



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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

AGENDA ITEM: 1
MEETING DATE: 3/20/2012
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:

Appoint members to Citizens' Finance Advisory Board and Disabilities Advisory Commission

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to appoint Gerry Fleischer to Citizens' Finance Advisory Board for a partial term effective until December 31, 2013. Adopt a motion to appoint Julie Harden to Citizens' Finance Advisory Board for a full term effective until December 31, 2014.

Adopt a motion to appoint Leona Watson to Disabilities Advisory Commission for a full term effective until June 30, 2014.

OPTIONS:

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

DESCRIPTION:

This is an administrative item appointing members to the Citizens' Finance Advisory Commission and the Disabilities Advisory Commission.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

Due to Councilor Trenary's election, he resigned from the Citizens' Finance Advisory Commission ("CFAC.") Another resignation created a second vacancy. Interviews were held February 28, 2012 with three candidates. The interview committee recommends appointing Gerry Fleischer to CFAC for a partial term effective until December 31, 2012 and appointing Julie Harden to CFAC for a full term effective until December 31, 2014.

The Disabilities Advisory Commission ("DAC") has had two vacancies. One individual applied and was interviewed on February 24, 2012. Leona Watson is recommended for appointment to

DAC for a term effective until June 30, 2014. The remaining vacancy, a term that expires June 30, 2012, will be included in the upcoming Spring recruiting process.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

None



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AGENDA ITEM: 2
MEETING DATE: 3/20/2012
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:

A resolution amending the scheduled meeting time of the Housing Authority of the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion approving the resolution

OPTIONS:

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

DESCRIPTION:

This is an administrative action to change the meeting time of the Housing Authority of the City of Loveland from the fourth Wednesday of each month at 6:00 p.m. to the fourth Wednesday of each month at 4:00 p.m.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The Housing Authority of the City of Loveland currently meets on the fourth Wednesday of each month at 6:00 p.m. On February 22, 2012, the Board approved a motion to recommend that City Council change the board meeting start time to 4:00 p.m.

REVIEWED BY CITY MANAGER:

William A. Cahill

LIST OF ATTACHMENTS: Resolution

RESOLUTION #R-24-2012

A RESOLUTION AMENDING THE SCHEDULED MEETING TIME FOR THE HOUSING AUTHORITY OF THE CITY OF LOVELAND

WHEREAS, on December 6, 2012, the City Council adopted Resolution #R-81-2011, which set a meeting date and time for the Housing Authority; and

WHEREAS, the Housing Authority has requested that the City Council change the Housing Authority’s meeting time from the fourth Wednesday of each month at 6:00 p.m. to 4:00 p.m.

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

Section 1. That the meeting date and time set in Resolution #R-81-2011 is hereby amended to change the Housing Authority’s meeting time from the fourth Wednesday of each month at 6:00 p.m. to 4:00 p.m.

Section 2. That except as amended herein and by prior resolutions, Resolution #R-81-2011 shall remain in full force and effect.

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

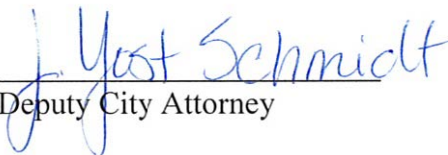
ADOPTED this 20th day of March, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
HUMAN RESOURCES DEPARTMENT
 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2371 • FAX (970) 962-2919 • TDD (970) 962-2620

AGENDA ITEM: 3
MEETING DATE: 3/20/2012
TO: City Council
FROM: Julia Holland, Human Resources Director
PRESENTER: Julia Holland

TITLE:

Resolution amending the scheduled meeting dates for the City of Loveland Board of Retirement

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion approving the resolution as submitted.

OPTIONS:

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

DESCRIPTION:

This is an administrative matter. The Board of Retirement is requesting Council change the regularly scheduled City of Loveland Board of Retirement meetings due to scheduling conflicts among members due to overlapping board and commission meetings.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The City of Loveland Board of Retirement (the "Board") is requesting the current scheduled meeting dates change due to scheduling conflicts from overlapping board and commission meetings affecting the Board members and liaisons. The Board unanimously approved a motion on February 8, 2012, to recommend City Council change the Board meeting time and dates to avoid scheduling conflicts. The approval of the attached Resolution would allow for regular meetings to be held at 3 p.m. on the second Wednesday of February, May, August and November of each calendar year. The location of the Board meetings will remain at the Main Floor Conference Room at 500 E. Third Street, Loveland, CO.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS:

Resolution

RESOLUTION #R-25-2012**A RESOLUTION AMENDING THE SCHEDULED MEETING DATES OF THE CITY OF LOVELAND BOARD OF RETIREMENT**

WHEREAS, on December 6, 2011, City Council adopted Resolution #R-81-2011 setting forth the 2012 meeting dates for the City's boards and commissions, including the City of Loveland Board of Retirement (the "Board"); and

WHEREAS, the Board meeting dates are currently set on the second Thursday of February, May, August and November of each calendar year at 2:00 p.m. in the Main Floor Conference Room, 500 East Third Street, Loveland, Colorado; and

WHEREAS, due to scheduling conflicts among the Board members and liaisons, and to multiple overlapping boards and commissions meetings, the Board unanimously approved a motion on February 8, 2012, to recommend that City Council change the Board meeting time and dates to avoid such conflicts; and

WHEREAS, such recommendation would move the Board's meeting time and dates from 2 p.m. on the second Thursday of February, May, August and November of each calendar year to 3 p.m. on the second Wednesday of February, May, August and November of each calendar year.

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

Section 1. That the meeting time and dates adopted in Resolution #R-81-2011 are hereby amended to change the Board's meeting time and dates from the 2 p.m. on the second Thursday of February, May, August and November of each calendar year to 3 p.m. on the second Wednesday of February, May, August and November of each calendar year. The meeting location shall remain the same: Main Floor Conference Room, 500 East Third Street, Loveland, Colorado.

Section 2. That Resolution #R-81-2011, as amended herein and by prior resolutions, shall remain in full force and effect.

Section 3. That pursuant to City Code Section 2.14.020B, the City Clerk is directed to publish the revised meeting dates established by this Resolution within seven days after the date of this Resolution to be published in a newspaper of general circulation in the City and in addition post such notice of revised meeting dates in a conspicuous place in the City Municipal Building.

Section 4. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this ____ day of March, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A Resolution Amending the Scheduled Meeting Dates of the City of Loveland Board of Retirement (2012)



CITY OF LOVELAND
CITY ATTORNEY'S OFFICE

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

AGENDA ITEM: 4
MEETING DATE: 3/20/2012
TO: City Council
FROM: John Duval, City Attorney
PRESENTER: John Duval, City Attorney

TITLE:

Public hearing and consideration of an ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget to fund an internship in the City Attorney's Office.

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the ordinance on first reading

OPTIONS:

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

DESCRIPTION:

This is an administrative action. The Ordinance appropriates funds for a legal intern in the City Attorney's Office. The City will be receiving from the intern's law school a grant of \$11,280 to fully fund the intern's 4½ month, 20 hours per week internship.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The internship is funded by intern's law school. The City will be reimbursed for all its salary expenses by the law school.

SUMMARY:

Recently, a newly admitted attorney to the Colorado Bar, Cameron Banninga, volunteered his services as unpaid legal intern to the City Attorney's Office. In the process of qualifying Cameron as a City volunteer, it was discovered that his law school, Florida Coastal School of Law, has a "Post Graduate Public Interest Program" through which it will fund Cameron's

internship with the City. The internship will be for approximately 4½ months at 20 hours per week. This ordinance appropriates the \$11,280 that the City will receive from this program and will use to pay Cameron for his services.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. An Ordinance Enacting a Supplemental Budget and Appropriation to the 2012 City of Loveland Budget to Fund an Internship in the City Attorney's Office.

