City Staff present: Bob Paulsen, Current Planning Manager; Moses Garcia, Assistant City Attorney; Jenell Cheever, Planning Commission Secretary.

These minutes are a general summary of the meeting. A complete video recording of the meeting is available for two years on the City's web site as follows: <http://loveland.pegcentral.com>

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Robert Paulsen**, Current Planning Manager, provided a preview of the July 11th and July 25th Planning Commission Meeting.
2. **Mr. Paulsen** noted that the Planning Commission and City Council will have a joint study session on July 26th to discuss Electronic Sign Provisions
3. **Mr. Paulsen** stated that the first reading for the Flexible Zoning Overlay provisions will be presented to City Council on July 5th.
4. **Mr. Paulsen** stated that the West Eisenhower Reinvestment Zone is on the July 19th City Council agenda.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

There were no comments.

APPROVAL OF THE MINUTES

Commissioner Meyers made a motion to approve the June 13, 2016 minutes; upon a second from Commissioner Forrest the minutes were unanimously approved.

CONSENT AGENDA

1. Anderson 1st Subdivision Preliminary Plat Extension

Project Description: This request requires quasi-judicial review by the Planning Commission to consider extension of the Preliminary Plat for Anderson 1st Subdivision for an additional one-year period. The preliminary plat and PUD Preliminary Development Plan

were approved by the City in January 2009. Extensions have been granted by the City since that time to keep the plat and plans valid. The most recent extension was granted by the Planning Commission on 8/10/15 for one year.

The property is located at the northeast corner of South Lincoln Avenue and South 42nd Street. The western portion of the property, consisting of approximately 34 acres, is zoned E-Employment and is controlled by a Concept Master Plan. The eastern portion of the property, consisting of 89.35 acres, is zoned “Ridge at Thompson Valley PUD” which allows a maximum of 152 dwelling units, and a gross density of 1.7 dwelling units per acre. Planning Commission has final authority on this matter.

Commissioner Meyers motioned to approve the items on the consent agenda. Upon a second by Commission Molloy, the motion was unanimously approved.

REGULAR AGENDA

2. Plan of Development (DDA)

Project Description: This item was continued from the June 13, 2016 Planning Commission meeting to allow the applicant time to adjust the Plan of Development to reflect Commission comments provided at the June 13, 2016 meeting.

The Plan of Development (DDA Plan) for the Loveland Downtown Development Authority (DDA) was initially reviewed by the Planning Commission on June 8, 2015 and subsequently approved by the City Council on July 7, 2015. The DDA Plan has been amended to incorporate minor changes in anticipation of the 2016 ballot measure—the ballot measure is needed to secure revenue generating measures for the DDA. By statute, the Planning Commission must review any Plan amendments, making a recommendation to the City Council for adoption. The amendments are reflected in redline format in the submitted Amended DDA Plan.

The DDA Plan is defined as a plan for the development or redevelopment of the DDA District over a thirty to fifty year period. After receipt of the Planning Commission recommendation, the City Council will hold a public hearing and thereafter consider a resolution approving the Amended DDA Plan. Review of this Amended Plan does not require a public hearing.

Mike Scholl stated that the commissioners’ requested revisions were incorporated into the Plan of Development per guidance from both the DDA and City of Loveland Attorneys.

COMMISSIONER QUESTIONS AND COMMENTS:

- **Commissioner Meyers** asked for clarification on the definition of food sales tax. **Blair Dickhorner**, Attorney representing the DDA, stated that the definition of food sales tax is defined in the City Code.

- **Commissioner Meyers** also asked if the plan defines items that should be taxed and items that are exempt from food sales tax. **Mr. Scholl** stated that the city is experienced with segregating out different items that should and should not be taxed.

Commissioner Molloy motioned to recommend the City Council adoption of the Amended Plan of Development for the Downtown Development Authority. Upon a second by Commissioner Forrest the motion passed with five ayes and three nays (Commissioners Ray, McFall, and Meyers).

3. Gatorwest Annexation and Zoning

Project Description: This is a public hearing regarding the proposed annexation and zoning of a 2.3-acre property located at 5100 Granite Street. The associated zoning request is for B - Developing Business. Annexation is a legislative matter, and final decision making authority rests with the City Council. The property is located along the west side of North Garfield Avenue (State Hwy. 287) to the north of 50th Street and to the south of Ranch Acres Drive. This area of Garfield includes a mix of commercial businesses and vacant property; there is a mixed pattern of annexed land in this area. The annexation and zoning request is compliant with State Statutes and with City policies and staff believes that all key issues have been resolved. Consequently, staff is recommending that the Planning Commission recommend approval of this application to the City Council.

Noreen Smyth, Senior Planner, provided a project description and noted that the project meets the requirements for city annexation. The property is currently vacant; however, it is mostly surrounded by developed property. **Ms. Smyth** noted that city staff is recommending the two conditions listed in the Staff Report.

Several commissioners raised initial questions, expressing concerns with increased traffic on Granite Street and asked if it was possible for the property to obtain access off of Highway 287. **Ms. Smyth** noted that the Colorado Department of Transportation (CDOT) would need to approve access from Highway 287 and it is unlikely CDOT would issue this approval.

Bryan Short, project applicant and property owner, provided a brief description of his business and his request to build a new office building at this location once annexation has been accomplished.

Several commissioners asked what the estimated traffic increase and impact on the neighborhood would be. **Mr. Short** stated that the impact would be minimal, explaining that he has a couple of survey crews with approximately six people each that would operate from the site. In addition, the facility would receive small deliveries from UPS approximately every other day. **Mr. Short** noted that all retail operations are primarily internet based, thus minimizing traffic associated with product sales.

Commissioner Roskie asked if the automotive repair business mentioned in the Concept Review is still considering renting space onsite. **Mr. Short** noted that this business is no longer a potential renter because the use requires Special Review approval.

CITIZEN COMMENTS:**Commissioner Dowding opened the public hearing at 6:55 p.m.**

- **Darrell Hughes**, resident, asked what the differences are between the B Zoning District in the county and city and why the business could not exist in the county. Mr. Hughes also expressed concerns that the site is located near a large elementary school and that residents already have problems with traffic flow. Mr. Hughes also asked if there is another potential tenant that could rent space onsite.
- **Marvin Oleske**, resident, stated that he felt the business is ideal for this site and it is consistent with the other small businesses surrounding the property. However, he stated that he preferred that the business stay in the county because much of the surrounding property is in the county.
- **Gail Woofter**, resident, stated that the residents already experience traffic congestion and would like to know how many accidents have occurred in the past year at Highway 287 and Ranch Acres. Ms. Woofter expressed concerns for the safety of the children in the neighborhood and asked what it means that the right-of-way was vacated or abandoned. Ms. Woofter requested that the fire department review the plan to determine the required width of the street to accommodate emergency vehicle access.

Commissioner Dowding closed the public hearing at 7:05 p.m.

- **Ms. Smyth** addressed the questions asked during the public hearing. She noted that an intergovernmental agreement between the city and Larimer County specifies expectations and requirements for the annexation of property that is located within the city's Growth Management Area. **Ms. Smyth** noted several benefits of annexing the property into the city, including the ability of the city to ensure that future development is aligned with the recently adopted 287 Strategic Plan and the city's new comprehensive plan..
- **Ms. Smyth** explained that a right-of-way on 51st Street, previously intended for the extension of 51st Street, had been vacated and is now part of private land. Consequently, 51st Street will not be extended to intersection Hwy. 287 in the future.
- **Ms. Smyth** noted that Fire reviewed the plan and didn't have any issues with the current access to the site.

COMMISSIONER QUESTIONS AND COMMENTS:

- **Commissioner Meyers** asked what the burden to the city would be to provide paving operations and street plowing for the additional street right-of-way to be annexed. **Ms. Smyth** stated that the city would provide services to the annexed streets; snow plowing for local streets, however, is a low priority. The county would continue to provide service to the south and the north of the site.

- **Commissioner Molloy** asked if it was possible to reduce the permitted uses by right in a zoning district. **Ms. Smyth** stated that these types of restrictions are typically done in a property zoned in a Planned Unit Development (PUD) and not a standard zoning district.
- **Commissioner Meyers** asked for clarification on who would provide police service to the site and **Ms. Smyth** noted the error in the Staff Report and stated that the City of Loveland would provide service.
- **Mr. Short** was asked if he had any plans to add a future tenant and **Mr. Short** stated that he is upgrading to a larger facility so he may have space to rent. However, the use would most likely be office space or another complimentary business.
- **Mr. Short** noted that based on parking capacity he is not anticipating a large number of vehicle traffic.

COMMISSIONER COMMENTS

- **Commissioner Ray** stated that this type of business is ideal for a residential area because it won't generate a lot of traffic. Commissioner Ray asked if it was possible to put a condition on the property limiting the uses by right. **Mr. Paulsen** and Assistant City Attorney, **Moses Garcia**, noted that it may be possible but is not a recommended approach.
- **Commissioner Meyers** stated that he did not support conditional zoning or limiting uses that would be allowed by zoning.
- **Commissioner Molloy** agreed that a business of this type typically has very limited traffic but was concerned with adding another renter depending on the use.
- **Commissioner Cloutier** agreed that this is a good use for the area and that it would be beneficial if the city had control over the property versus the county.
- **Commissioner McFall** expressed concerns with the traffic impact on the area; however, he feels the business is a good fit for the area.
- **Commissioner Roskie** stated support for the project and did not recommend placing constraints on the uses through an annexation agreement. Commissioner Roskie stated that she respects the traffic concerns expressed by the neighbors; however, the traffic generated by the school is actually up to the school to manage and not the city.
- **Commissioner Forrest** stated that this is a perfect size of business for the site and is an opportunity to start implementing the Highway 287 requirements. Additionally, the size of the project will limit the use by any other tenant.
- **Commissioner Dowding** thanked the citizens who provided comments. Commissioner Dowding asked if the plan meets the Comprehensive Plan and Highway 287 Strategic Plan requirements and **Ms. Smyth** verified that it did. Commissioner Dowding stated that the size of the business was a good fit for the area and did not feel the use would create heavy traffic.

Commissioner Dowding asked if the applicant accepts the conditions listed in the staff report; **Mr. Short** confirmed that he accepted the listed conditions.

Commissioner Ray moved to make the findings listed in Section VIII of the Planning Commission staff report dated June 27, 2016 and, based on those findings, recommend that City Council approve the Gatorwest Addition, subject to the conditions listed in Section IX, as amended on the record, and zone the addition to B Developing Business. Upon a second by Commissioner Meyers, the motion was unanimously approved.

ADJOURNMENT

Commissioner Meyers, made a motion to adjourn. Upon a second by Commissioner Ray, the motion was unanimously adopted.

Commissioner Dowding adjourned the meeting at 7:40 p.m.

Approved by: Carol Dowding
Carol Dowding, Planning Commission Vice-Chair

Jenell Cheever
Jenell Cheever, Planning Commission Secretary

Chapter 18.28**B DISTRICT-DEVELOPING BUSINESS DISTRICT****Sections:**

18.28.000	Purpose.
18.28.010	Uses permitted by right.
18.28.020	Uses permitted by special review.
18.28.030	Minimum yards.
18.28.035	Height limitations.
18.28.040	Off-street parking.
18.28.050	Site development plan review.
18.28.060	Usable open space.
18.28.070	Lot area, multiple-family dwellings.
18.28.080	Residential landscaping.

18.28.000 Purpose.

The developing business (B) district is intended to provide for auto-oriented and auto-dependent uses, primarily along established commercial corridors of the city. This district is applied to many of the city's established commercial corridors and corresponds to the areas depicted as CC-corridor commercial on the Comprehensive Master Plan's Land Use Plan Map. These areas provide a wide range of general retail goods and services for residents of the entire community, as well as businesses and highway users, primarily inside of enclosed structures. Locations for this zone require good vehicular access.

18.28.010 Uses permitted by right.

The following uses are permitted by right in the B district:

- A. Financial services;
- B. Gas station with or without convenience goods or other services subject to Sections 18.52.060 and 18.50.135 and located three hundred feet or more from a residential use or zone district (measurement shall be made from the nearest site or lot line of the gas station to the nearest lot line of the residential use or zone district);
- C. Place of worship or assembly;
- D. Lodging establishments;
- E. Clubs and lodges;
- F. Medical, dental, or professional office or clinic;
- G. Office, general administrative;
- H. Parking lot and parking garage;
- I. Park or recreation area;
- J. Personal and business service shop;
- K. Public and private school;
- L. Essential public utility uses, facilities, services, and structures (underground);
- M. Indoor entertainment facility and theater;
- N. Restaurant standard;
- O. Retail store;
- P. Bed and breakfast establishment;
- Q. Accessory buildings and uses;
- R. Commercial child day care center licensed according to the statutes of the state;
- S. Multiple-family dwellings for the elderly;
- T. Combined use (or mixed-use) developments of permitted use;

- U. Boardinghouses and rooming houses;
- V. Community facility;
- W. Long term care facility;
- X. One-family dwelling;
- Y. Printing shop, provided that no such shop occupies more than 3,500 square feet of floor area;
- Z. Retail laundry;
- AA. Special trade contractor's shop (any outdoor storage shall be subject to special review as provided in Chapter 18.40.);
- BB. Two-family dwelling;
- CC. Antennas, as defined in Section 18.55.020, located on an existing tower or structure as provided in Section 18.55.030 and Section 18.55.030 and meeting all other requirements of Chapter 18.55;
- DD. Art gallery, studio, and workshop including live/work studio and workshop. Such facilities may include the display, sale, fabrication or production of paintings, sculptures, ceramics and other art media. Limited outdoor fabrication of art work may be permitted subject to special review as provided in Chapter 18.40.
- EE. Bar or tavern;
- FF. Convention and conference center;
- GG. Food catering;
- HH. Funeral home
- II. Garden supply;
- JJ. Health care service facility;
- KK. Outdoor storage of equipment or products or other goods as an accessory use subject to Section 4.06 of the Site Development Performance Standards and Guidelines;
- LL. Parking garage and parking lots;
- MM. Research laboratory;
- NN. Warehouse and distribution (enclosed within a building);
- OO. Hospital;
- PP. Workshop and custom small industry (entirely enclosed within a building and provided there is no excessive odor, glare, smoke, heat, vibration, etc.). Limited outdoor fabrication of products may be permitted subject to special review as provided in Chapter 18.40; and
- QQ. Shelter for victims of domestic violence, subject to Section 18.52.070.