FIRST READING March 20, 2012

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET TO FUND AN INTERNSHIP IN THE CITY ATTORNEY’S OFFICE

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That revenues in the amount of \$11,280 in contributions from the Florida Coastal School of Law in the General Fund 100 are available for appropriation. Revenues in the total amount of \$11,280 are hereby appropriated for an attorney internship and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 100 - Attorney Intern**

Revenues		
100-13-110-0000-35304	Contributions	11,280
Total Revenue		11,280
Appropriations		
100-13-110-0000-41012	Temporary Salaries	10,480
100-13-110-0000-41544	FICA	800
Total Appropriations		11,280

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

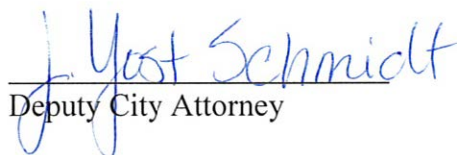
ADOPTED this ____ day of April, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



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

AGENDA ITEM: 5
MEETING DATE: 3/20/2012
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Bob Paulsen, Current Planning Manager

TITLE:

A public hearing to consider AN ORDINANCE VACATING A PORTION OF SIGHT DISTANCE EASEMENT LOCATED ON LOTS 1 AND 2, BLOCK 17 OF THE ALFORD LAKE FIRST SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

RECOMMENDED CITY COUNCIL ACTION:

Move to adopt on first reading the ordinance vacating a portion of sight distance easement locate on Lots 1 and 2, Block 17 of the Alford Lakes First Subdivision, City of Loveland, Larimer County, Colorado.

OPTIONS:

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

DESCRIPTION:

This item is a legislative action to consider an ordinance on first reading vacating a portion of sight distance easement on Lots 1 and 2, Block 17 of the Alford Lakes First Subdivision. The subject property is generally located east of N. Taft Avenue on the southeast corner of Brandywine Drive and Coral Burst Circle. The vacation is being requested because two existing single family homes slightly encroaching into the easement.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The single family homes built on the two subject properties (5276 and 5235 Coral Burst Circle) encroached approximately 1.3 feet into the sight distance easement. The total area of the encroachment is 282 square feet. The sight distance easement was established on the Alford Lake First Subdivision to maintain proper sight line visibility at the intersection of Brandywine Drive and Coral Burst Circle. The existing encroachments are so minor that they do not create a threat to public safety.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

- A. Ordinance
- B. Council Memorandum

FIRST READING: March 20, 2012

SECOND READING: _____

ORDINANCE NO. _____

**AN ORDINANCE VACATING A PORTION OF A SIGHT DISTANCE EASEMENT
LOCATED ON LOTS 1 AND 2, BLOCK 17, ALFORD LAKE FIRST SUBDIVISION,
CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

WHEREAS, the City Council, at a regularly scheduled meeting, considered the vacation of that portion of a sight distance easement described below and on **Exhibit A**, located in Lots 1 and 2, Block 17, Alford Lake First Subdivision, City of Loveland, Larimer County, Colorado, which sight distance easement was dedicated on the Plat of Alford Lake First Subdivision as recorded in Book 1387 under Reception No. 02336977 of real property records of the Larimer County Clerk and Recorder; and

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

WHEREAS, the City Council finds and determines that the portion of sight distance easement to be vacated is no longer necessary for the public use and convenience; and

WHEREAS, the City Council further finds and determines that the application filed at the Development Center was signed by the owners of more than 50% of property abutting the easement to be vacated.

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

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

Section 2. That, based on the City Council’s findings described above, the following described portion of a sight distance easement be and the same is hereby vacated:

A parcel of land being a part of Lots One (1) and Two (2), Block Seventeen (17), Alford Lake First Subdivision as recorded in Book 1387 under Reception No. 02336977 of the Larimer County Clerk and Records office, located in the Northwest Quarter (NW1/4) of Section Thirty five (35), Township Six North (T.6N.), Range Sixty-seven west (R.69W.) of the Sixth Principal Meridian (6th P .M.) City of Loveland, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast comer of said Lot 2 and assuming the East line of said Lot 2 as

bearing South 46°17'14" West with all other bearings contained herein relative thereto;

THENCE South 46°17' 14" West along said East line, a distance of 5.10 feet to the POINT OF BEGINNING; THENCE continuing South 46°17'14" West along said East line, a distance of 4.05 feet to the South line of a Sight Distance Easement as recorded on said Alford Lake First Subdivision;

THENCE North 67°39'50" West along said South line, a distance of 152.20 feet to the West line of said Lot 1;

THENCE South 69°02'37" East a distance of 153.89 feet to the POINT OF BEGINNING.

Said described parcel of land contains 282 Square Feet, more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 4. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Signed this ____ day of _____, 2012.

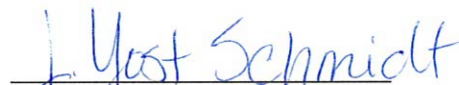
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



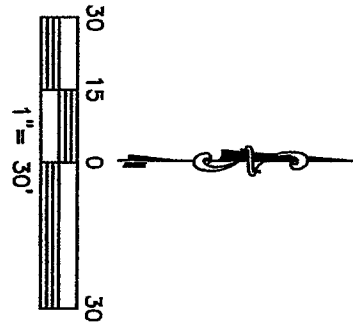
Deputy City Attorney

PROPERTY DESCRIPTION

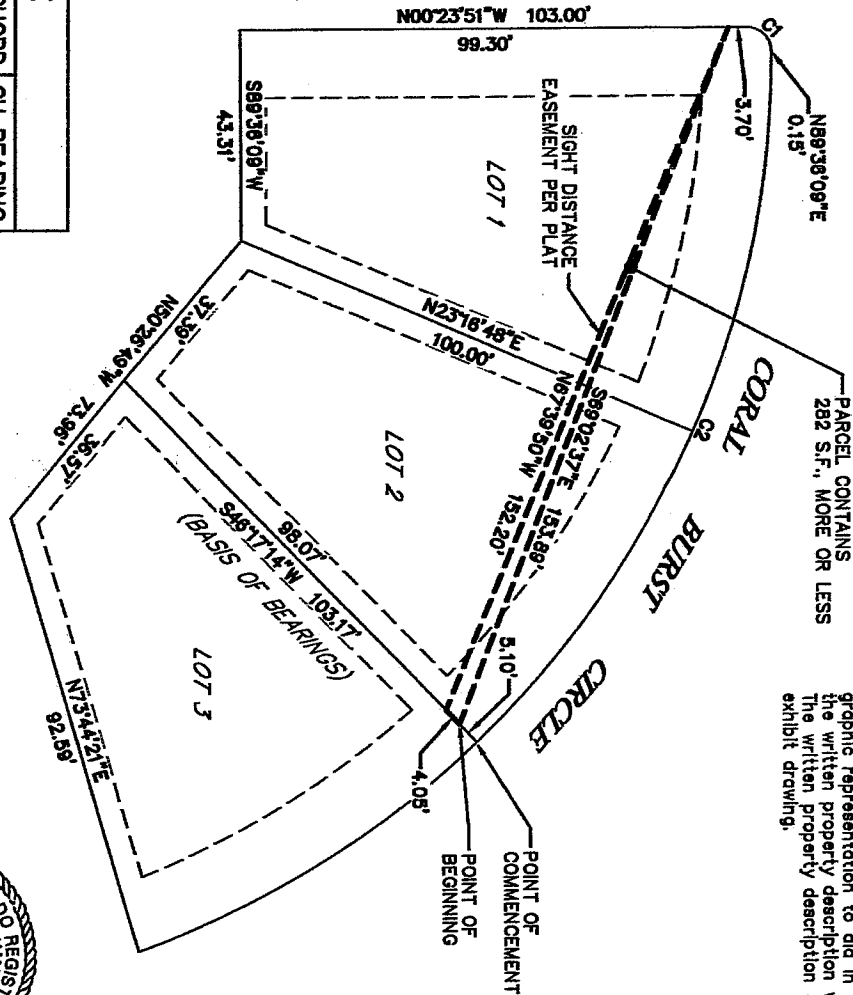
EXHIBIT A

SEC. 35, T 6N, R 69W

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	7.95'	5.00'	89°57'16"	7.07'	S44°34'47"W
C2	156.88'	195.00'	48°41'00"	154.52'	N87°03'09"W

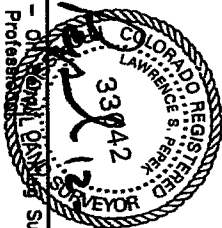


BRANDYWINE DRIVE



NOTE: This exhibit drawing is not intended to be a monumented land survey. Its sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

Lawrence S. Pepak - ON
 Colorado Registered Professional
 Land Surveyor #33642



12-14-2011



KING SURVEYORS, INC.

650 E. Garden Drive | Windsor, Colorado 80550
 phone: (970) 686-5011 | fax: (970) 686-5821

www.kingsurveyors.com

PROJECT NO: 2011511
 DATE: 12/12/2011

CLIENT: KEITH WAGNER
 DWG: 2011511 EXH

DRAWN: BMH CHECKED: LSP

PROPERTY DESCRIPTION

A parcel of land being a part of Lots One (1) and Two (2), Block Seventeen (17), Alford Lake First Subdivision as recorded in Book 1387 under Reception No. 02336977 of the Larimer County Clerk and Recorders office, located in the Northwest Quarter (NW1/4) of Section Thirty five (35), Township Six North (T.6N.), Range Sixty-seven West (R.69W.) of the Sixth Principal Meridian (6th P.M.) City of Loveland, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast corner of said Lot 2 and assuming the East line of said Lot 2 as bearing South 46°17'14" West with all other bearings contained herein relative thereto;


THENCE South 46°17'14" West along said East line, a distance of 5.10 feet to the **POINT OF BEGINNING**;

THENCE continuing South 46°17'14" West along said East line, a distance of 4.05 feet to the South line of a Sight Distance Easement as recorded on said Alford Lake First Subdivision;
THENCE North 67°39'50" West along said South line, a distance of 152.20 feet to the West line of said Lot 1;
THENCE South 69°02'37" East a distance of 153.89 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 282 Square Feet, more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

SURVEYORS STATEMENT

I, Lawrence S. Pepek, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.


Lawrence S. Pepek - on behalf of King Surveyors, Inc.
Colorado Registered Professional Land Surveyor #33642

KING SURVEYORS, INC.
650 Garden Drive
Windsor, Colorado 80550
(970) 686-5011



**Development Services
Current Planning**

500 East Third Street, Suite 310 • Loveland, CO 80537
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www.cityofloveland.org

MEMORANDUM

TO: City Council

FROM: Bob Paulsen, Current Planning Manager

DATE: March 20, 2012

SUBJECT: Vacation of a portion of a Sight Distance Easement located on Lots 1 and 2, Block 17 of the Alford Lake First Subdivision (5267 and 5235 Coral Burst Circle NW)

I. EXHIBITS

1. Applicant's Letter of Request
2. Vacation Exhibits

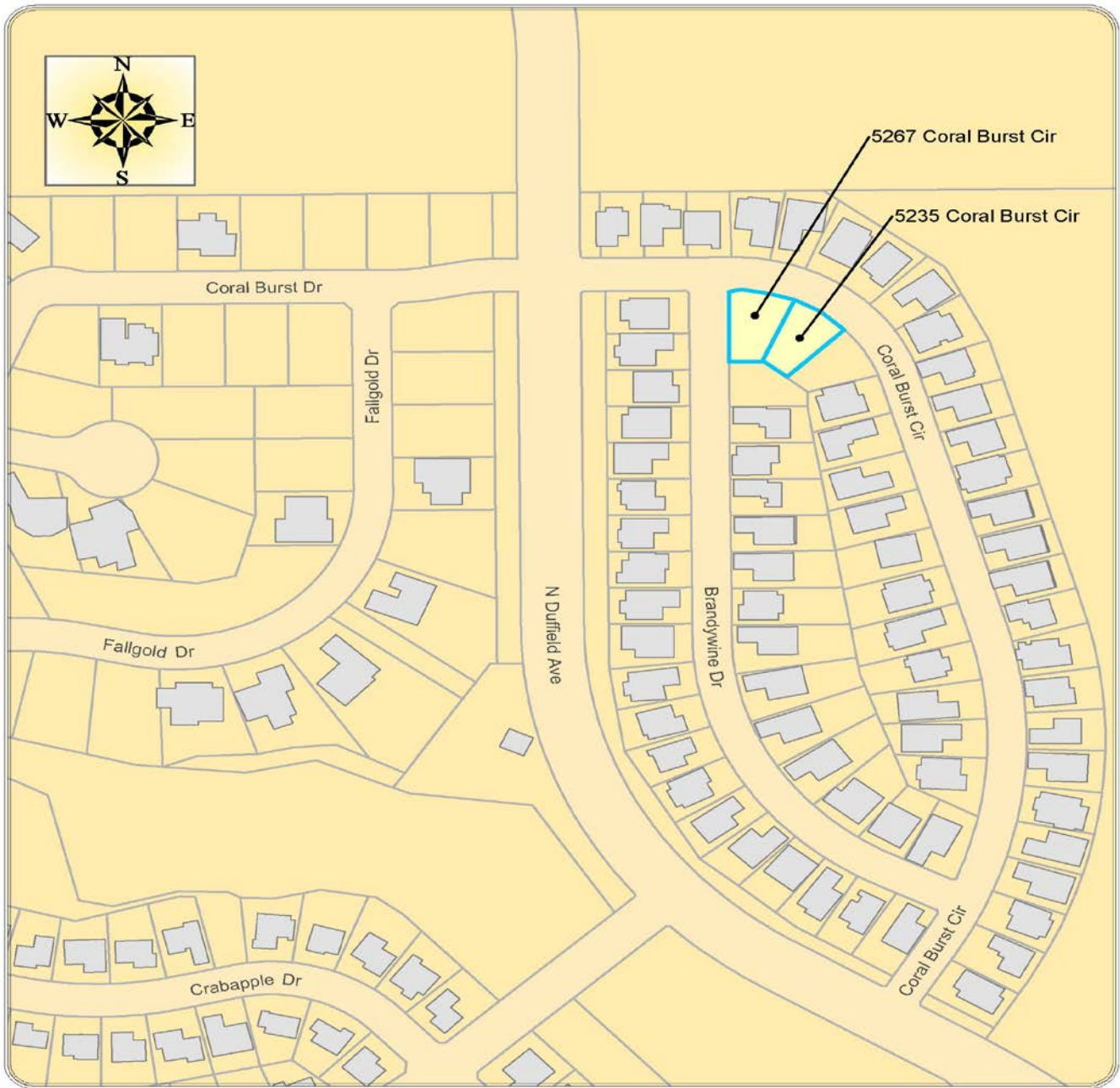
II. KEY ISSUES

Staff believes that there are no key issues regarding this request.

III. PROJECT DESCRIPTION

This is a request to vacate a sliver-shaped portion of a site distance easement along the frontage of 5267 and 5235 Coral Burst Circle. The portion of the easement to be vacated is 154 feet in length and approximately 4 feet in width at the widest point; the total area to be vacated is 282 square feet. The vast majority of the site distance easement along the front of the two lots will remain intact.

The two impacted residential lots are located immediately west of the intersection of Coral Burst Circle and Brandywine Drive within the Alford Lakes First Subdivision. The vacation of this narrow portion of the site distance easement is to accommodate an inadvertent 1.3-foot encroachment of a home at 5235 Coral Burst Circle into the easement, which creates a minor impact on site distance relating to the site distance on the adjacent curve in Coral Burst Circle.



IV. FINDINGS AND ANALYSIS

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

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

Transportation: Since the proposed vacation of this easement does not involve the vacation of any existing public street or alley rights-of-way, no land will be left without an established public or private right-of-way or easement connecting said land with another established public or private right-of-way or easement. (This sight distance easement vacation will not leave adjoining land without access to the existing public street/alley system).

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

Transportation: The small encroachment into the sight distance easement is negligible and will not create an unsafe situation on the adjacent public streets. The new sight distance still meets AASHTO sight distance standards.

Current Planning: Current Planning staff believes this finding can be met. The vacation is internal to the property and the vacation will have a negligible impact on site distance.

Fire: The vacation will not have any effect on the provision of fire or emergency services.

Power: The vacation and adjustment of the sight distance will not affect Power requirements.

Stormwater: The existing sight distance triangle piece of ground to be vacated is not used to convey Stormwater and thus is not necessary for the public use and conveyance of Stormwater.