18.28.020 Uses permitted by special review.

The following uses are permitted by special review in a B district subject to the provisions of Chapter 18.40:

- A. Vehicle sales and leasing of cars and light trucks;
- B. Vehicle minor and major repair, servicing and maintenance;
- C. Car wash;
- D. Combined-use (or mixed-use) developments containing one or more special review use(s);
- E. Dairy processing plants, laundry and dry-cleaning plants;
- F. Gas station with or without convenience goods or other services subject to Sections 18.52.060 and 18.50.135 and located less than three hundred feet from a residential use or zone district (measurement shall be made from the nearest site or lot line of the gas station to the nearest lot line of the residential use or zone district)
- G. Lumberyard;
- H. Light industrial, indoor;
- I. Mobile home park and RV park/campground;
- J. Pet store and veterinary clinic small animal hospitals;
- K. Printing shop over 3,500 square feet of floor area;
- L. Aboveground public utility and public service installations and facilities, essential public utility

- uses, facilities, services, and structures (above ground);
- M. Private recreational uses, outdoor;
- N. Restaurants and other eating and drinking places, outdoor;
- O. Undertaking establishments;
- P. Warehouses and enclosed storage;
- Q. Wholesale stores;
- R. Multiple-family dwelling;
- S. Restaurant, drive-in or fast food;
- T. Massage parlors(massage therapy included in definition of health care service facility);
- U. Congregate care facility;
- V. Combined use developments including one or more special review use(s);
- W. Attended recycling collection facility;
- X. Unattended recycling collection facility;
- Y. Convenience store;
- Z. Personal wireless service facility (on new structure) as defined in Section 18.55.020, located on a new structure, meeting all requirements of Chapter 18.55;
- AA. Group care facility;
- BB. Contractor's storage yard;
- CC. Domestic animal day care facility;
- DD. Open-air farmers market;
- EE. Outdoor recreation facility;
- FF. Nightclub;
- GG. Plant nursery;
- HH. Self-service storage facility;
- II. Vehicle rentals for cars, light trucks and light equipment;
- JJ. Sales and leasing of farm equipment and mobile homes, recreational vehicles, large trucks and boats with outdoor storage;
- KK. Vehicle rental for heavy equipment, large trucks, and trailers;
- LL. Outdoor storage of equipment, products or other goods as a principle use;
- MM. Crematorium, subject to Section 18.52.080; and
- NN. Firing range, indoor.

*See Chapter 18.40.

18.28.030 Minimum yards.

- A. Minimum yards in a B district, being the minimum distance of any building from a street right-of-way or zoning district boundary line, shall be twenty-five feet. The minimum distance of any building to an alley right-of-way or public alley easement boundary line shall be fifteen feet.
- B. Subsection A. notwithstanding, residential uses within a B district shall be the following setback requirements:
 - 1. The minimum front yard lot shall be as follows:
 - a. Single, two, and three-family dwelling: twenty feet.
 - b. All other residential uses: twenty-five feet.
 - 2. The minimum side yard of a lot shall be as follows:
 - a. Single, two, and three-family dwelling: one foot for each three feet or fraction thereof of building height; except that no side yard shall be less than five feet.
 - b. All other residential uses: ten feet.
 - c. Subsections 2.a. and b. notwithstanding, the minimum street side yard for any residential use shall be fifteen feet.
 - 3. The minimum rear yard of a lot shall be as follows:

- a. Principal structure: fifteen feet.
- b. Detached accessory: five feet.

18.28.035 Height limitations.

Buildings and structures in this zone shall comply with Chapter 18.54.

18.28.040 Off-street parking.

The minimum off-street parking in the B district shall be as provided in Chapter 18.42.

18.28.050 Site development plan review.

Category 2 development shall be subject to the provisions of Chapters 18.39 and 18.46, and the site development performance standards and guidelines as provided in Chapter 18.47.

18.28.060 Usable open space.

The usable open space in the B district shall be ten percent of the total lot area.

18.28.070 Lot area, multiple-family dwellings.

- A. The minimum area of a lot for multiple-family dwellings in the B district shall be seven thousand square feet for the first two units, plus one thousand square feet for each additional dwelling unit up to four dwelling units, plus two thousand square feet for each additional dwelling unit over four units.
- B. The minimum area of a lot for multiple-family dwellings for the elderly shall be seven thousand square feet.

18.28.080 Residential landscaping.

All residential parcels developed within the B district shall be landscaped with materials such as grass, shrubs, trees, or decorative materials. A minimum of two trees shall be provided for each two-family dwelling. The required trees shall be combinations of deciduous and coniferous trees with each deciduous tree having a minimum caliper of two inches at time of planting and each coniferous tree having a minimum height of six feet. All landscaping requirements shall be completed prior to occupancy of the structure or within thirty days following the beginning of the next planting season.

4.1.17. - B-Business.

A. Principal uses:

Agricultural

1. Apiary (R)
2. Livestock veterinary clinic/hospital (SP/
S)—See section 4.3.1
3. Pet animal facility (SP/
S)—See section 4.3.1
4. Pet animal veterinary clinic/hospital (SP/
S)—See section 4.3.1

Commercial

5. Automobile service station (S)
6. Carwash (S)
7. Clinic (SP)
8. Convenience store (S)
9. General retail (SP/
S)—See section 4.3.3
10. Instructional facility (SP)
11. Bar/tavern (SP/MS)—See section 4.3.3
12. Personal service (SP)
13. Professional office (SP)
14. Restaurant (SP/MS)—See section 4.3.3

Institutional

15. Child/elderly care center (S)
16. Church (SP/
S)—See section 4.3.4
17. Community Hall (SP)
18. Health services (SP)
19. Hospital (SP)
20. Rehabilitation facility (SP)
21. School, nonpublic (S)

Attachment 6

Accommodation

- 22. Bed and breakfast (SP)
- 23. Hotel/motel (SP)
- 24. Nursing home (SP)
- 25. Resort lodge/resort cabins (SP)

Utilities

- 26. Commercial mobile radio service (SP/S)—See section 16
- 27. Radio and television transmitter (S)

Transportation

- 28. Bus terminal (S)
- 29. Park and ride (SP)
- 30. Parking lot/garage (SP)
- 31. Transportation service (SP)

Recreational

- 32. Country club (S)
- 33. Golf course (S)
- 34. Membership club/clubhouse (SP)
- 35. Place of amusement or recreation (SP/S)—See section 4.3.5

Industrial

- 36. Oil and gas drilling and production (R)
 - 37. Small solar facility (R/PSP)
- B. Lot, building and structure requirements:
- 1. Minimum lot size:
 - a. 100,000 square feet (2.3 acres) if a well or septic system is used.
 - b. 15,000 (0.34 acre) square feet if public water and sewer are used.
 - 2. Minimum required setbacks: (If more than one setback applies, the greater setback is required.)
 - a.

Attachment 6

Street and road setback (Refer to section 4.9.1 setbacks from highways, county roads, and all other streets and roads.) The setback from a street or road must be 25 feet from the lot line, nearest edge of the road easement, nearest edge of right-of-way, or nearest edge of traveled way, whichever is greater.

- b. Side yards—Ten feet.
 - c. Rear yards—Ten feet.
 - d. Refer to section 4.9.2 for additional setback requirements (including but not limited to streams, creeks and rivers).
- 3. Maximum structure height—40 feet.
 - 4. A parcel may be used for one or more principal buildings and accessory buildings.

(Res. No. 11122002R001, 9-23-2002; Res. No. 06172003R009, 6-17-2003; Res. No. 03302004R001, § 1(Exh. A), 3-15-2004; Res. No. 01222008R001, Exh. A, 1-22-2008; Res. No. 10282008R005, Exh. A, 10-28-2008; Res. No. 02172009R010, Exh. A, 2-17-2009; Res. No. 04282009R001, Exh. A, 4-28-2009; Res. No. 08102010R001, Exh. A, 8-10-2010; Res. No. 01242012R001, Exh. A, 1-24-2012; Res. No. 02142012R001, Exh. A, 2-14-2012; Res. No. 05292012R003, Exh. A, 5-29-2012; Res. No. 07092013R006, Exh. A, 6-10-2013)

Cross reference— Businesses, ch. 14.

Attachment 6

AGENDA ITEM: 5.3
MEETING DATE: 8/16/2016
TO: City Council
FROM: Community Partnership Office
PRESENTER: Laurie Stolen, Larimer County



TITLE:

A Resolution Of The Loveland City Council Supporting The Passage On November 8, 2016 Of The Larimer County Mental Health, Detox/Substance Abuse Facility And Services Ballot Issue

RECOMMENDED CITY COUNCIL ACTION:

Approve the resolution.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action.
3. Adopt a modified action. (specify in the motion)

SUMMARY:

This is an update presentation on the recommendation to enhance behavioral health services in Larimer County and an administrative item to approve a resolution supporting a 2016 ballot issue to support a mental health, detox and substance abuse facility in Larimer County.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:

At the May 23, 2016, second quarter municipalities meeting, City Council heard a presentation by representatives of the People for a Healthier Larimer County about supporting a ballot issue to fund a county-wide mental health, detox and substance abuse facility. Funding will also be designated for Loveland's homeless with Permanent Supportive Housing. The Board of County Commissioners officially referred the initiative to the ballot on Tuesday August 2, 2016

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Resolution
2. Critical BH Services
3. Executive Summary
4. Services to be Provided
5. Powerpoint Presentation

RESOLUTION #R-80-2016

**A RESOLUTION OF THE LOVELAND CITY COUNCIL SUPPORTING THE
PASSAGE ON NOVEMBER 8, 2016 OF THE LARIMER COUNTY MENTAL HEALTH,
DETOX/SUBSTANCE ABUSE FACILITY AND SERVICES BALLOT ISSUE**

WHEREAS, mental illness and substance use disorders are serious health issues for 1 in 4 people in Larimer County, and are treatable health conditions; and,

WHEREAS, too often people in crisis as a result of such disorders end up at an emergency room, in jail, or are taken to the City of Greeley's detoxification facility; and

WHEREAS, an estimated 44,300 Larimer County adults suffer with mental illness and an estimated 31,000 Larimer County adults are drug or alcohol dependent; and,

WHEREAS, 2,800 Larimer County adults receive mental health, detoxification or substance abuse treatment annually; and

WHEREAS, residents of Larimer County need a public, community-based, mental illness and behavioral health treatment facility that can provide a continuum of high-quality care for mental health, detoxification, and substance abuse treatment and related services; and

WHEREAS, the Larimer County Mental Health, Detox/Substance Abuse Facility and Services ballot issue calls for a county-wide sales and use tax of .0025 cents on each \$1.00, beginning January 1, 2017, to build, improve, maintain, and operate a facility for mental health, detoxification and alcohol and drug abuse treatment, and associated support services; and

WHEREAS, such a facility would be less costly than jails and emergency rooms, would eliminate the travel costs to send residents out of Larimer County and could accommodate 4,700 individuals annually; and,

WHEREAS, the estimated yearly admissions in such a facility would be 990 patients to the 12-bed acute treatment unit, 820 patients to the medically-monitored withdrawal management or detoxification unit, and 300 patients to the short-term intensive residential substance abuse treatment unit; and,

WHEREAS, the expected cost for land and construction of such a facility of 51,000-square-foot facility is \$20.42 million with estimated annual operating costs of \$11.77 million (operating cost of \$15.77 million minus revenue = \$11.77 million).

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

Section 1. The Loveland City Council fully supports the passage of the Larimer County Mental Health, Detox/Substance Abuse Facility and Services ballot issue and urges

every registered voter to go to the polls on November 8, 2016 and to vote "YES" on the ballot issue.

Section 2. This Resolution shall be effective as of the date of its adoption.

Adopted this 16th day of August, 2016.

By: _____
Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A RESOLUTION OF THE LOVELAND CITY COUNCIL SUPPORTING THE PASSAGE OF THE LARIMER COUNTY MENTAL HEALTH, DETOX/SUBSTANCE ABUSE FACILITY AND SERVICES BALLOT ISSUE ON NOVEMBER 8, 2016

Services Needed: Filling Our Greatest Gaps

New 24/7 Behavioral Health Services Center



- **Thorough Assessments**
Professionals skilled in both MI and SUD
Connection to appropriate community service
7,600 assessments
- **Client Assistance**
Help paying for transportation, medications, co-pays, and deductibles
1,600 clients
- **Acute Treatment Unit (ATU)**
Acute mental illness stabilization when hospitalization not required
12 beds / 990 admissions
- **Withdrawal Management (f/k/a detox)**
Medically monitored
12 beds / 820 admissions
- **Short Intensive Residential (SIR)**
For substance use disorder treatment
11 beds / 300 admissions



In the Community

Encourage Others to Expand

- **Long-term Low Intensity Residential**
90 day for Substance Use Disorders
52 beds, 190 admissions
- **Increase Intensive Outpatient & Outpatient Services**



Provide

- **24/7 Certified Addictions Counselors**
- **Client Assistance with Costs (above)**
- **For Those with Complex Needs**
Care Coordination (250 people)
Support Services (100 people)
When living in Permanent Supportive Housing

What Would It Take?