Water/Wastewater: The existing easement to be vacated does not impact the existing water and wastewater utility configuration within and adjacent to this development. The existing easement to be vacated is no longer necessary for public use and convenience

V. RECOMMENDATION

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

VII. CONDITIONS

No City departments or other review agencies have submitted any recommended conditions for this application.

Waggoner Contracting Inc.

P. 22

13476 Thorncreek Circle Thornton CO 80241

Date: 2/1/12

To: Whom it may concern

From: Keith A Waggoner, President

Re: 5235 Coral Burst Circle, Lot 2, Block 17, Alford Lake First Subdivision.

~~5276~~ Coral Burst Circle, Lot 1, Block 17, Alford Lake First Subdivision

67

Due to an error on my part, Keith A Waggoner, a small portion of the new residence being constructed at 5235 Coral Burst Circle is encroaching into the sight distance easement on this lot by approximately 1.3 feet. This error occurred because I mistakenly assumed the back of the curb was the front lot line. As can be seen in the Improvement Location Certificate the actual front lot line is approximately 1.5 feet inside the curb line.

I am asking the City of Loveland to vacate the portion of the easement designated in exhibit A (provided)

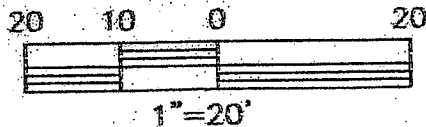
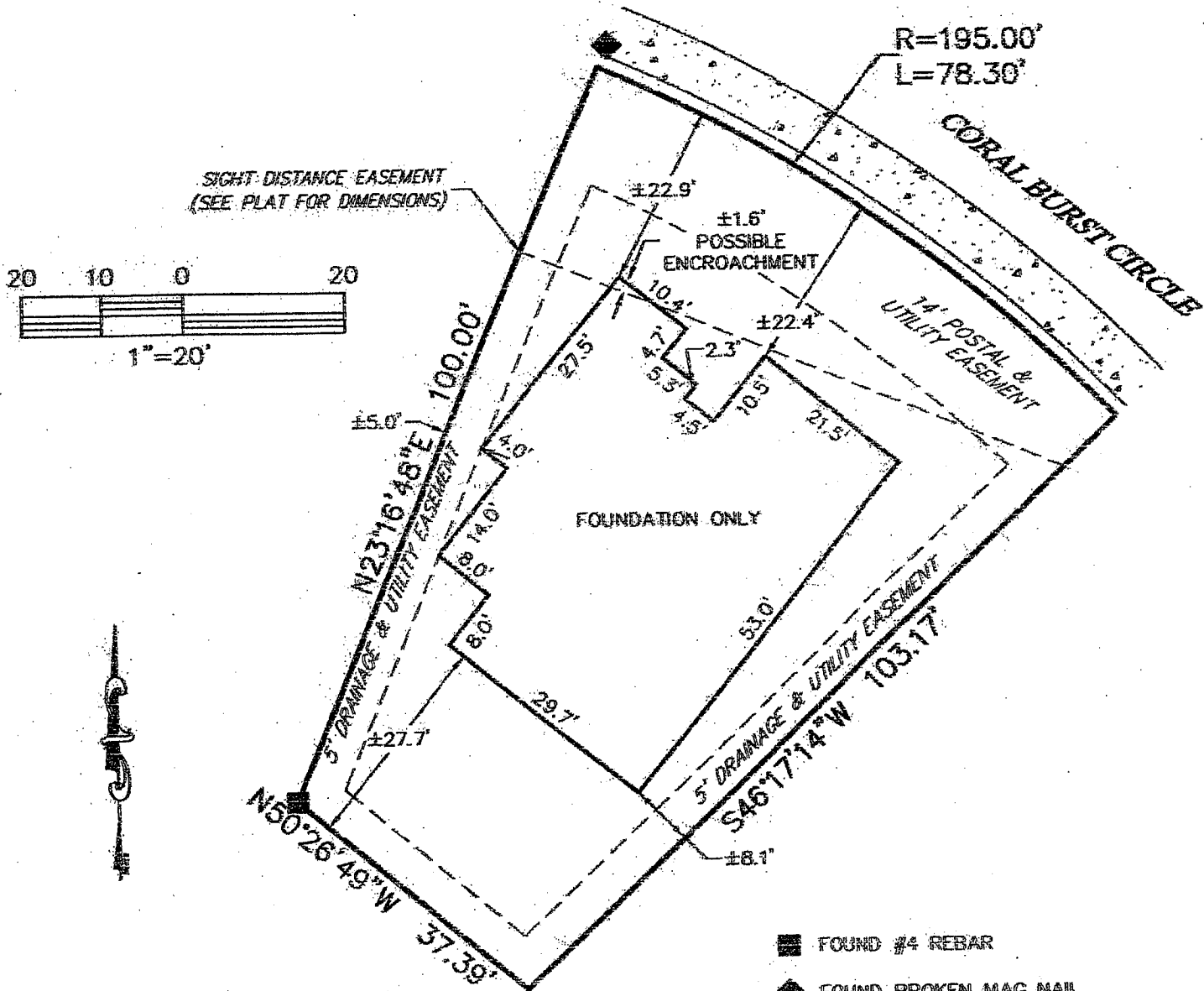
Please feel free to contact me.

Thanks you,

Keith A Waggoner
President
303-667-5301

Exhibit 1

IMPROVEMENT LOCATION CERTIFICATE



- FOUND #4 REBAR
- ◆ FOUND BROKEN MAG NAIL

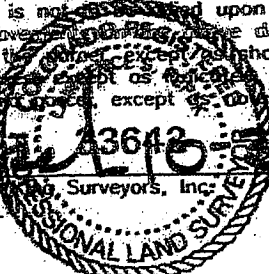
ADDRESS: 5235 CORAL BURST CIRCLE, LOVELAND, CO 80538

PROPERTY DESCRIPTION: LOT 2, BLOCK 17, ALFORD LAKE FIRST SUBDIVISION, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO.

NOTE: The improvements are generally situated as shown and only apparent improvements and encroachments are noted. King Surveyors Inc. and Lawrence S. Pepek, PLS will not be liable for more than the cost of this Improvement Location Certificate and then only to the client specifically shown hereon or in our files by a signed work authorization. Acceptance and/or use of this instrument for any purpose constitutes agreement by the client to all terms stated hereon.

I hereby certify that this Improvement Location Certificate was prepared for FIRST BANK, that it is not a Land Survey Plat or Improvement Survey Plat, and that it is not intended upon for the establishment of fence, building, or other future improvement lines. I further certify that the improvements on the described parcel on this date, 10-28-2011, except utility connections, are entirely within the boundaries of the parcel depicted as shown, that there are no encroachments upon the described premises by improvements on an adjoining premises, except as noted, and that there is no apparent evidence or sign of any easement crossing or burdening any part of the parcel, except as noted.

Lawrence S. Pepek
 LAWRENCE S. PEPEK - On Behalf of King Surveyors, Inc.
 COLORADO REGISTERED PROFESSIONAL
 LAND SURVEYOR #33642



KING SURVEYORS, INC.
 650 E. Garden Drive | Windsor, Colorado 80550
 phone: (970) 686-5011 | fax: (970) 686-5821
 www.kingsurveyors.com