Facility Cost: \$20.4 Million

51,000 square feet

Annual Cost: \$11.8 Million

(after revenues)



Value

Save lives and families

Increase self-sufficiency

A wise economic investment

Reduces future health care and criminal justice costs
Increases productivity

Reduce poverty and homelessness

Reduce unnecessary use of:

Emergency Departments
Hospitals
Ambulance
Health Care
Police
Courts
Jails

**Change
Nothing
and
Nothing
Changes**

For more information on the report and recommendations,
contact: Lin Wilder lwilder@healthdistrict.org 5/4/16

Development of Critical Behavioral Health Services in Larimer County: Recommendations

Study and recommendations from NIATx, February 2016 • Requested by the Mental Health and Substance Abuse Partnership of Larimer County
Commissioned by the Health District of Northern Larimer County • Funded by the Health District, SummitStone Health Partners and Larimer County

The Issue

Behavioral Health Disorders, which include **mental illness** and **substance use disorder**, are **serious health conditions**. Much like diabetes or heart disease, they can be chronic, disabling and even life-threatening.

*"Like every other health condition, we need to be sure we have adequate services available right here in our community so that we can **give our families, friends and co-workers a fighting chance at recovery.**"*

Anne Hudgens, Partnership Chair

Key Finding

Although it has many quality services, Larimer County does **NOT** have the range of services and facilities to meet the needs of thousands of residents who need treatment for mental illness and substance use disorder

Key Recommendation

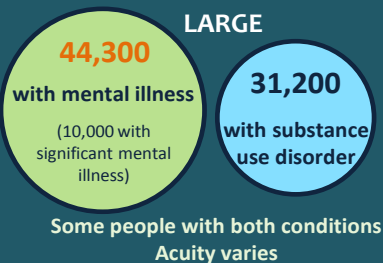
Since the effective treatment of mental health and substance use disorders, like other serious health conditions, requires specialized care, fill gaps in care with high-quality specialized treatment options. Include a 24/7 Behavioral Health Services Center providing thorough assessments, connections to existing services, and short-term live-in treatment for: acute mental health problems, withdrawal management from substances (f/k/a Detox), and intensive substance use disorder treatment. Significantly expand effectiveness of these and other community services by providing client assistance to help pay for transportation, medications, and cost of care; providing special care coordination and services for more people who have complex needs; and helping to create longer-term residential treatment for those with more severe substance use disorders. Encourage expansion of skilled outpatient and intensive outpatient services.



Nearly 90% of people view physical and mental health as equally important

American Foundation for Suicide Prevention

The Impacts of Behavioral Health Disorders in Larimer County are:



COSTLY

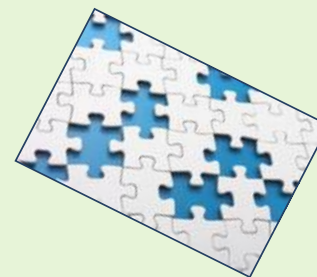
HUMAN

- Impacts on Individual and family
- Unemployment/poverty
- Early death

FINANCIAL

- Lost productivity
- Health care costs
- Law enforcement
- Criminal justice
- Disability

PERSONAL



REVISED 3/31/2016

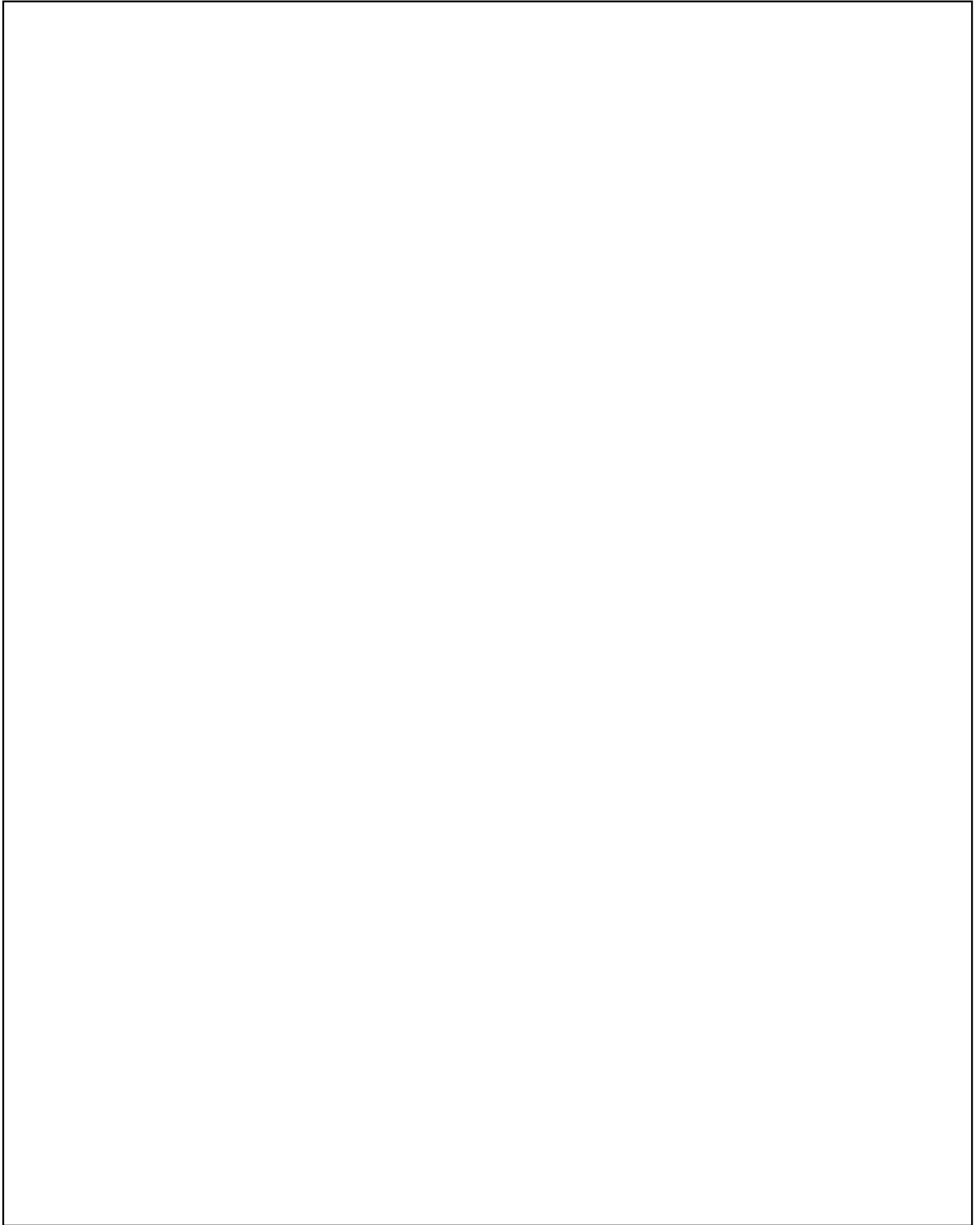
Recommendations for the Development of Critical Behavioral Health Services in Larimer County

Executive Summary



**Community Mental Health and Substance Abuse
Partnership of Larimer County**
An Unincorporated Non-Profit Association

February 23, 2016





**Community Mental Health and Substance Abuse
Partnership of Larimer County**
An Unincorporated Non-Profit Association

Executive Summary

Recommendations for the Development of Critical Behavioral Health Services in Larimer County

February 23, 2016

Introduction

While many quality behavioral health treatment and support services are being provided in Larimer County, the current continuum of services being offered is not sufficient to meet the needs of the many people who have mental illnesses and/or substance use disorders. As a result, these people often simply can't get the level of care that they need to address their illness.

Awareness of the gaps in behavioral health services has been growing over time to the point that several major community organizations have mentioned the need for an improved behavioral healthcare system in their strategic planning, including Larimer County, the City of Fort Collins, and the Health District of Northern Larimer County. The Community Mental Health and Substance Abuse Partnership of Larimer County, a collaborative effort between over twenty organizations, consumer and family advocates, and treatment and service providers, established creating a plan for the expansion of critical behavioral health services as its highest priority in 2015. This document is the result of this priority area and the work of a sub-group of Partnership Members known as the "Plan Guidance Team" and is intended to inform the planning process.

To aid in data collection, analysis and development of recommendations, the Partnership engaged the services of the NIATx group, a multidisciplinary team of consultants with a unique blend of expertise in public policy, agency management, and systems engineering that has worked with 1000+ treatment providers and 50+ state and county governments.

The purpose of this document is to help citizens and service providers understand existing challenges, garner commitment to making changes and improvements, and stimulate significant development and expansion of critical behavioral health services in Larimer County. The ultimate goal is to guarantee Larimer County's capacity to meet the growing behavioral health needs of its citizens. This document seeks to accomplish the following:

1. Delineate what is needed for a more complete continuum of care capable of providing adequate levels of affordable care for those with behavioral health needs (focusing on the best evidence, high quality, and access to care), understand what actually exists in our community, and determine the gaps.
2. Determine a cost estimate for filling the gaps, potential revenue sources, and the remaining need for funding.

The Need

Behavioral health disorders, including mental illness and substance use disorders are serious, chronic health issues that can be potentially life-threatening, similar to other chronic health disorders such as diabetes and heart disease. These disorders of the brain are common and can affect anyone at any age or socioeconomic status. It is estimated that there are approximately 44,300 adults who have mental illness and 31,000 who are dependent on alcohol or drugs living in Larimer County, although many have both disorders and the impact of the disorders varies.

Behavioral health disorders are treatable and treatment effectiveness is improving. However, the majority of those with these disorders never receive the treatment they need to help restore their functioning. Though these conditions are treatable health disorders, consumers and families regularly report great difficulty in getting access to the recommended range of services – a situation that is quite different than access to care for other chronic illnesses such as heart disease and diabetes.

Lack of treatment is particularly true for those with substance use disorders (thus this study focused heavily on estimating unmet need for these disorders). NIATx estimated that of the approximately 31,000 people meeting the criteria for needing treatment for substance use disorders, only 2,800 people actually receive that care each year in Larimer County, leaving over 28,000 people needing, but not receiving, treatment annually. Of those 28,000, it is estimated that approximately 1,400 actually want or would seek treatment but do not receive that treatment. Providing an improved continuum of care for the 4,200 people needing and seeking treatment (2,800 who currently seek treatment and an additional 1,400 who need but don't receive that treatment) is critical to their recovery.

When people with behavioral health disorders do not receive appropriate, timely, or adequate treatment the result is often greater suffering from symptoms, poor quality of life, reduced ability to function and use of more intensive and higher cost levels of treatment. People with behavioral health disorders are also at risk for unstable employment, poverty, chronic health conditions, early death, and suicide. Many people who don't get the right treatment enter a cycle of repeated use of the highest cost services in our community such as emergency departments, law enforcement or criminal justice, including jail.

While many quality services are being provided here, **the key finding of this investigation is that Larimer County does not have a continuum of behavioral health treatment and support services that is sufficient to meet the needs of the many people with mental illnesses and/or substance use disorders.** As a result, these people often simply can't get the level of care that they need to address their illness.

Recommended Solutions to Meet the Need

Specifically, this planning process recommended that four key levels of care and a range of support services be added or expanded in order to provide adequate standards of care in Larimer County.

- A full complement of Withdrawal Management (Drug/Alcohol Detoxification) services
- Residential Treatment for Substance Use Disorders (SUDs)
- Acute Treatment Unit (ATU) for just-under-hospitalization level of care
- Intensive Outpatient Treatment Services (IOP)
- Support Services (moderately intensive to intensive care coordination, medications, and support services for those living in Permanent Supportive Housing, assessment, and client assistance funds).

The study also recommended that many of these services be provided in a 24-7 Services Center providing a new state-of-the-art model of care and enabling more seamless transitions between levels of care. Part of the new model would include a more thorough, formal, patient-centered assessment process in order to better guide transitions into and between the levels of care.

Specific recommendations to create and support adequate services in each of these areas include:

1. **Expand treatment capacity** to accommodate the estimated need for services for up to 4,700 adults. This includes an estimated 2,800 people currently receiving some level of treatment, plus an additional 1,400 adults estimated to need and seek treatment in Larimer County but who are currently unable to receive that treatment, plus an allowance of 500 people for anticipated growth. The total annual utilization of all services included in the recommended model is estimated at approximately 12,000 admissions (defined broadly).
2. **Create a more complete continuum of care and the ability to place patients into appropriate levels of care based on assessment and re-assessment. Provide most services in one facility, with specific services supported and provided in the community.**
3. **Create a medically monitored Withdrawal Management Center (Drug/Alcohol Detoxification) in Larimer County** with 12 beds and the capacity for up to 822 ASAM level 3.7 admissions in order to support detoxification from alcohol or drugs and transition individuals into treatment. Two additional levels of withdrawal management services would be available in the community (but are not included in the funding recommendations included in this document): Ambulatory (ASAM level 2.0) managed on an outpatient basis, and Intensive Inpatient (ASAM level 4.0) provided in a hospital setting.
4. **Create or support several levels of residential care to support up to 500 short-term and long-term supported residential admissions as follows:**
 - **Create Short-Term Intensive Residential Treatment (IRT)** designed to provide a safe therapeutic environment where clinical services and medications are available to treat patients who are medically stable and withdrawn from substances. Capacity: 11 beds, average length of stay (ALOS) of 12 days, and 305 admissions.
 - **Support Low Intensity Residential (LIR) services** designed to build and reinforce a stable routine in a safe and supportive context for residents who lack a stable living environment. Capacity: 52 beds (in the community, not part of facility), ALOS of 90 days, and 190 admissions.
 - **Encourage the development of independent, voluntary sober housing**, like “Oxford Houses” in the community to provide safe and supportive living environments for those who choose and can pay for this type of residence. No external financing is recommended for this type of housing.
5. **Encourage the development of community capacity for Intensive Outpatient Services (IOP)** for individuals who require a more structured substance use disorder outpatient treatment experience than traditional outpatient treatment. Capacity: 1,089 IOP admissions, an average of 30 visits per admission, and an average daily census of 50. (Note: Since health insurance is likely to cover these services, the only amount included in the budget recommendations in this document is client assistance for up to 218 uninsured or underinsured individuals.)

6. **Encourage the development of community capacity for Outpatient (OP) Substance Use Disorder Treatment** to provide up to 3,800 admissions, with 30 FTE providing 10 sessions per admission for people who can benefit from outpatient treatment. (Note: Since health insurance is likely to cover these services, the only amount included in budget recommendations is client assistance for up to 780 uninsured or underinsured people.)
7. **Create an Acute Treatment Unit in Larimer County** to provide short-term crisis stabilization for individuals whose symptoms and treatment can be managed in non-hospital settings. Capacity: 12 beds, ALOS of five days and capacity to provide up to 986 admissions.
8. **Provide specific behavioral health support services** to include:
 - Moderately intensive to intensive care coordination for up to 250 clients
 - Client assistance fund to help cover needs such as transportation, co-pays (including IOP and OP), medications, and personal emergencies for up to an estimated 1,620 clients
 - Approximately 7,650 patient-centered, intensive assessments to ensure placement in appropriate levels of care
 - Support services in Permanent Supportive Housing for up to 100 clients with chronic health conditions who lack family/social supports, and are disconnected from employment and other community functions. (Housing to be provided by other sources.)

Financial Resources Needed to Provide These Services

After NIATx completed a preliminary report with a first round of cost, revenue and facilities estimations, local experts in behavioral health, budgeting and facilities amended these figures to represent local circumstances and input. The annual costs to provide these services have been estimated at \$15.77 million. Available revenues from client fees and insurance are estimated at approximately \$4 million. The remaining need for funding is estimated at \$11.77 million.

Projected Overall Operating Budget	
Personnel	\$8.58 million
Client Assistance	\$2.40 million
Operational (operational costs, maintenance, equipment, contracted services, etc.)	\$4.79 million
TOTAL:	\$15.77 million
Less Revenues	\$ 4.00 million
Needed Annual Funding:	\$11.77 million

Facilities Needed and Associated Costs

Estimates for facility space and costs are currently estimated based on providing most services in one facility. Based on current estimates, a 51,000 square foot facility would be required to provide these services. The total facility and land costs are estimated at \$20.42 million. Facility costs have not been estimated for Low Intensity Residential services.

Benefits and Value to the Community

There is ample evidence to demonstrate significant value and benefits of behavioral health disorder treatment. Patients and families benefit from increased health, well-being and ability to function in their family, work, community and society (similar benefits as those seen for managing symptoms of diabetes or hypertension). Communities realize reductions in related costs. Additionally, the National Institute of Health estimates that every dollar spent on addiction treatment yields a return of between \$4 and \$7 in reduced drug-related crime, criminal justice costs, and theft. When healthcare related savings are included, total savings can exceed costs by a ratio of 12 to 1.

Summary, Estimated Increased Capacity for Critical Services To Be Developed Under Proposed Budget		
	Capacity	Utilization
Assessments		7,655 assessments
Acute Treatment Unit (ATU)	12 beds	986 admissions
Withdrawal Management (medically monitored detox)	12 beds	822 admissions
Short-term Intensive Residential Treatment (IRT)	11 beds	305 admissions
Low-intensity Residential (LIR) (funding for staff, not facility; beds to be outside of facility)	52 beds	191 admissions
Client Assistance (transportation, medication, co-pays, etc.) Includes client assistance for IOP and OP for un- & under-insured		1,620 clients
Care Coordination (moderately intensive to intensive)		250 clients
Support Services (for those in Permanent Supportive Housing (PSH))		100 clients
TOTAL		11,929

Additional Substance Use Disorder Treatment Capacity Needed and to Be Encouraged (Insurance Coverage Available)	
Intensive Outpatient (IOP) Treatment	1,089 (capacity needed; 220 clients included in client assistance, above)
Outpatient (OP)	3,800 (capacity needed; 780 clients included in client assistance, above)
TOTAL	4,889

For more information contact:

Lin Wilder

Community Mental Health and Substance Abuse Partnership of Larimer County

lwilder@healthdistrict.org

**Recommendations for Critical Behavioral Health Services in Larimer County
Estimates of Services to be Provided**

April 2016

Paid for With Projected Budget, in 24/7 Behavioral Services Facility:

- 1) **Thorough Assessments:** 7,600 assessments
Clinically strong, evidence-based, assess both mental illness and substance use disorder
Provided by psychiatrists, licensed therapists, CACs with differential diagnosis expertise
- 2) **Acute Treatment Unit:** 12 Beds, 990 admissions, average LOS 5 days
Acute mental illness stabilization when hospitalization not required; more than crisis stabilization center but less than inpatient hospitalization
- 3) **Medically Monitored Withdrawal Management (f/k/a detox):**
12 beds, 820 admissions, average LOS 5 days
Includes adequate medical staff to be able to administer person's personal meds, meds for initial withdrawal if needed, and start medication-assisted treatment for opioid withdrawal
- 4) **Short Term Intensive Residential (SIR):** 11 beds, 300 admissions, average LOS 12 days
Short term intensive treatment for substance use disorder
- 5) **Client Assistance For Treatment Costs:** Assist 1,600 individuals
Flexible funding to assist with medications, transportation, deductibles/co-pays, etc.

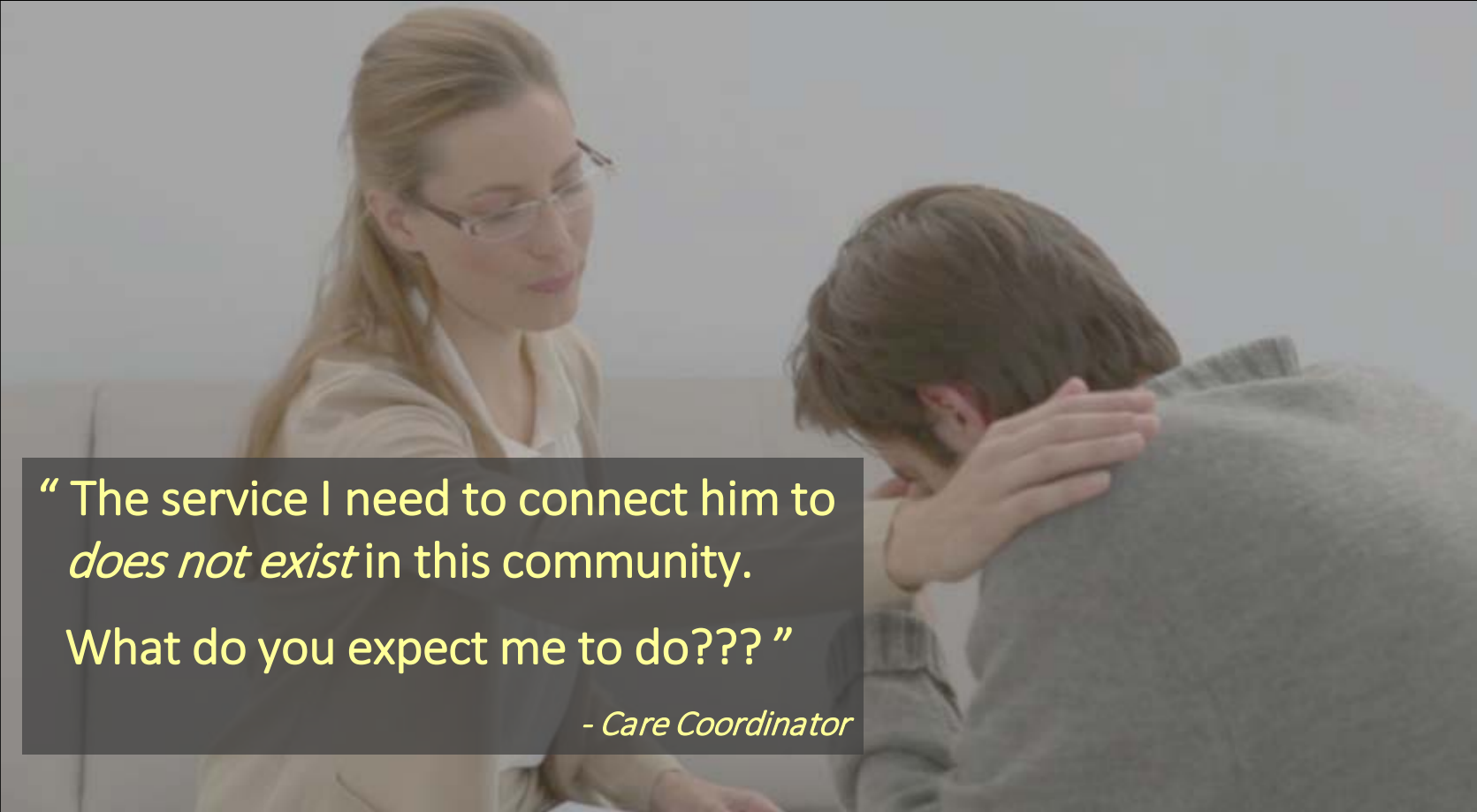
Paid for With Projected Budget, in the COMMUNITY:

- 6) **Moderately Intensive to Intensive Care Coordination:** 250 caseload
Provides higher level care coordination for those with most complex needs, more significant behavioral health disease
- 7) **Supportive Services for those in Permanent Supportive Housing:** 100 caseload
Provides behavioral supportive services for those whose level of functional impairment are appropriate for permanent supportive housing

Partially Supported With Projected Budget, in the COMMUNITY:

- 8) **24/7 Certified Addictions Counselors (CACs) (only)** for Long Term Low Intensity Residential Care (LIR):
52 beds, 190 admissions, average LOS 90 days
While other organizations would provide the LIR, projected funding would cover the cost of CACs 24/7
- 9) **Client Assistance Funds** (see above) to provide **limited help** with Intensive Outpatient and Outpatient Services. IOP: average LOS 30 visits; 1089 admissions total capacity needed.
OP: average LOS 10 visits; 3800 admissions total capacity needed.
The project would encourage existing providers to expand IOP and OP services for substance use disorders. While **insurance is anticipated to pay for most of the cost of IOP and OP**, some of the client assistance funds, above, are anticipated to be needed to assist with deductibles/copays for IOP and OP services for substance use disorders.



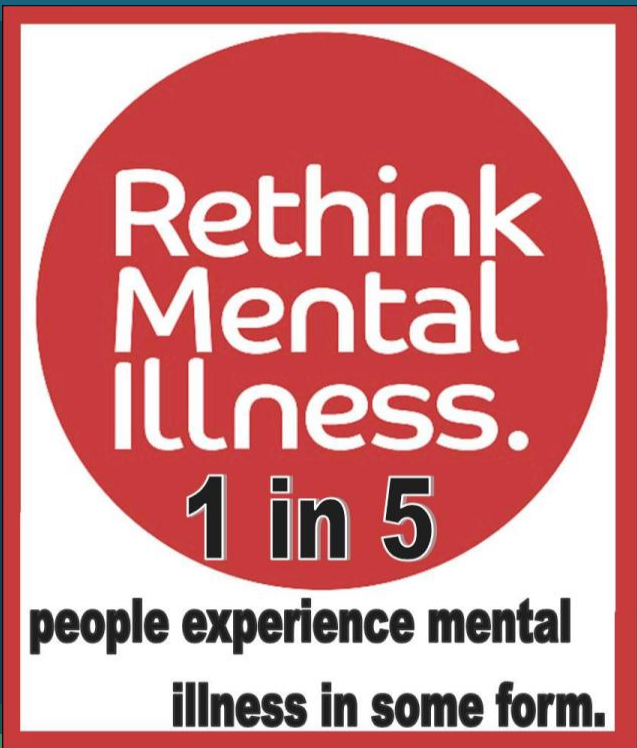


“ The service I need to connect him to
does not exist in this community.

What do you expect me to do???”

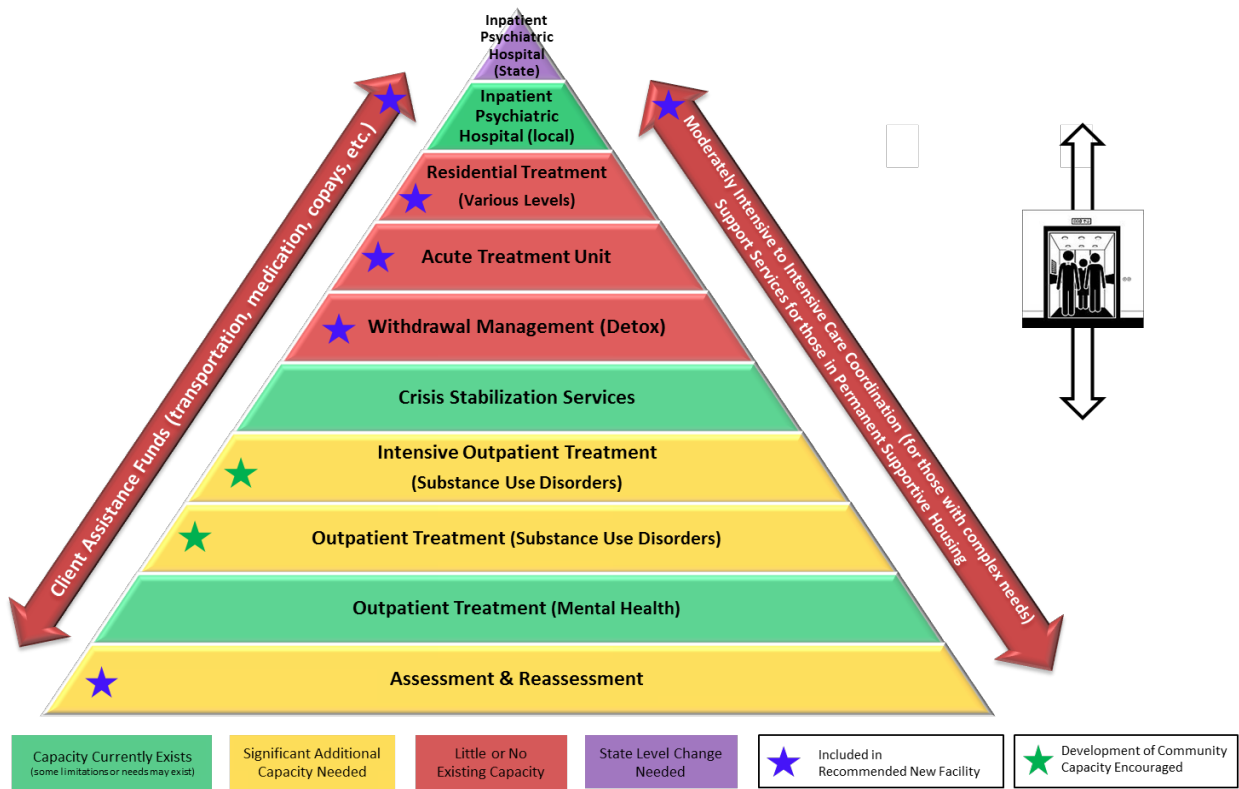
- Care Coordinator





... Rethink
Everything...