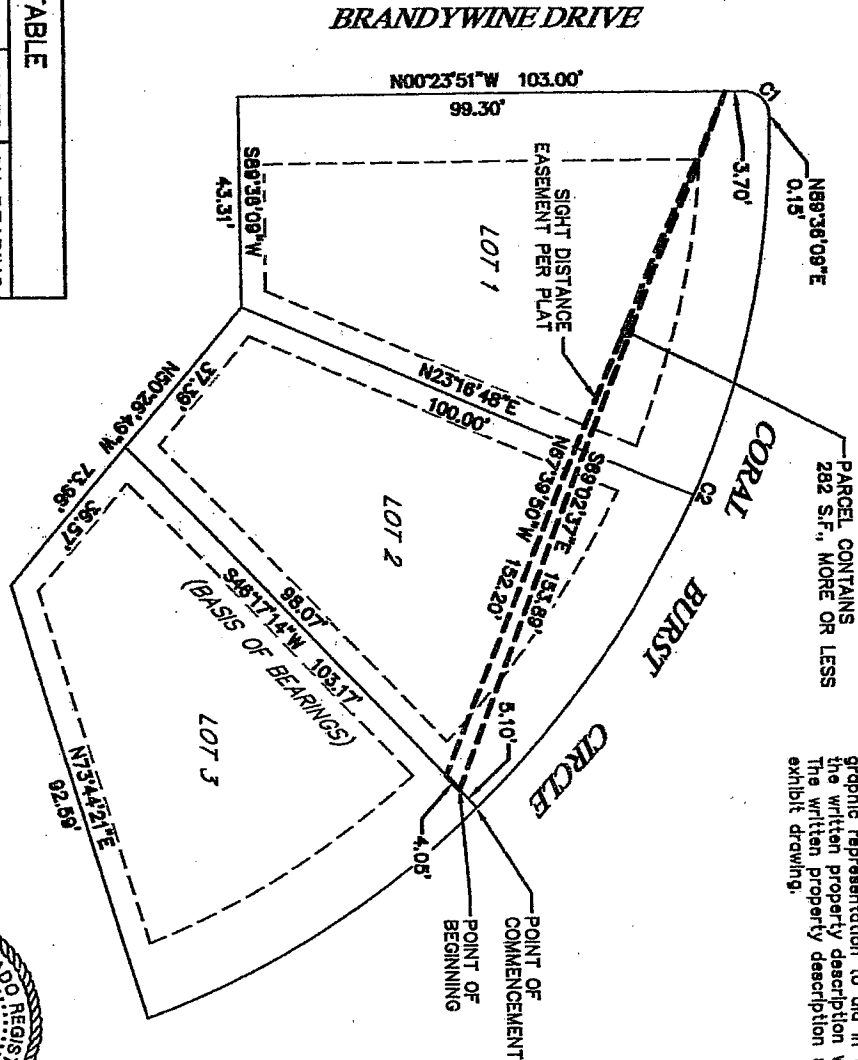
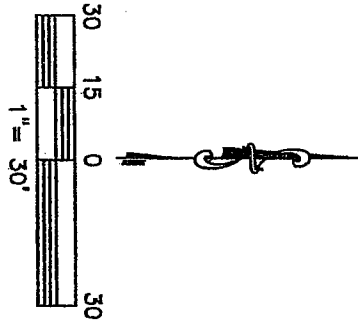
PROJECT NO: 2011511
 DATE: 10-31-2011
 CLIENT: FIRSTBANK
 DWG: ILC
 DRAWN: SIP CHECKED: LSP

PROPERTY DESCRIPTION

EXHIBIT A

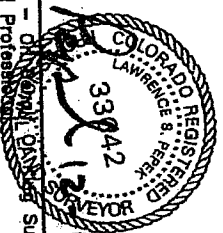
SEC. 35, T 6N, R 69W

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	7.85'	5.00'	89°57'16"	7.07'	S44°34'47"W
C2	158.88'	195.00'	48°41'00"	154.52'	N67°03'08"W



NOTE: This exhibit drawing is not intended to be a monumented land survey. Its sole purpose is as a graphic representation to aid in the visualization of the written property description which it accompanies. The written property description supersedes the exhibit drawing.

Lawrence S. Papak - D.K. King
 Colorado Registered Professional Surveyor
 Land Surveyor #33642



4-2011



KING SURVEYORS, INC.
 650 E. Garden Drive | Windsor, Colorado 80550
 phone: (970) 686-5011 | fax: (970) 686-5821
 www.kingsurveyors.com

PROJECT NO: 2011511
 DATE: 12/12/2011
 CLIENT: KEITH WAGNER
 DWG: 2011511 EXH
 DRAWN: BMH CHECKED: LSP

Exhibit 2

PROPERTY DESCRIPTION

A parcel of land being a part of Lots One (1) and Two (2), Block Seventeen (17), Alford Lake First Subdivision as recorded in Book 1387 under Reception No. 02336977 of the Larimer County Clerk and Recorders office, located in the Northwest Quarter (NW1/4) of Section Thirty five (35), Township Six North (T.6N.), Range Sixty-seven West (R.69W.) of the Sixth Principal Meridian (6th P.M.) City of Loveland, County of Larimer, State of Colorado and being more particularly described as follows:

COMMENCING at the Northeast corner of said Lot 2 and assuming the East line of said Lot 2 as bearing South 46°17'14" West with all other bearings contained herein relative thereto;

THENCE South 46°17'14" West along said East line, a distance of 5.10 feet to the **POINT OF BEGINNING**;

THENCE continuing South 46°17'14" West along said East line, a distance of 4.05 feet to the South line of a Sight Distance Easement as recorded on said Alford Lake First Subdivision;
THENCE North 67°39'50" West along said South line, a distance of 152.20 feet to the West line of said Lot 1;
THENCE South 69°02'37" East a distance of 153.89 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 282 Square Feet, more or less (±), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

SURVEYORS STATEMENT

I, Lawrence S. Pepek, a Colorado Registered Professional Land Surveyor do hereby state that this Property Description was prepared under my personal supervision and checking, and that it is true and correct to the best of my knowledge and belief.



Lawrence S. Pepek - on behalf of King Surveyors, Inc.
Colorado Registered Professional
Land Surveyor #33642

KING SURVEYORS, INC.
650 Garden Drive
Windsor, Colorado 80550
(970) 686-5011



CITY OF LOVELAND
WATER & POWER DEPARTMENT
 200 North Wilson • Loveland, Colorado 80537
 (970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: 6
MEETING DATE: 3/20/2012
TO: City Council
FROM: Melissa Morin, Water and Power
PRESENTER: Chris Matkins, Water and Power
 Dave Klockeman, Public Works

TITLE:

Motion to award a construction contract for 29th Street Waterline Replacement and Concrete Repairs Project to Coulson Excavating Company, Inc

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to award a construction contract for the 29th Street Waterline Replacement and Concrete Repairs Project to Coulson Excavating Company, Inc. in the amount of \$607,445.07, and to authorize the City Manager to execute the contract on behalf of the City.

OPTIONS:

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

DESCRIPTION:

This is an administrative action to approve a construction contract for replacement of a waterline within 29th Street and concrete repairs with Coulson Excavating Company Inc. in the amount of \$607,445.07.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Budget dollars have been appropriated and are available in the Water & Power (\$442,079.57) and Public Works (\$165,365.50) department budgets.

SUMMARY:

The City received competitive bids for the 29th Street Waterline Replacement and Concrete Repairs Project on March 1, 2012. This is a shared departmental project between the Water &

Power Department and the Public Works Department. City staff has reviewed the contractors' bids. Coulson Excavating Company, Inc. of Loveland, Colorado was determined to be the lowest responsive and responsible bidder. Coulson's unit price bid is in the amount of \$607,445.07. The Water & Power Department will contribute 73% of the required funds (\$442,079.57), and the Public Works Department will contribute 27% (\$165,365.50). Water & Power's share includes 100% of the water line installation including the storm drain and force main removal and repair. Public Work's share includes 100% of the concrete repair and erosion control installation. The Departments then split the paving costs of the lane rehabilitation over the new water line installation 50/50. This joint approach offers savings to both Departments.

Bidder	Bid Amount
Coulson Excavating Company, Inc	\$607,445.07
Iron Woman Construction	\$625,000.00
Don Kehn Construction	\$662,617.35
Connell Resources	\$694,614.05
New Design Construction	\$776,225.90
Farner Enterprises, Inc	\$830,277.38
Brannon Construction Company	\$860,868.00

Water & Power wants to replace a portion of the waterline within 29th Street due to an increasing frequency of leak repairs. The leak history of the waterline shows 27 leak repairs between Taft Avenue and Garfield Avenue since 1987 with an accelerating occurrence frequency in recent years. The history also shows that a majority of the leaks have occurred between N. Colorado Avenue and the west side of the Greeley-Loveland Outlet Canal (24 leaks). The waterline replacement project was accelerated to capitalize on the financial savings of a joint project with a scheduled Public Works street overlay project. By replacing the waterline prior to the asphalt project, Water & Power will reduce future traffic disruption and safety concerns due to leak repairs and road cuts on a highly traveled central Loveland road.