Existing and Recommended Service Capacity in the Larimer County Behavioral Health System



Services Needed: Facility



**New 24/7 Behavioral Health
Services Center**

- **Acute Treatment Unit (ATU)**

Acute mental illness stabilization when
hospitalization not required
12 beds / 990 admissions

- **Withdrawal Management
(f/k/a detox)**

Medically monitored
12 beds / 820 admissions

- **Short Intensive Residential (SIR)**

For substance use disorder treatment
11 beds / 300 admissions

- **Thorough Assessments**

Professionals skilled in both MI and SUD
Connection to appropriate community
service
7,600 assessments

- **Client Assistance**

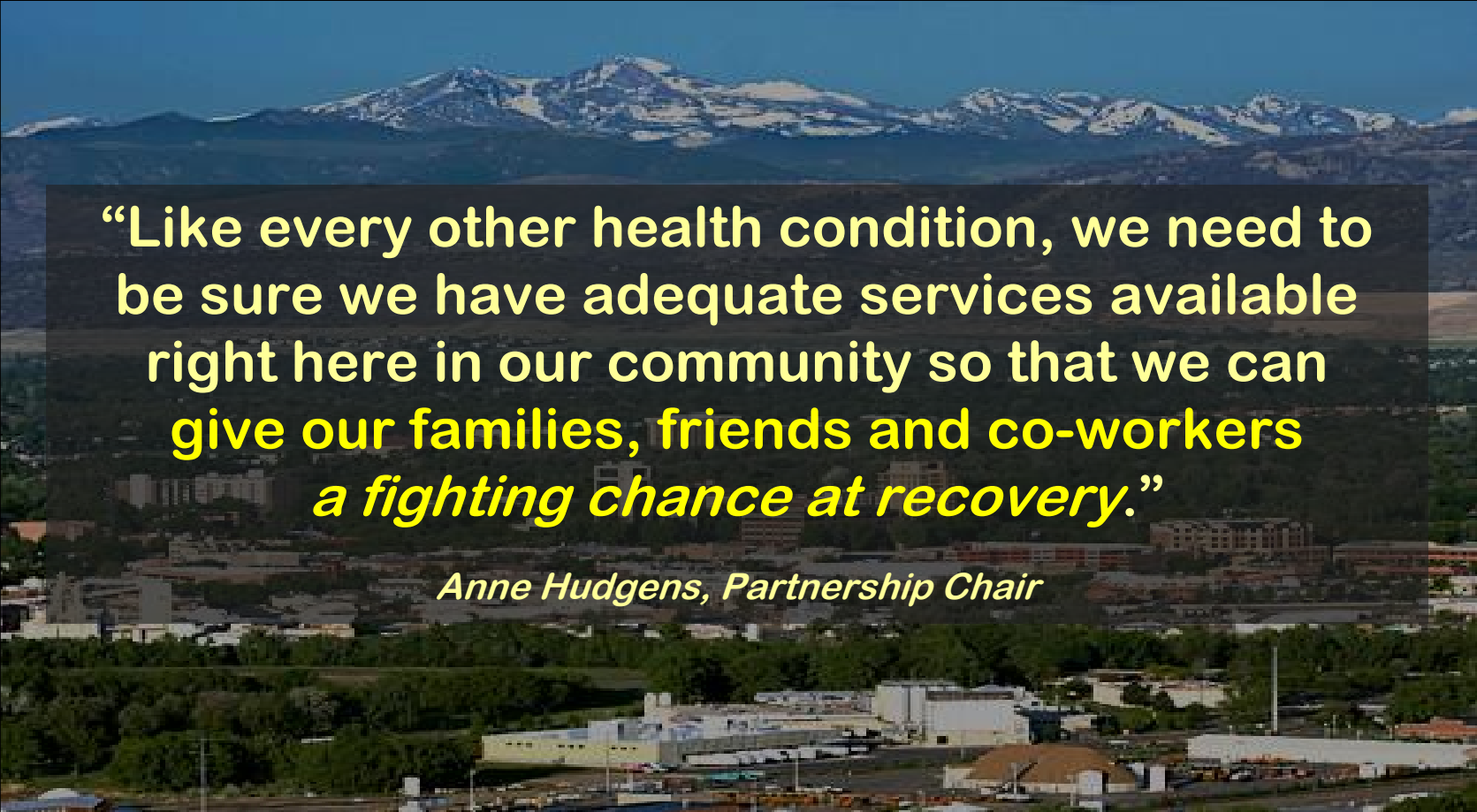
Help paying for transportation,
medications, co-pays, and deductibles
1,600 clients

In the community...

- Permanent Supportive Housing support staffing
- Long-term Low Intensity Residential
- Increase Intensive Outpatient & Outpatient Services







“Like every other health condition, we need to be sure we have adequate services available right here in our community so that we can give our families, friends and co-workers *a fighting chance at recovery.*”

Anne Hudgens, Partnership Chair



**People FOR
A Healthier
Larimer County**

AGENDA ITEM: 5.4
MEETING DATE: 8/16/2016
TO: City Council
FROM: City Attorney's Office
PRESENTER: Tami Yellico, City Attorney



TITLE:

Option 1 - An Ordinance Repealing Loveland Municipal Code §§ 12.48.030 AND 12.48.110 Prohibiting Takeoff and Landing of Aircraft Outside of Airport and Landing in City

or

Option 2 - An Ordinance Amending Loveland Municipal Code Chapter 12.48 To Provide An Exemption For Hot Air Balloons, And An Exception For Aircraft Landing In Emergency Circumstances, From Prohibitions Against Takeoff And Landing Of Aircraft Outside Of Airport And Landing In City

RECOMMENDED CITY COUNCIL ACTION:

Approve an Ordinance on first reading.

OPTIONS:

1. Adopt the action as recommended.
2. Deny the action. The election will not be held if the action is denied.
3. Adopt a modified action. (specify in the motion)
4. Refer back to staff for further development and consideration.

SUMMARY:

Approval one of the ordinance will repeal or amend Sections 12.48.030 and 12.48.110 of the Loveland Municipal Code.

BUDGET IMPACT:

- ☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:

At the City Council Meeting on August 2, 2016, City Council asked the City Attorney's Office to prepare a draft ordinance repealing the existing code provisions requiring the City Manager's approval for the landing and takeoff of aircraft within the City of Loveland. Loveland Municipal Code Section 12.48.010 defines aircraft as "any airplane, helicopter, flying machine, gasbag, balloon, or any contrivance now known or hereafter invented, used, or designed for navigation or flight in the air."

Concerns such as private property owner rights generally are covered in trespass ordinances and laws. The regulation of airspace generally is already regulated by the Federal Aviation Administration (except for enclosed space of ground and buildings immediately surrounding a person's residence).

The use of Parks and Recreation facilities or lands are controlled by regulations promulgated by that Department to ensure compatibility with mission and intent of open lands and parks uses. There aren't any specific rules that address aircraft. The Parks and Recreation Department does have some concerns about damage to parks and open space.

Two ordinance options are attached, described as follows:

1. Option 1 – Removes manager approval for landing and takeoff of all aircraft, including hot air balloons
2. Option 2 - Removes manager approval for landing and takeoff of hot air balloons only

REVIEWED BY CITY MANAGER:

SCA

LIST OF ATTACHMENTS:

1. Ordinance – Option 1 – Removes restrictions from all aircraft, including hot air balloons
2. Ordinance – Option 2 – Removes restrictions from hot air balloons

First Reading_____

Second Reading_____

ORDINANCE NO. _____

**AN ORDINANCE REPEALING LOVELAND MUNICIPAL
CODE §§ 12.48.030 AND 12.48.110 PROHIBITING TAKEOFF
AND LANDING OF AIRCRAFT OUTSIDE OF AIRPORT AND
LANDING IN CITY**

WHEREAS, Sections 12.48.030 12.48.110 of the Loveland Municipal Code prohibit the landing or takeoff of aircraft outside of the Northern Colorado Regional Airport and landing within the city limits without permission from the City Manager, unless such takeoff or landing is an emergency or conducted on behalf of a governmental entity; and

WHEREAS, Council desires to remove these code sections as Council has determined that it is no longer necessary.

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

Section 1. That Sections 12.48.030 and 12.48.110 of the Loveland Municipal Code are hereby repealed.

Section 2. That this Ordinance shall be effective ten (10) days after its publication after adoption on second reading as provided in Loveland Charter Section 4-8(b).

Signed this ____ day of August, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:



Teresa Ablao
Assistant City Attorney

First Reading_____

Second Reading_____

ORDINANCE NO. _____

AN ORDINANCE AMENDING LOVELAND MUNICIPAL CODE CHAPTER 12.48 TO PROVIDE AN EXEMPTION FOR HOT AIR BALLOONS, AND AN EXCEPTION FOR AIRCRAFT LANDING IN EMERGENCY CIRCUMSTANCES, FROM PROHIBITIONS AGAINST TAKEOFF AND LANDING OF AIRCRAFT OUTSIDE OF AIRPORT AND LANDING IN CITY

WHEREAS, Sections 12.48.030 and 12.48.110 of the Loveland Municipal Code prohibit the landing or takeoff of aircraft outside of the Northern Colorado Regional Airport and landing within the city limits without permission from the City Manager, unless such takeoff or landing is conducted by an emergency medical transportation aircraft or conducted on behalf of a governmental entity; and

WHEREAS, Council desires to allow persons operating hot air balloons to takeoff and land in the City; and

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

That Chapter 12.48 of the Loveland Municipal Code is hereby amended to add Section 12.48.120 to read as follows:

12.48.120 Exemption for operation of hot air balloons.

(a) The provisions of 12.48.030 and 12.48.110 notwithstanding, a hot air balloon may take off and land in the city. For purposes of this section, the term hot air balloon means any balloon that requires fire underneath to propel it.

Section 2. That this Ordinance shall be effective ten (10) days after its publication after adoption on second reading as provided in Loveland Charter Section 4-8(b).

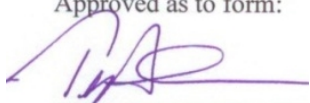
Signed this ____ day of August, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:



Teresa Ablao
Assistant City Attorney

AGENDA ITEM: 5.5
MEETING DATE: 8/16/2016
TO: City Council
FROM: Susan Grafton, Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager



TITLE:

1. Public update and Council briefing on the South Catalyst project;
2. A possible executive session to review the preliminary term sheet with the Brinkman Partners and to provide direction to staff to complete the negotiations, and;
3. A Resolution of the City of Loveland City Council Approving the Execution of the Second Amendment to the Exclusive Negotiation Agreement (ENA) with Brinkman Capital, LLC for the South Catalyst Project

RECOMMENDED CITY COUNCIL ACTION:

1. No action required, information only
2. Staff is recommending that Council move to enter into an executive session
3. Adopt a motion to approve the Second Amendment to the ENA

OPTIONS:

1. Adopt the actions as recommended.
2. Deny the actions – There will only be an public briefing; staff will not receive direction on negotiations and the deadline for the ENA agreement would remain August 16, 2016
3. Adopt a modified action – Council could direct staff to conduct the meeting in public and could seek conditions to the approval of the ENA
4. Refer back to staff for further development and consideration.

SUMMARY:

Staff will provide a public briefing on the South Catalyst project; specifically, the progress staff has made in negotiation with the Brinkman Partners. The presentation will include an overview of what has been accomplished, the most recent conceptual plans, a brief overview of the proposed cost and financing plan and next steps. The executive session will allow Council to review the draft terms of agreement and provide direction on confidential business negotiations.

If approved the Second Amendment to the Exclusive Negotiation Agreement (see attached) changes the deadline for the completion of the preliminary terms of the agreement from August 16, 2016 to November 15, 2016. Because there is no administrative extension allowed under the original agreement, this amendment is required to go before City Council for consideration.

BUDGET IMPACT:

- ☐ Positive
☒ Negative
☐ Neutral or negligible

The City will be expected to contribute the land value, and fee waivers as well as additional public contributions to be discussed in Executive Session.

BACKGROUND:

On February 16, 2016, City Council approved an Exclusive Negotiation Agreement (ENA) with the Brinkman Partners as the preferred developer for the South Catalyst project. The ENA was for six months and included specific benchmarks on conceptual plans, project financing and the final Disposition and Redevelopment Agreement. Brinkman Partners was selected after a competitive selection process approved by City Council.

The South Catalyst Project is proposed to be a large scale infill development that will accelerate downtown revitalization and have a broad impact on the downtown as a whole. The project has been contemplated by the City since the approval of the 2009 Downtown Strategic Plan.

The project that has been negotiated will include approximately:

- 625 seat first run movie theater
- 59,150 square feet of office
- 142 residential units
- 15,000 square feet of retail/service uses
- 460 space public parking structure
- Large public plaza
- Significant improvements to the alleyway and streetscapes to promote connectivity to the rest of downtown

Since the approval of the ENA in February, staff and the Brinkman Partners have completed the following actions:

- the site plan and conceptual plan was completed and reviewed
- the preliminary construction budget has been developed and refined
- a full parking analysis was completed
- a full financial analysis was completed and is being updated and refined as necessary
- a hotel market study has been initiated
- the preliminary terms of the development agreement have been discussed and agreed upon
- bond counsel has been engaged
- two public meetings were hosted to gather community input about the project and a third is scheduled for Friday, August 10

Staff would like to use the time in executive session to review the draft terms of agreement with City Council and get direction on confidential business items. Based on direction from City Council following the executive session, staff from both parties will begin the process of drafting the agreements into legal form for formal consideration by City Council. This will include all financing and other separate agreements as called for in the draft term sheet.

The ENA, which was originally for six months, is a formal contract with the developer that lays out the deliverables and expectations for both the developer and the City during the negotiation period which ends August 16, 2016. There is considerable work remaining to draft the agreements and initiate the financing process. In addition, a variable is the upcoming Downtown Development Authority's (DDA) TABOR election scheduled for November 8. Therefore, staff recommends extending the expiration date 90 days, to allow for the legal documents to be drafted and the DDA election to occur.

During the extension period the following benchmarks have been outlined in the ENA:

Item:

Date:

Extension of the ENA	August 16, 2016
Present the preliminary DRA to Council for review by Council	October 18, 2016
DDA TABOR Election	November 8, 2016
Complete the DRA and schedule full consideration by Council	November 15, 2016

REVIEWED BY CITY MANAGER:
SCA

LIST OF ATTACHMENTS:

1. Resolution
2. Staff Report
3. Conceptual Plans
4. GANTT Chart/Schedule
5. Exclusive Negotiation Agreement dated February 2016
6. 1st Amendment to the Exclusive Negotiation Agreement dated June 2016
7. 2nd Amendment to the Exclusive Negotiation Agreement (new)

RESOLUTION #R-81-2016

A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING THE EXECUTION OF THE SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT WITH BRINKMAN CAPITAL, LLC FOR THE SOUTH CATALYST PROJECT

WHEREAS, on February 16, 2016, the City of Loveland (“City”) approved Resolution #R-16-2016 authorizing the City Manager to sign an Exclusive Negotiation Agreement with Brinkman Capital, LLC for the South Catalyst Project (the “ENA”), concerning the redevelopment of the real property that includes the street rights of way on 2nd Street and 3rd Street between Lincoln and Cleveland Avenues as well as any public alleyways; and

WHEREAS, on June 7, 2016, City Council approved a motion authorizing the City Manager to execute the First Amendment to the Exclusive Negotiation Agreement with Brinkman Capital, LLC for the South Catalyst Project (the “First Amendment”), which extended the term of the agreement by two weeks and changed the deadline for completion of the preliminary terms of the agreement from August 2, 2016 to August 16, 2016; and

WHEREAS, Section 4 of the ENA set forth a timeline for the development of the Disposition and Re-Development Agreement (the “DRA”); and

WHEREAS, the preliminary site plan was completed and the preliminary construction budget was received on May 27, 2016 as required by the ENA as amended, but additional time is needed to complete the remaining items of the “DRA timeline”; and

WHEREAS, the Parties desire to amend Section 4 of the ENA and extend the term of the agreement ninety (90) days and change the deadline for completion of the preliminary terms of the ENA to November 15, 2016 to allow more time for development of the DRA.

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

Section 1. That the Second Amendment to the Exclusive Negotiation Agreement attached hereto as **Exhibit A** is approved.

Section 2. That the City Manager and the City Clerk are hereby authorized and directed to execute the Second Amendment to the Exclusive Negotiation Agreement on behalf of the City of Loveland.

Section 3. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 16th day of August, 2016.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

EXHIBIT A

EXCLUSIVE NEGOTIATION AGREEMENT

EXHIBIT B
Affidavits of Publication



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

Memorandum

To: City Council
Through: Steve Adams, City Manager
From: Mike Scholl, Economic Development Manager
Date: August 16, 2016
RE: South Catalyst/Staff Report

Background:

City Council is being asked to review the draft terms of agreement with the Brinkman Partners for the development of the South Catalyst project. If the terms of agreement are acceptable to Council, staff will begin the process of drafting the legal and financing agreements for formal consideration. This staff report provides an overview of the project since its inception.

Timeline:

<u>Item</u>	<u>Date</u>
Downtown Strategic Plan	2009
Downtown Vision Book	2010
Property Acquisition	2013 - 2015
Developer RFP	November 2015
Brinkman Partners Selected	February 2016
Abatement and Demolition	April – August 2016
Draft of the Term Sheet presented to Council	August 16, 2016
Council Review of the draft Disposition & Redevelopment Agreement	October 2016
DDA Tabor Election	November 2016
Council Consideration of Final Disposition & Redevelopment Agreement	November/December 2016
Groundbreaking	1 st Quarter of 2017

History:

The South Catalyst project has been contemplated by the City since the approval of the 2009 Downtown Strategic plan, which called for a large “catalyst” project to revitalize the downtown. The project was further articulated by the Downtown Vision Book in 2010, which first coined the term “*South Catalyst*” for this project concept. The Vision Book also called for the “North Catalyst” project which became the Gallery Flats project. Both the Strategic Plan and Vision Book are available on the City’s website under the Economic Development tab. (<http://www.cityofloveland.org>)

In 2012, the City purchased three properties 301 and 319 N. Lincoln and 270 E. 3rd Street. The City built a long-term parking lot at 270 E. 3rd Street and proceeded with a Brownfield cleanup of 301 and 319 N. Lincoln with the assistance of a \$300,000 federal grant. The site has been remediated and is now development ready.



In the fall of 2013, at the direction of City Council, staff began the process of acquiring the property for the South Catalyst project. In April of 2014, City Council approved a \$250,000 appropriation for earnest money deposits, and \$6.25 million in July of 2014 to cover the cost of acquisition. The first property (123 N. Lincoln) closed on August 29, 2014. After extended negotiations, the final property (201 N. Lincoln) closed a year later on June 29, 2015. The use of eminent domain by the City was not needed and all transactions were mutually agreed upon by City and owners. In some instances, the City leased back the property to business owners to facilitate a smooth transition.

The City also engaged with Larimer County regarding locating their office building in the downtown project. Due to constraints with parking and other issues, the option was not pursued and the County identified an alternative location at 1st Street and Denver Avenue.

The City initially engaged with the Michaels Development Company as an “exclusive” developer prior to working with the Brinkman Partners. Unfortunately, they were not a good fit for the project and both parties mutually agreed to part ways in July of 2015.

Brinkman Partners:

The Brinkman Partners are an integrated development company based in Fort Collins, Colorado. The company has in-house capacity for real estate development, general contracting, commercial brokerage, as well as property management.

More information on the Brinkman Partners can be found at:

<http://www.brinkmanpartners.com/company/about.html>



The Brinkman Partners were the City's partner on the Gallery Flats project, which won the Governor's Award from Downtown Colorado Inc. as the Best New Infill Project for 2015.

In November of 2015, the Brinkman Partners were one of two firms that responded to the City's Request for Proposals (RFP) to be the City's exclusive developer for the South Catalyst project. In February of 2016, Brinkman was selected by City Council based on the recommendation from a review committee made up of community stakeholders including City Councilors and members of the Loveland Downtown Partnership (LDP) and the Downtown Development Authority (DDA).

The Brinkman Partners are working with Oz Architecture out of Boulder, Colorado for design of the South Catalyst project.

More information on Oz Architecture may be found at: <http://ozarch.com/>

Abatement and Demolition:

The City initiated the abatement and demolition of the properties in April of 2016. The abatement is on schedule and the City should receive "No Further Action" letters from the Colorado Department of Public Health and Environment (CDPHE) at the conclusion of the demolition. The Contractor, Hudspeth Environmental, found five additional Underground Storage Tanks (USTs) in and around 123 and 201 N. Lincoln. Most of the tanks were either small, 100 gallon tanks or had been previously decommissioned. There was no additional soil contamination and but costs to remove the tanks increased the budget by around \$40,000. Staff has had no other change orders and the effort will conclude on schedule in mid-August.

Exclusive Negotiation Agreement:

The Exclusive Negotiation Agreement (ENA) was approved by Council on February 16, 2016. The ENA had a deadline which called for the preliminary term sheet and the draft of the Disposition and Redevelopment Agreement (DRA) to be presented to Council by August 16, 2016. Below is the schedule:

February 16, 2016	Effective Date of the ENA Agreement (as amended)
April 4, 2016	Preliminary site plan
May 2, 2016	Preliminary Pro Forma, Construction Budget and Definition of the Project Site
August 16, 2016	Complete Preliminary Term Sheet

Since the approval of the ENA in February, staff and the Brinkman Partners have completed the following actions:

- the site plan and conceptual plan have been completed and reviewed by the Negotiation Review team



- the preliminary construction budget has been developed and is being refined to fit the financing constraints
- a full parking analysis was completed by Walker Parking consultants from Denver, Colorado to fully understand the project parking needs as well as the need of the immediate area.
- a full financial analysis was completed and is being updated and refined as the project is defined
- a hotel market study has been initiated
- the preliminary terms of the development agreement have been discussed and agreed upon
- bond counsel has been engaged
- two public meetings were hosted to get citizen comments and feedback about the project; and a third is scheduled for Friday, August 10

Staff and Brinkman Partners are ready to move into final documentation of the Desposition and Redevelopment Agreement (DRA). Therefore, staff is asking that the ENA be extended for 90 days. This allows time to complete the draft of the legal agreements and to allow for the DDA election on November 8, 2016.

Next Steps:

Staff and the Brinkman partners are seeking direction from Council on August 16 to begin the process of drafting the legal agreements and preparing the financing for the project. If Council provides positive direction, staff anticipates coming back to Council with a draft DRA in October for a preliminary review and completing the DRA by the November 15 deadline in the proposed amended ENA.















STREET ELEVATIONS





3003 LARIMER STREET
DENVER, COLORADO 80205
PHONE: 303.861.5704
WWW.OZARCH.COM



SOUTH CATALYST LOVELAND, CO

PROJ. NO. 115253.00
DRAWN: (XX)
CHECKED: (XX)
APPROVED: (XX)
DATE: 06/08/16

© OZ ARCHITECTURE

SOUTH CATALYST

ISSUED FOR:
CONCEPT DESIGN

SHEET TITLE:
AERIAL VIEWS

SCALE: T.B.D.
SHEET NUMBER

L1.03



3003 LARIMER STREET
DENVER, COLORADO 80205
PHONE: 303.861.5704
WWW.OZARCH.COM



SOUTH CATALYST LOVELAND, CO

PROJ. NO. 115253.00
DRAWN: (XX)
CHECKED: (XX)
APPROVED: (XX)
DATE: 06/08/16

© OZ ARCHITECTURE

SOUTH CATALYST

ISSUED FOR:
CONCEPT DESIGN

SHEET TITLE:
AERIAL VIEWS

SCALE: T.B.D.
SHEET NUMBER

L1.05



3003 LARIMER STREET
DENVER, COLORADO 80205
PHONE: 303.861.5704
WWW.OZARCH.COM



SOUTH CATALYST
LOVELAND, CO

PROJ. NO. 115253.00
DRAWN: (XX)
CHECKED: (XX)
APPROVED: (XX)
DATE: 06/08/16

© OZ ARCHITECTURE

SOUTH CATALYST

ISSUED FOR:
CONCEPT DESIGN

SHEET TITLE:
AERIAL VIEWS

SCALE: T.B.D.
SHEET NUMBER

L1.06

South Catalyst Project Schedule
8/16/2016

	Activity Name	Duration (Days)	Plan Start Date	Plan Finish Date	2015	2016				2017				2018	
					Fourth Q	First Q	Second Q	Third Q	Fourth Q	First Q	Second Q	Third Q	Fourth Q	First Q	Second Q
1	South Catalyst Project	650.00	10/6/15	4/2/18											
2	Downtown Request for Proposal/Developer Selection...	96.00	10/6/15	2/16/16											
9	Developer Negotiation	320.00	2/8/16	4/28/17											
10	<i>Preliminary Kick off Meeting</i>	5.00	2/8/16	2/12/16											
11	<i>Preliminary site investigation and project design</i>	45.00	2/15/16	4/15/16											
12	<i>Preliminary project proforma</i>	46.00	3/14/16	5/16/16											
13	<i>Preliminary term sheet</i>	112.00	3/14/16	8/16/16											
14	<i>Preliminary RDA Draft</i>	131.00	2/16/16	8/16/16											
15	<i>Council Consideration/DRA</i>	0.00	12/30/16	12/30/16											
16	<i>Final Approvals/Closings</i>	64.00	1/31/17	4/28/17											
17															
18	Abatement and Demolition	226.00	10/6/15	8/16/16											
19	<i>Complete Asbestos survey</i>	40.00	10/6/15	11/30/15											
20	<i>Complete Phase II</i>	50.00	11/23/15	1/29/16											
21	<i>Prepare bid documents</i>	96.00	10/6/15	2/16/16											
22	<i>Issue Bid</i>	0.00	2/19/16	2/19/16											
23	<i>City Council Consideration of Contract</i>	0.00	4/20/16	4/20/16											
24	<i>Contract Award</i>	4.00	4/20/16	4/25/16											
25	<i>Abatement and Demolition</i>	72.00	5/9/16	8/16/16											
26															
27	Communications Plan	148.00	1/19/16	8/12/16											
28	<i>City Council Meeting/Developer Announcement</i>	0.00	1/19/16	1/19/16											
29	<i>City Council Study Session</i>	0.00	2/23/16	2/23/16											
30	<i>City Newsletter/Update</i>	0.00	3/1/16	3/1/16											
31	<i>Public Engagment/Abatement and Demolition</i>	0.00	3/23/16	3/23/16											
32	<i>Public Engagement Meeting #1</i>	0.00	4/8/16	4/8/16											
33	<i>Public Engagement Meeting #2</i>	0.00	6/10/16	6/10/16											
34	<i>Public Engagment Meeting #3</i>	0.00	8/12/16	8/12/16											
35															
36	Budget and Appropriations	151.00	5/24/16	12/20/16											
37	<i>Preliminary Study Session/Review the Budget</i>	0.00	5/24/16	5/24/16											
38	<i>Downtown Development Authority/TABOR Election</i>	0.00	11/8/16	11/8/16											
39	<i>Appropriation Ordinance/First & Second Reading</i>	11.00	12/6/16	12/20/16											
40	<i>LURA/DDA-Bond (tentative)</i>	11.00	12/6/16	12/20/16											
41															
42	Site Plan and Permitting	590.00	12/29/15	4/2/18											
43	<i>Concept Review</i>	40.00	11/7/16	12/30/16											
44	<i>Traffic Study</i>	45.00	12/29/15	2/29/16											
					Fourth Q	First Q	Second Q	Third Q	Fourth Q	First Q	Second Q	Third Q	Fourth Q	First Q	Second Q

	Activity Name	Duration (Days)	Plan Start Date	Plan Finish Date	2015	2016				2017				2018	
					Fourth Q	First Q	Second Q	Third Q	Fourth Q	First Q	Second Q	Third Q	Fourth Q	First Q	Second Q
45	Site Plan Application	69.00	1/2/17	4/6/17											
46	Building Permit Application(s)	67.00	3/28/17	6/28/17											
47	Groundbreaking	0.00	4/3/17	4/3/17											
48	Construction/Construction Oversight/RDA Implementation	261.00	4/3/17	4/2/18											
					Fourth Q	First Q	Second Q	Third Q	Fourth Q	First Q	Second Q	Third Q	Fourth Q	First Q	Second Q

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the "Agreement") dated February 25, 2016, is made by and between the CITY OF LOVELAND, COLORADO, a body corporate and politic of the State of Colorado (the "City") and Brinkman Capital, LLC, a Colorado limited liability company (the "Developer"), which may be referred to individually herein as a "Party" or collectively herein as the "Parties."