The project primarily consists of the following:

- Install temporary water service to affected customers;
- Nine pipe joints on the existing steel water main will be exposed and replaced with a fabricated joint harness if found to have an original connection;
- Replace 1,190 feet of 16" Steel waterline with PVC in 29th Street (between Colorado Avenue and the Greeley-Loveland Outlet Canal);
- Replace portions of existing waterline lateral connection within 29th Street to Logan Drive, Colorado Avenue, and Sheridan Boulevard with PVC; and
- Asphalt and concrete removal and replacement between the intersections of N. Taft Avenue and N. Garfield Avenue, including concrete curb and gutter, sidewalk, crosspan, and curb ramp removal and replacement.

The project is anticipated to be completed within 60 days of the Notice to Proceed. After completion Public Works will be milling and overlaying the entire street width of 29th Street from Taft Avenue and Garfield Avenue.

REVIEWED BY CITY MANAGER: *William A. Cahill*

LIST OF ATTACHMENTS: None



CITY OF LOVELAND
FIRE RESCUE AUTHORITY

Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
 (970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM: 7
MEETING DATE: 3/20/2012
TO: City Council
FROM: Randy Mirowski, Fire
PRESENTER: Randy Mirowski, Fire Chief

TITLE:

Motion to approve the purchase of components for 108 self-contained breathing apparatus units from Municipal Emergency Services, Inc. for an amount not to exceed \$512,000 and authorize the City Manager to sign the purchase order on behalf of the City

RECOMMENDED CITY COUNCIL ACTION:

Adopt action as recommended

OPTIONS:

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

DESCRIPTION:

This is an administrative action approving an expenditure exceeding \$500,000 for the purchase of components for 108 self-contained breathing apparatus units (SCBAs). Pursuant to Chapter 3.12 of the City Code, purchases exceeding \$500,000 must be approved by City Council.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

This action approves a purchase order for an amount greater than \$500,000. The supplemental budget for the federal grant and the City's 20% match was appropriated, from a reserve specifically for this purpose, by an ordinance approved on second reading March 6, 2012.

SUMMARY:

Loveland Fire Rescue Authority (LFRA) currently utilizes Scott SCBAs. Each complete unit is made up of three components: the face-piece, the back-frame/reducer assembly, and the

cylinder. LFRA has been awarded a grant to replace and upgrade the back-frame/reducer assembly and upgrade the face-piece assembly. The parts for these units are not interchangeable with components from other manufacturer's equipment. Municipal Emergency Services, Inc. (M.E.S.) is the only authorized regional parts source for Scott equipment. Scott SCBAs are arguably the best in the industry as evidenced by regional use. Of the 6 surrounding fire departments LFRA responds with, all use Scott SCBAs. It is important to maintain our "fleet" to allow for more efficiency and interoperability in our district when working with neighboring fire departments on incident scenes. M.E.S. not only sells the complete unit but they also provide the only authorized warranty service center in our region and maintain a complete inventory of parts for the systems we are authorized to maintain ourselves. The M.E.S. pricing meets or beats the advertised pricing of General Services Administration. When purchasing our SCBA equipment we gain an additional advantage of trade-in value for our old outdated equipment that will not be available with any other vendor or manufacturer.

To summarize, the reasons supporting this sole source purchase are:

- M.E.S. is the only authorized 1F fire distributor for Scott SCBAs in the region;
- LFRA is utilizing AFG monies to replace a portion of the components of our Scott SCBAs;
- 6 of 6 surrounding fire departments utilize Scott SCBAs, increasing interoperability;
- LFRA's outdated equipment has trade in value with M.E.S. for upgrades to new SCBAs; and
- Using another manufacturer's SCBA would require replacing equipment that is still serviceable and require training for the entire department.

Loveland Fire Rescue Authority, if City Council approves the purchase order, intends to purchase 108 air packs, 107 face pieces, 50 nose cups, and 4 pak-tracker handheld units for \$512,000.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS: None

City Council Study Session
February 28, 2012
Page 1 of 1

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

1. PUBLIC WORKS

Stormwater 101

City Engineer, Dave Klockeman presented this item to Council to provide an overview of the functions of the City's Stormwater Utility, including engineering, operations and maintenance. Public Works staff members, Kevin Gingery and Mick Mercer were available to explain the City's stormwater history since drafting of the master plan adopted in 1986 and the increasing costs of maintenance and operations. Public Works Director, Keith Reester spoke about probable stormwater utility rate increases and the possibility of bonding for future improvements. Staff will return on March 13, 2012 for another Council study session and discussion of funding proposals.

2. PUBLIC WORKS

Bicycle and Pedestrian Plan

City Engineer, Dave Klockeman presented this item to Council of the Draft bicycle and Pedestrian Plan for discussion prior to finalizing the plan for Council adoption. Ray Moe from LSA Associates presented an overview of the process used to prepare the plan. Reviews will be done at upcoming Board and Commission meetings and then City Council consideration will be in May for final approval of the plan. Council shared concerns with safety on the bike paths and trail connections. Public Works Director, Keith Reester stated that coordination and communication among City Departments is critical regarding bicycle and pedestrian planning and implementation of any transportation improvements or programs. The plan will be used for budgeting purposes and determining priorities for the capital improvement program.

The study session was adjourned at 8:42 p.m.

Respectfully Submitted,

Jeannie M. Weaver, Deputy City Clerk

Cecil A. Gutierrez, Mayor

CALL TO ORDER Mayor Gutierrez called the regular meeting of the Loveland City Council to order on the above date at 6:30 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL Roll was called and the following responded: Gutierrez, Farley, Klassen, Shaffer, Trenary, McEwen, Taylor and Fogle. Councilor McKean was absent.

PROCLAMATION Councilor Trenary read a proclamation declaring, March 7, 2012 as "National Education Association's Read Across America Day". The proclamation was received by Mary Lou Rogers, Media Specialist at Loveland High School.

PROCLAMATION

WHEREAS, National Engineers Week, founded in 1951 by the National Society of Professional Engineers, is always celebrated at the time of George Washington's birthday in February because he was our first president and a military engineer, and

WHEREAS, the purpose of National Engineers Week is to increase public awareness and appreciation of the engineering profession; and

WHEREAS, engineers are encouraging our young math and science students to realize the practical power of their knowledge; and

WHEREAS, the Engineers of the State of Colorado will actively help to maintain and sustain the vital infrastructure of our civilized and national environments; and

WHEREAS, engineers help America remain at the forefront of technological development and contribute to countless breakthroughs that improve the quality of life for people throughout the world.

NOW, THEREFORE, we, the Loveland City Council of the City of Loveland, do hereby proclaim February 19 through 25, 2012 as

NATIONAL ENGINEERS WEEK

in the City of Loveland.

Signed this 21st day of February, 2012

Cecil A. Gutierrez, Mayor

PRESENTATION Mayor Gutierrez presented Acting Finance Director Bonnie Steele and staff with the Certificate of Achievement for Excellence in Financial Reporting Award.

PROCEDURAL INFORMATION

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

CONSENT AGENDA

Mayor Gutierrez asked if anyone in the audience, Council or staff wished to speak on any of the items or public hearings listed on the Consent Agenda. Councilor McEwen moved to approve the Consent Agenda. The motion was seconded by Councilor Shaffer and a roll call vote was taken with all councilors present voting in favor thereof.

1. CITY MANAGER

Board & Commission Appointments

Motion

Administrative Action: The following appointments were approved:

Affordable Housing Commission:

Ted Schlagenhauf was appointed as an alternate member to the Affordable Housing Commission for a term effective until June 30, 2012.

Senior Advisory Board:

Phoebe Hawley was appointed as representing the McKee Medical Center Seasons Club and Doris Helwig as the at-large-member representing Senior Singles, both for terms effective until March 6, 2014.

2. FIRE & RESCUE

Supplemental Appropriation from a Federal Assistance to Firefighters Grant

Ordinance #5669

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE REPLACEMENT OF SELF-CONTAINED BREATHING APPARATUS AND AUTOMATED EXTERNAL DEFIBRILLATORS FROM A FEDERAL ASSISTANCE TO FIREFIGHTERS GRANT " was approved and ordered published on second reading.