In consideration of the following mutual covenants and other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Development Project.** Pursuant to a competitive bidding procedure established by the City, the Developer's affiliate, Brinkman Development, LLC ("Brinkman Development") submitted a proposal dated November 13, 2015 ("Proposal"), concerning the redevelopment of the real property that is depicted on the attached map, labeled **Exhibit A**, and incorporated herein by this reference, and which includes the street rights of way on 2nd Street and 3rd Street between Lincoln and Cleveland Avenues as well as any public alleyways (the "Property").

The Parties acknowledge that the Proposal is conceptual and a starting point for negotiations.

The Proposal provides for construction on the Property of the following:

- A three- or four-story commercial building with approximately 57,000 square feet.
- A four- or five-story mixed-use building with approximately 78,000 square feet to include up to 100 multifamily apartment units, with some ground floor office and/or retail space.
- A single-story, 22,250 square foot movie theater with four to six movie screens.
- One or two stories of approximately 28 for-sale condominium units that are comprised of approximately 28,080 square feet.
- A parking structure with an estimated 370 parking spaces sized to the needs of the development, the downtown and ground floor retail. Parking spaces within the structure may be above or below grade.
- Approximately seven artist studios.
- Improvements to the Greeley Loveland Irrigation Canal ("GLIC") and the areas adjacent to Lincoln Avenue that serve as a gateway to downtown.
 - Both parties agree that any improvements to GLIC are subject to additional input from the community, project design team, and City's review team and are subject to review by representatives from GLIC.
 - Both parties acknowledge that the cost of any public improvements are subject to further negotiation.

Such Property and Proposals described in Section 1 above shall be referred to collectively in this Agreement as the "Project."

The City acknowledges that the Developer, in entering into this agreement, will be seeking significant financial participation as indicated in their Proposal and which is outlined in Exhibit B. Further, both parties agree that the information in Exhibit B is based on a conceptual design that

is subject to change and is merely a starting point for negotiations and nothing in this Agreement is commitment by the City to such financial participation.

On January 19, 2016, the RFP Review Committee, appointed by the Loveland City Council ("City Council") recommended the Developer as the City's "preferred developer" with which to enter into an exclusive negotiation agreement for redevelopment of the Property as described above as the Project. Such selection and the execution of this Agreement shall not be deemed acceptance of the Proposal or the Developer by the City. The Project shall not be deemed accepted until the Parties execute a mutually agreeable Disposition and Re-Development Agreement (the "DRA"), which may differ *substantially from the Project*; provided, however, failure of the Parties to agree upon a material revision or alteration of the Project, without more, shall not constitute a violation of this Agreement, including the obligation of the Parties to negotiate in good faith.

2. **Exclusive Negotiations.** The Parties agree that for a period beginning on February 2, 2016 and expiring on August 2, 2016 (the "Negotiation Period"), they will negotiate exclusively and in good faith with one another in an effort to reach a mutually acceptable DRA. The Negotiation Period may be extended only by written amendment of this Agreement authorized and executed by the Parties, and such amendment must be approved by City Council.

3. **Deposit.** Upon execution of this Agreement, the Developer shall deliver to the City a good faith deposit of Ten Thousand Dollars (\$10,000) in the form of a company check (the "Deposit"). The Deposit shall be held by the City during the term of this Agreement and all extensions. The City shall retain the Deposit in an interest bearing account. All interest earned on the Deposit shall be added to and become part of the Deposit. If, in spite of the Parties' best efforts and good faith negotiations, they are unable to agree upon a mutually acceptable DRA, the Deposit, and all interest earned thereon, shall be promptly returned to the Developer by the City. The Developer agrees that the City shall retain the Deposit, and all interest earned thereon, as liquidated damages if the Developer breaches this Agreement by failing or refusing to meet at reasonable intervals or in accordance with a mutually established schedule to negotiate with the City's representatives or if the Developer otherwise fails to negotiate in good faith (collectively, "Deposit Retention Events"). The Developer agrees to provide the City with a proposed schedule of meetings.

4. **DRA Timeline.** The Parties agree to adhere to the following timeline for the development of the DRA:

DATE	ITEM
FEBRUARY 2	Effective date of this Agreement
APRIL 4	Preliminary site plan that includes the location of various elements of the Project, including the parking structure and any new or relocated infrastructure
MAY 2	Preliminary pro forma and construction

AUGUST 2

budget and definition of the Project site

Complete preliminary term sheet that includes the major terms and conditions, including, financing, for the DRA; Complete first draft of the DRA to be brought before City Council for review and consideration.

5. **Developer's Duties and Covenants.** The Developer warrants and covenants as follows:

a. Developer inspected and is reasonably familiar with the general character and location of the Property. For purposes of this section, Developer assumes all areas of land have had a Phase 2 environmental study performed and the City will provide the Developer with all documentation regarding the environmental conditions, including all actions taken by the City to abate, remediate and/or cure any known environmental conditions.

b. The Developer understands and acknowledges that the Property is subject to certain legal requirements, including to the Downtown Urban Renewal Plan, as amended, and the Loveland Downtown Development Authority and, when appropriate, the restrictions, covenants, conditions and obligations required by the City and all applicable law. The Parties will jointly seek reasonable modifications to any such requirements that may be required by the terms of the final DRA, as agreed upon by the Parties.

c. Developer hereby certifies to the best of Developer's actual knowledge that it possesses the legal ability and the ability to obtain adequate financing to develop the Property by constructing the improvements contemplated by the Proposal. Subject to normal financing contingencies and market conditions, the Developer knows of no reason or circumstance that will preclude its ability to obtain adequate financing. This warranty by Developer is subject to the Project not materially deviating from the current Proposal.

d. The Developer will disclose to the City, prior to the execution of the DRA, its principals, officers, stock holders, partners, joint venturers, members, guarantors, and other interested persons that will be involved in the ownership of the special purpose entity(ies) that will develop, own and operate the real property and improvements located thereon of the Project. The City acknowledges and agrees that the ownership composition of such entities have not been finalized.

e. As part of the Developer's obligations under this Agreement, the Developer shall reasonably cooperate with the City, its bond advisors, underwriters, attorneys, legal advisers, consultants, City staff and others involved in the financing and completion of the Project.

f. The Developer shall submit to the City periodic reports as reasonably requested by the City, regarding the progress of studies, reports, plans, designs and other activities that affect

the negotiation of the DRA. Reports made by the Developer at scheduled meetings shall satisfy this Agreement.

h. The Developer shall provide at its own expense) the professional services necessary to complete the preliminary site design and conceptual rendering for the Project ("Professional Expenses"), in a form reasonably satisfactory to the City.

i. The Developer shall provide tenant commitment(s) for the retail space, at terms that are reasonably satisfactory to the City. Developer agrees to provide market comparable to the City in an effort to verify market rates.

j. The Developer shall provide, market studies ("Market Studies") that demonstrate retail and housing demand, in a form reasonably acceptable to the City.

k. The Developer shall complete, at its own expense, site design and conceptual design renderings for the Project, in a form reasonably acceptable to the City.

l. The City agrees to dedicate sufficient staff to ensure timely input and review of conceptual design renderings.

m. The City agrees to make available space for meetings at no cost to the Developer, to provide all documents related to the project site, electronic CAD files prepared by the civil engineer and other information as necessary.

m. The City acknowledges that it has no claim to any work product including but not limited to site design, conceptual renderings, and Market Studies. In the event that the parties fail to reach an agreement, the City is not entitled to use any work product without prior agreement from the Developer.

6. City Duties and Covenants. The City represents, warrants, and covenants as follows:

a. To provide current and future (the environmental and clearing studies planned for Spring, 2016) site data in the City's possession, including maps and civil surveys, required to complete the preliminary Project site design and concept design, full utility and parcel maps, and title work on those portions of the Property to be conveyed;

b. Access to and prioritization of the City's internal design review team; and

c. Right of Developer to include within the Project Proposal the additional property located at 3rd Street, should it be brought under purchase contract by the Developer during the term of this Agreement and expiring one year following completion of the Project as evidenced by a certificate of occupancy.

7. **Developer and City Duties.** The Developer and the City agree to complete the following no later than the close of business on August 2, 2016, subject to the Project timeline set forth in Section 3 above:

- a. A term sheet describing the terms and conditions of the DRA;
- b. The first draft of the DRA to be brought before City Council for review and consideration;
- c. Subject to further change and revision as the Project progresses, The Project budget and redevelopment pro-forma; and
- d. To dedicate staff as needed to complete a term sheet and DRA as set forth in this Agreement, including bi-weekly meetings at the City beginning Monday, February 8, 2016 through the completion of the draft DRA.

8. **Access to Property.** At any reasonable time, the Developer, its employees, agents or contractors may enter upon the Property at the sole risk of the Developer for the purpose of making inspections or conducting such reasonable tests, investigations, studies, audits, surveys and reviews and for the purpose of removing samples from the Property in connection with the design and construction of the Project. Immediately after such entry on the Property, the Developer shall restore the Property to substantially the same condition it was in prior to such entry. The Developer shall indemnify and hold harmless the City, and City Council members, employees, agents, consultants, insurance provider and attorneys for any loss, damage or claims of any loss or damage (including reasonable legal fees) resulting from any such entry, tests and surveys. The City may require the Developer and any other person seeking such entry to sign reasonable and customary license agreements and other documents confirming the terms of this provision.

9. **Indemnification.** The Developer shall indemnify and hold harmless the City, its officials, officers, employees, agents, and insurance provider for and against any loss, damage, or claims of any loss or damage, including reasonable legal fees, resulting from any action, representation, commitment or activity of the Developer in connection with the proposed redevelopment of the Property.

10. **No Assignment.** This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party. The City recognizes that the Developer intends to form separate, special purpose entity(ies) to develop, own and operate real property and the improvements thereon of the Project, and that assignments may be required in connection with such activities. Approval of any such assignment(s) shall not be unreasonably withheld by the City.

11. **Covenant Against Contingent Fees and Costs.** The City shall not be liable for any fees or costs, including real estate commissions or brokerage fees, or costs of studies, reports, or other

documents that may arise as a consequence of any transaction involving this Agreement or the Property or any part thereof. The Parties represent that neither has engaged a broker, agent or finder in connection with this Agreement or in connection with the sale and transfer of the Property or any part thereof.

12. **City not a Partner.** Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, the City shall not be deemed to be a partner or joint venturer of the Developer or any operator or manager of the Project, and the City shall not be responsible for any debt of the Developer.

13. **Defaults; Remedies.** Upon a default by the other Party, and provided that such Party has not cured the default within twenty (20) days of the receiving written notice thereof, the remedies of the respective Parties under this Agreement shall be as follows:

a. If the Developer fails to substantially observe or perform any covenant, obligation or agreement required under this Agreement, the sole and exclusive remedy of the City shall be to cancel and rescind the Agreement, except in the case of a Deposit Retention Event, the sole and exclusive remedy of the City shall be to cancel and rescind the Agreement.

b. If the City fails to substantially observe or perform any covenant, obligation or agreement required under this Agreement, Developer shall be entitled to cancel and rescind the Agreement. The Developer shall not be entitled to any other legal or administrative remedy, action or proceeding including, without limitation, the right to seek damages, specific performance, or to seek any other right or remedy at law or in equity. The Developer shall be responsible for bearing all of its costs and expenses, direct or indirect, in connection with the Project, this Agreement or the DRA.

14. **No Other Rights or Remedies.** Notwithstanding any language in the Agreement or any other Agreement, document or communication to the contrary, the Project shall not be deemed accepted by the Parties until the DRA is executed by both Parties. The rights and remedies of the Parties are specifically limited to those set forth in this Agreement and no rights to specific enforcement or in the nature of equitable conversion will be deemed to have been created with respect to the Project, the Property or otherwise.

15. **Non-liability for Certain Persons.** No City Council member, employee, agent, consultant, underwriter, insurance provider, or attorney of the City shall be personally liable to the Developer under this Agreement or in the event of any default or breach by the City under this Agreement.