3. POLICE

Municipal Code Amendment – Pawnbroker Licensing & Regulation

a) Ordinance #5670

Legislative Action: "AN ORDINANCE REPEALING AND REENACTING CHAPTER 5.28 OF THE LOVELAND MUNICIPAL CODE REGARDING PAWNBROKERS TO LICENSE AND REGULATE PAWNBROKERS AND PAWNBROKER OPERATIONS" was approved and ordered published on second reading.

b) Resolution #R-18-2012

Administrative Action: Resolution #R-18-2012 amending the 2012 Schedule of Rates, Charges and Fees for City Clerk Services provided by the City of Loveland, Colorado to include licensing of Pawnbrokers was approved.

RESOLUTION # R-18-2012

A RESOLUTION AMENDING THE 2012 SCHEDULE OF RATES, CHARGES AND FEES FOR CITY CLERK SERVICES PROVIDED BY THE CITY OF LOVELAND, COLORADO TO INCLUDE LICENSING OF PAWNBROKERS

WHEREAS, City Council adopted the rates, charges and fees for services provided by the City of Loveland (the "City") for calendar year 2012 in Resolution #R-62-2011, other than services provided by the Stormwater Enterprise and the Water and Power Department; and

WHEREAS, on March 6, 2012 City Council adopted an ordinance regulating pawnbrokers and pawnbroker operations to ensure the integrity and reputable business practices of current and future pawnbrokers operating within the City; and

WHEREAS, in order to cover the City's costs in administering and enforcing the pawnbroker licensing process the City must adopt annual fees set in an amount necessary to defray the city's actual and reasonable direct and indirect expenses related to such administration and enforcement; and

WHEREAS, the City Council finds that the proposed pawnbroker licensing fees set forth below are reasonable and necessary to protect the health, safety and welfare of the City's residents.

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

Section 1. That all previous rates, charges and fees for services provided by the City Clerk are hereby reaffirmed and ratified.

Section 2. That City Clerk schedule of rates, charges and fees for 2012 is hereby amended to include pawnbroker licensing fees as follows:

CITY CLERK

Pawnbroker Licensing:

Application Fee	\$400.00
Annual License Fee	\$100.00
Annual License Renewal Fee	\$100.00
3-Year Manager's Certificate Fee	\$100.00
Transfer of License Application Fee	\$400.00
Section 5.28.220 Business Relocation Application Fee	\$225.00

Section 3. That this resolution shall take effect as of the dates of its adoption.

ADOPTED this 6th day of March, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

4. WATER & POWER

Municipal Code Amendment – Cross Connection Control

Ordinance #5671

Legislative Action: "AN ORDINANCE AMENDING TITLE 13 OF THE LOVELAND MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 13.06 REGARDING CROSS-CONNECTION CONTROL" was approved and ordered published on second reading.

5. WATER & POWER

Supplemental Appropriation for Colorado-Big Thompson Project Water

Ordinance #5672

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE PURCHASE OF UNITS OF THE COLORADO-BIG THOMPSON (CBT) PROJECT WATER" was approved and ordered published on second reading.

6. DEVELOPMENT SERVICES

Findings & Conclusions for Garden Gate Appeal

Resolution #R-19-2012

Quasi-judicial Action: Resolution #R-19-2012 adopting findings and conclusions regarding appeal of the Planning Commission's decision regarding maintenance practices for the Garden Gate First Subdivision was approved.

RESOLUTION #R-19-2012

A RESOLUTION ADOPTING FINDINGS AND CONCLUSIONS REGARDING APPEAL OF THE PLANNING COMMISSION'S DECISION REGARDING MAINTENANCE PRACTICES FOR THE GARDEN GATE FIRST SUBDIVISION

WHEREAS, the Garden Gate First Subdivision located in southeast Loveland (the "Subdivision") encompasses approximately 69 acres and includes 181 single family homes; and

WHEREAS, the Subdivision is zoned Planned Unit Development and is subject to a Final Development Plan approved by the City on September 30, 2004 (the "FDP"); and

WHEREAS, the FDP sets forth development parameters for the improved and natural environments within the Subdivision, including requirements governing the landscaping of open space tracts now owned by the Garden Gate Homeowners' Association (the "HOA"); and

WHEREAS, the FDP includes requirements governing the specific open space, wetlands, and/or natural areas located in the southeastern portion of the Subdivision along either side of the Farmers' Ditch, the detention facility at the extreme southeastern corner of the Subdivision (next to a Platte River Power Authority substation), and along the south perimeter of the Subdivision, all of which are generally depicted on Exhibit A attached hereto and incorporated herein by this reference (the "Specified Open Space Tracts"); and

WHEREAS, the City received citizen complaints that the HOA was not maintaining the Specified Open Space Tracts in accordance with the FDP and Chapter 7.18 of the Loveland Municipal Code regarding weed control (the "Municipal Weed Ordinance") and the HOA requested clarification of its maintenance responsibilities for the Specified Open Space Tracts under the FDP from the Director of Development Services ("Director"); and

WHEREAS, on September 2, 2011, the Director issued his "Determination of Maintenance Practices for Designated Open Space Lands within the Garden Gate First Subdivision" (the "Director's Decision"); and

WHEREAS, pursuant Code Section 18.80.040, Mr. Bruce W. Cromwell, a resident of the Subdivision and a party-in-interest, filed a timely notice of appeal of the Director's Decision with the Loveland Planning Commission (the "Commission"); and,

WHEREAS, pursuant to Code Section 18.80.040.D and after due notice had been given, the Commission held a de novo public hearing on November 28, 2011 regarding the appeal of the Director's Decision; and,

WHEREAS, at the public hearing the recommendations of the Current Planning Division as set forth in the Planning Commission Agenda Item No. 2 dated November 28, 2011 and all attachments thereto (the "Staff Commission Report") regarding the Director's Decision were received and duly considered by the Commission, as was testimony from the appellant, Bruce W. Cromwell, representatives of the HOA, and other residents of the Subdivision; and

WHEREAS, at the close of the public hearing on November 28, 2011, the Commission adopted a motion denying the appeal, upholding the Director's Decision, and concluding that the Director properly interpreted and applied the applicable provisions of the Loveland Municipal Code subject to the condition that noxious weeds must be controlled in the Specified Open Space Tracts (the "Commission Decision"); and

WHEREAS, the Commission Decision was based on the findings set forth in Section VI of the Staff Commission Report; and

WHEREAS, pursuant to Code Section 18.80.050, Mr. Bruce Cromwell, a resident of the Subdivision and a party-in-interest, filed a timely notice of appeal of the Commission Decision to the City Council on December 6, 2011, on the grounds that the Director and the Commission failed to properly interpret and apply relevant provisions of the Municipal Code or other law as contemplated by Code Section 18.80.030 (the "Appeal"); and

WHEREAS, pursuant to Code Section 18.80.050.D and after due notice had been given, City Council held a de novo public hearing on February 7, 2012 regarding the Appeal, at which the recommendations of the Current Planning Division as set forth in Planning Staff Report dated February 7, 2012 and all attachments thereto (the "Staff Report") regarding the Appeal were received and duly considered by the Council, as was testimony from the appellant, Bruce W. Cromwell, representatives of the HOA, and other residents of the Subdivision; and

WHEREAS, City Council considered the Appeal, the Staff Report, and all testimony and evidence received at the public hearing in light of the intent and objectives of Chapter 18.41 of the Loveland Municipal Code and the FDP and determined that the Appeal should be denied and the Commission Decision should be upheld.

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

Section 1. That the City Council hereby finds that the Commission Decision to uphold the Director's Decision subject to condition that noxious weeds must be controlled in the Specified Open Space Tracts, was a proper interpretation and application of the approved FDP and the Municipal Weed Ordinance.

Section 2. That the City Council has concluded, on the basis of the findings set forth herein, that the Appeal is hereby denied, the Commission Decision is hereby upheld, and therefore the Director's Decision is upheld, subject to the condition that noxious weeds must be controlled in the Specified Open Space Tracts.

Section 3. That as of the date set forth below and in accordance with Code Section 18.80.050.D, this Resolution shall constitute the written findings and conclusions and final decision of the City Council with respect to the Appeal for purposes of any appeal of the City Council's decision to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

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

ADOPTED this 6th day of March, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

7. HUMAN RESOURCES

Amendment to City of Loveland Police Retirement Plan

Resolution #R-20-2012

Administrative Action: Resolution #R-20-2012 approving the 2012 amended and restated City of Loveland Police Retirement Plan was approved.