16. **Conflicts of Interest.** None of the following shall have any personal interest, direct or indirect, in this Agreement: a member of the governing body or an employee of the City who exercises responsibility concerning the Project, or an individual or firm retained by the City, who has performed or will perform consulting or legal services in connection with the Project. Nor shall any of the above persons or entities make any decisions relating to this Agreement that affect

his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested.

17. Notices. A notice or demand under this Agreement by any Party to the other shall be in writing and sufficiently given if delivered in person or via overnight courier service with guaranteed next-day delivery or by certified mail, return receipt required, postage prepaid, and;

a. in the case of the Developer, is addressed or delivered to the Developer as follows:

Brinkman Capital, LLC
Attn: Jay Hardy
3528 Precision Drive, Suite 100
Fort Collins, CO 80528

with a copy to:

Liley, Rogers & Martell L.L.C.
Attn: Lucia Liley
300 S. Howes Street
Fort Collins, CO 80521

b. in the case of the City, is addressed or delivered to the City as follows:

City Manager
City of Loveland
500 E. Third Street, Suite 330
Loveland, CO 80537

with a copy to:

City Attorney
City of Loveland
500 E. Third Street, Suite 330
Loveland, CO 80537

or at such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this Section.

18. Authorized Contacts for Communications. The Developer and the City agree that each shall designate one individual as a point of contact for all communications pursuant to this Agreement. The City designates Mike Scholl, Economic Development Director, as its contact and the Developer designates Jay Hardy as its contact.

19. **Applicable Law and Venue.** The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement and exclusive venue shall be in the Larimer County District Court.

20. **Confidentiality.** Pursuant to the Colorado Open Records Act, C.R.S. §§ 24-72-201 *et seq.* ("Act"), all information provided to the City is subject to public disclosure unless it meets one of the exceptions set forth in the Act. To avoid disclosure of trade secrets, privileged information, or confidential commercial, financial, geological, or geophysical data ("Confidential Information"), the Developer must clearly mark all Confidential Information as such and provide a written, detailed justification to the City of the protected nature of the Confidential Information under Colorado law. This justification must address, at a minimum, the specific competitive harm that may result from any disclosure, the intrinsic value of the Confidential Information to the Developer, and any safeguards the Developer uses to protect the Confidential Information from disclosure. By executing this Agreement, the Developer agrees to hold the City harmless from any claim arising from the release of Confidential Information not clearly marked as such by the bidder or lacking written, detailed justification supported by Colorado law.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be duly executed as of the day first above written.

DEVELOPER:
BRINKMAN CAPITAL, LLC,
 a Colorado limited liability company

By: BRINKMAN REAL ESTATE SERVICES, LLC
 a Colorado limited liability company
 its Manager

By: 
 Kevin Brinkman, Manager

CITY:
CITY OF LOVELAND, COLORADO

By: Paul A. Gutierrez
Mayor

ATTEST:

[Signature]
Deputy City Clerk



APPROVED AS TO FORM:

[Signature]
City Attorney

Exhibit A

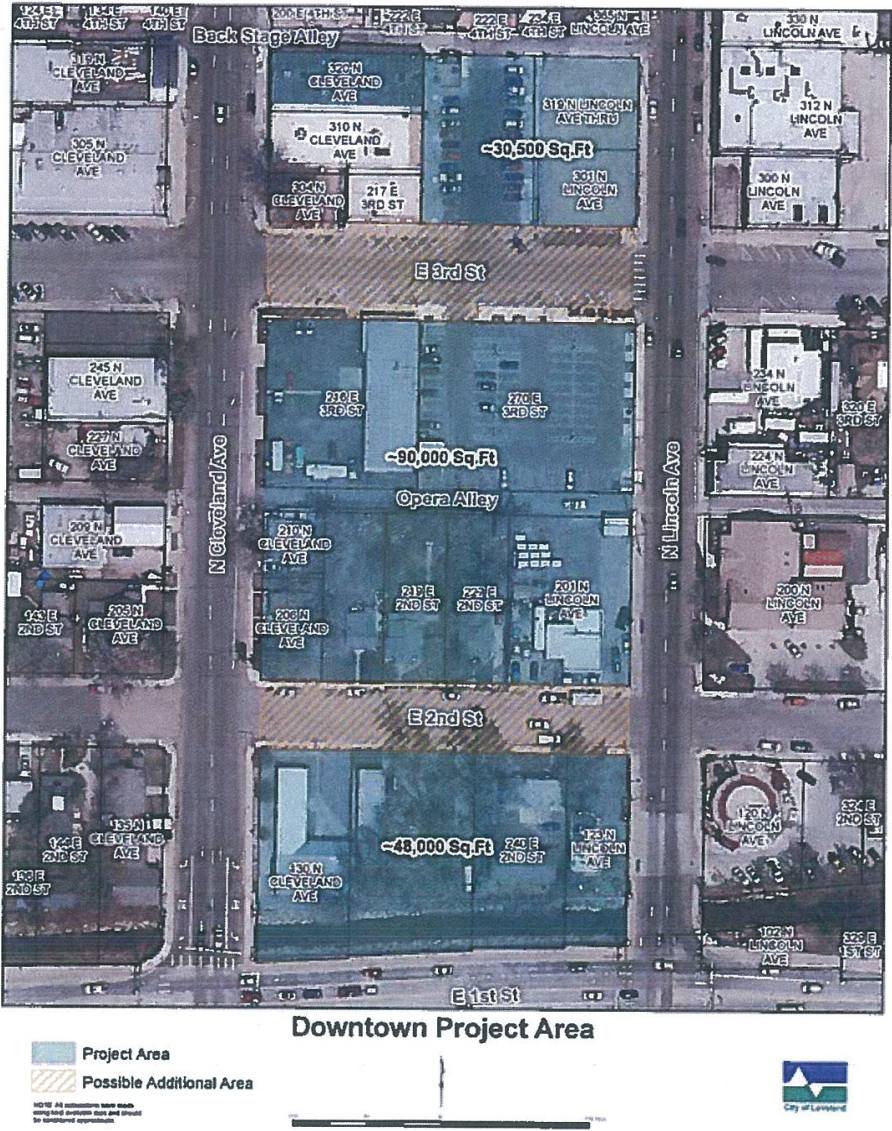


Exhibit B

Developer Requested Assistance – By product type			(see proforma gap analysis)
Project	Land	Fee Waivers	Financial need (NPV)
Movie Theater	X	X	\$ 1,798,641
Mixed Use building	X	X	\$ -
Office	X	X	\$ 147,655
Live/Work units	X	X	\$ 793,588
Condominiums	X	X	\$ -
Artist Studios	X	X	\$ 120,430
Parking Structure	X	X	\$ 5,091,797
			\$ 7,952,111



FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT

THIS **FIRST AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT** (the "First Amendment") is entered into this ~~16th~~ ^{June} day of ~~May~~, 2016, by and between the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the "City") and **BRINKMAN CAPITAL, LLC**, a Colorado limited liability company (the "Developer"), which may be referred to individually herein as a "Party" or collectively as the "Parties."

WHEREAS, the Parties have entered into that certain Exclusive Negotiation Agreement dated February 25, 2016, (referred to herein as "the Agreement") concerning the redevelopment of the real property that is depicted on the map labeled Exhibit A to the Agreement, which includes the street rights of way on 2nd Street and 3rd Street between Lincoln and Cleveland Avenues as well as any public alleyways; and

WHEREAS, Section 4 of the Agreement set forth a timeline for the development of the Disposition and Re-Development Agreement (the "DRA");

WHEREAS, the Parties desire to amend Section 4 of the Agreement to allow more time for the development of the DRA; and

WHEREAS, Section 2 of the Agreement provides that the Parties may amend the Negotiation Period by an instrument signed by both Parties and approved by City Council; and

WHEREAS, the Loveland City Council approved this First Amendment by motion at the June 7th, 2016 Loveland City Council meeting.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

AMENDMENT TO AGREEMENT

1. That Section 4 of the Agreement be stricken in its entirety and restated as follows:
4. **DRA Timeline.** The Parties agree to adhere to the following timeline for the development of the DRA:

DATE	ITEM
FEBRUARY 16	Effective date of this Agreement
APRIL 4	Preliminary site plan that includes the location of various elements of the Project, including the parking structure and any new or relocated infrastructure

MAY 27

Preliminary pro forma and construction budget and definition of the Project site

AUGUST 16

Complete preliminary term sheet that includes the major terms and conditions, including, financing, for the DRA; Complete first draft of the DRA to be brought before City Council for review and consideration.

2. That the first sentence of Section 7 of the Agreement be amended as follows: "The Developer and the City agree to complete the following no later than the close of business on August 16, 2016, subject to the project timeline set forth in Section 4 above."

MISCELLANEOUS

3. That the City and the Developer each find and determines that the execution of this First Amendment is in the best interest of the public health and general welfare of the City, and that it will serve the public purposes of providing significant social and economic benefits to the City.

4. That except as expressly provided in this First Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment or counterpart copies thereof as of the date first written above.

CITY OF LOVELAND, COLORADO, a Colorado municipal corporation

By: Cecil A. Gutierrez
Cecil Gutierrez, Mayor

ATTEST:

By: [Signature]
Deputy City Clerk




APPROVED AS TO FORM:

By: [Signature]
City Attorney

DEVELOPER:
BRINKMAN CAPITAL, LLC,
a Colorado limited liability company

By: BRINKMAN REAL ESTATE SERVICES,
LLC, a Colorado limited liability company
its Manager

By: 
Kevin Brinkman, Manager

SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT

THIS **SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATION AGREEMENT** (the "Second Amendment") is entered into this ____ day of _____, 2016, by and between the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the "City") and **BRINKMAN CAPITAL, LLC**, a Colorado limited liability company (the "Developer"), which may be referred to individually herein as a "Party" or collectively as the "Parties."

WHEREAS, the Parties have entered into that certain Exclusive Negotiation Agreement dated February 25, 2016, (referred to herein as "the Agreement") concerning the redevelopment of the real property that is depicted on the map labeled Exhibit A to the Agreement, which includes the street rights of way on 2nd Street and 3rd Street between Lincoln and Cleveland Avenues as well as any public alleyways; and

WHEREAS, the Parties have entered into the First Amendment to the Exclusive Negotiation Agreement dated June 16, 2016;

WHEREAS, Section 4 of the Agreement set forth a timeline for the development of the Disposition and Re-Development Agreement (the "DRA");

WHEREAS, the Parties desire to amend Section 4 of the Agreement to allow more time for the development of the DRA; and

WHEREAS, Section 2 of the Agreement provides that the Parties may amend the Negotiation Period by an instrument signed by both Parties and approved by City Council; and

WHEREAS, the Loveland City Council approved this Second Amendment by motion at the _____, 2016 Loveland City Council meeting.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

AMENDMENT TO AGREEMENT

1. That the first sentence of Section 2 of the Agreement be amended as follows: "The Parties agree that for a period beginning February 2, 2016 and expiring on November 15, 2016 (the "Negotiation Period"), they will negotiate exclusively and in good faith with one another in an effort to reach a mutually acceptable DRA."

2. That Section 4 of the Agreement be stricken in its entirety and restated as follows:

4. **DRA Timeline.** The Parties agree to adhere to the following timeline for the development of the DRA:

DATE	ITEM
FEBRUARY 16	Effective date of this Agreement
APRIL 4	Preliminary site plan that includes the location of various elements of the Project, including the parking structure and any new or relocated infrastructure
MAY 27	Preliminary pro forma and construction budget and definition of the Project site
AUGUST 16	Extension of the ENA; Complete preliminary term sheet that includes the major terms and conditions, including financing.
OCTOBER 18	Present the preliminary DRA to Council for review
NOVEMBER 8	DDA TABOR Election
NOVEMBER 15	Present the complete DRA to Council for review and consideration

3. That the first sentence of Section 7 of the Agreement be amended as follows: "The Developer and the City agree to complete the following no later than the close of business on November 15, 2016, subject to the project timeline set forth in Section 4 above:"

MISCELLANEOUS

4. That the City and the Developer each find and determines that the execution of this Second Amendment is in the best interest of the public health and general welfare of the City, and that it will serve the public purposes of providing significant social and economic benefits to the City.

5. That except as expressly provided in this Second Amendment, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment or counterpart copies thereof as of the date first written above.

CITY OF LOVELAND, COLORADO, a Colorado
Municipal Corporation

By: _____
Cecil Gutierrez, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

DEVELOPER:
BRINKMAN CAPITAL, LLC,
a Colorado limited liability company

By: BRINKMAN REAL ESTATE SERVICES,
LLC, a Colorado limited liability company
its Manager

By: _____
Kevin Brinkman, Manager

AGENDA ITEM: 5.6
MEETING DATE: 8/16/2016
TO: City Council
FROM: City Clerk
PRESENTER: Terry Andrews, City Clerk



TITLE:

A motion calling a special meeting of City Council August 23, 2016 at 6:00 p.m., to be located in the Devereux Room, at the Rialto Theatre, 228 E 4th St. Loveland, CO 80537. The purpose of the meeting is for Council to work with the City Manager on goals, objectives and priorities for the City of Loveland.

RECOMMENDED CITY COUNCIL ACTION:

Approve the motion.

OPTIONS:

- 1) Council could approve the meeting at the offsite location.
- 2) Council could approve the meeting and change the location.
- 3) Council could not approve the motion and move to set the meeting at a different time and location.

SUMMARY:

City Council directed the City Manager to set a special meeting to discuss and establish goals, objectives and priorities to be used for future direction in the City of Loveland. Council has requested the meeting occur offsite. Council preference was to use a Tuesday evening Study session date and time. The meeting will occur at the Devereux Room at the Rialto Theatre on August 23, 2016. A special meeting has been called and will be published and posted at least 24 hours prior to the meeting per the C.R.S. "Open Meetings Law". Study sessions items currently slated for August 23, 2016 on the "Rolling Calendar" will be moved to August 30, 2016.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

None