RESOLUTION # R-20-2012

A RESOLUTION APPROVING THE 2012 AMENDED AND RESTATED CITY OF LOVELAND POLICE RETIREMENT PLAN

WHEREAS, pursuant to City Council's Resolution #R-46-87, the City of Loveland (the "City") is the sponsor of that certain police pension benefit plan titled, "The Principal Mutual Life Insurance Company Prototype Basic Defined Contribution Plan," as amended and restated prior to the date of this Resolution, (the "Plan"); and

WHEREAS, the Plan currently allows a Plan participant to access his or her Plan balance if the participant has reached normal retirement age of fifty-five (55) and is no longer a City employee; and

WHEREAS, the Plan also limits a participant's voluntary after-tax contributions to the Plan to no more than seven percent (7%) of his or her compensation; and

WHEREAS, on May 17, 2011, the City's Police Pension Board of Trustees (the "Board") voted to amend the Plan to allow any Plan participant who has reached normal retirement age of fifty-five (55) to access his or her vested Plan balance regardless of employment with the City, and to allow Plan participants to increase their voluntary after-tax contributions to the Plan, subject to the maximum federal limits (together, the "Proposed Amendments"); and

WHEREAS, the Board has obtained approval of the Proposed Amendments by at least sixty-five percent (65%) of active Plan participants and now seeks approval by the City; and

WHEREAS, City Council reviewed the Proposed Amendments at the January 24, 2011, City Council study session and directed City staff to present to Council for its consideration an amended and restated plan incorporating the Proposed Amendments; and

WHEREAS, the Proposed Amendments, certain federal law updates, removal of language inapplicable to the Plan, and corrections to clerical errors that have occurred since the Plan was approved by Council in 1987, have been incorporated into that certain "City of Loveland Police Retirement Plan 414(h) Plan CL2010, Restated March 1, 2012," a copy of which is attached as Exhibit A and incorporated by reference (the "2012 Restated Plan"); and

WHEREAS, City Council finds that the 2012 Restated Plan is reasonable and in the best interests of the City, its citizens and the Plan participants.

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

Section 1. That the Plan, as originally approved in 1987, and all its amendments and restatements thereafter, are hereby ratified, approved and reaffirmed by the City Council. Notwithstanding the foregoing, the 2012 Restated Plan is hereby approved by City Council and the Plan, as originally adopted in 1987, together with all of the said Plan's subsequent amendments and restatements thereto occurring prior to the date of this Resolution, are hereby superseded and replaced in all respects as of the effective date of this Resolution by the 2012 Restated Plan.

Section 2. That the City Manager is hereby authorized and directed to execute the 2012 Restated Plan on behalf of the City subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

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

ADOPTED this 6th day of March, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

8. CITY ATTORNEY

Waterfall Metropolitan District Resolution #R-21-2012 and Public Hearing

Legislative Action: A public hearing was held and Resolution #R-21-2012 of the Loveland City Council approving a material modification to the Consolidated Service Plan for Waterfall metropolitan Districts Nos. 1 and 2 permitting the exclusion of certain real property from the boundaries of Waterfall Metropolitan District No. 2.

RESOLUTION #R-21-2012

A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING A MATERIAL MODIFICATION TO THE CONSOLIDATED SERVICE PLAN FOR WATERFALL METROPOLITAN DISTRICTS NOS. 1 AND 2 PERMITTING THE EXCLUSION OF CERTAIN REAL PROPERTY FROM THE BOUNDARIES OF WATERFALL METROPOLITAN DISTRICT NO. 2

WHEREAS, pursuant to C.R.S. Section 32-1-204.5, the Loveland City Council ("City Council") approved the Consolidated Service Plan for Waterfall Metropolitan Districts Nos. 1 and 2 ("Service Plan") on April 1, 2008, in Resolution #R-32-2008; and

WHEREAS, Waterfall Metropolitan Districts Nos. 1 and 2 (the "Districts") were formed pursuant to C.R.S. Section 32-1-101 et seq., as amended, by order of the District Court for Larimer County, Colorado, and after approval of the eligible electors of the Districts at a regular election held on May 6, 2008, for the purpose of assisting in the financing and development of the area generally located in the northwest section of the intersection of Boyd Lake Avenue and U. S. Highway 34; and

WHEREAS, a significant portion of the property contained within the boundaries of Waterfall Metropolitan District No. 2 ("District No. 2") has been sold to the Housing Authority of the City of Loveland, Colorado (the "Housing Authority") and is exempt from the payment of ad valorem property taxes; and

WHEREAS, the property purchased by the Housing Authority is more particularly described as Lot 1, Block 1, Waterfall Sixth Subdivision to the City of Loveland, County of Larimer, State of Colorado, with a street address of 3601 E. 15th Street, Loveland, Colorado 80538 (the "Property"); and

WHEREAS, the Housing Authority has petitioned District No. 2 for the exclusion of the Property from the boundaries of District No. 2; and

WHEREAS, District No. 2 desires to exclude the Property from its boundaries and is requesting the City Council to approve the exclusion by adopting this Resolution; and

WHEREAS, the exclusion of the Property from the boundaries of District No. 2 represents of material modification of the Service Plan and requires City Council approval; and

WHEREAS, notice of a public hearing before the City Council for its consideration and approval of the material modification of the Service Plan was published in the Loveland Reporter-Herald on February 14, 2012, as required by law; and

WHEREAS, notice of the public hearing before the City Council was also mailed by first class mail, on February 10, 2012, to interested persons, defined as follows: (1) the owners of record of all property within the Districts as such owners of record are listed on the records of the Larimer County Assessor; (2) the division of local government, and (3) the governing body of all municipalities or special districts which have levied an ad valorem tax with the next preceding tax year, and which have boundaries within a radius of three (3) miles of the Districts' boundaries; and

WHEREAS, pursuant to the provisions of Title 32, Article 1, C.R.S., the City Council held a public hearing on the material modification of the Service Plan on March 6, 2012; and

WHEREAS, the City Council has considered the material modification to the Service Plan, and all other testimony and evidence presented at the hearing.

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

Section 1. That the hearing before the City Council was open to the public; that all interested parties were heard or were given the opportunity to be heard, and that all relevant testimony and evidence submitted to the Council was considered.

Section 2. That the City Council hereby determines that the requirements of Sections 32-1-207 (2), C.R.S., relating to the approval of a material modification to the Service Plan; the requirements of Sections 32-1-204 (1) and (1.5), C.R.S., relating to the notice of the hearing by the City Council; and the requirements of Section 32-1-204.5, C.R.S., relating to the approval by the City Council, have been fulfilled in a timely manner.

Section 3. That the City Council hereby finds that the material modification to the Service Plan to exclude the Property from the boundaries of District No. 2 is in the best interests of the Districts and the City.

Section 4. That the City Council does hereby approve the material modification to the Service Plan to exclude the Property from the boundaries of District No. 2.

Section 5. That nothing herein limits the City's powers with respect to the Districts, the remaining real property within the Districts' boundaries, or the improvements to be constructed by the Districts.

Section 6. That the City Council's findings are based solely on the evidence presented at the public hearing and that the City has not conducted any independent investigation of the evidence.

Section 7. That this Resolution shall take effect on the date and at the time of its adoption by the City Council.

ADOPTED this 6th day of March, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports None

b) Business from Council

Trenary Councilor Trenary attended an excellent Workforce Investment Board presentation. On March 9, during Night on the Town, Sharon Danhauer from Loveland Historical Society will give a presentation on the founder of the Loveland Museum, Harold Dunning.

Klassen Councilor Klassen mentioned the March 6th issue of Time magazine has a great article on Economic Development. Copies will be distributed to City Council. He attended the Board & Commission Summit meeting last week and expressed appreciation to all the community members who volunteer their time. Council photographs will occur on March 20, 2012 prior to the Council meeting.

Farley Councilor Farley attended the "Stars on the Bridge" benefit concert and art auction for the new Rialto Theater Center on Sunday, March 4, 2012 hosted by Jan Sawyer.

Shaffer Councilor Shaffer reminded Council the North Front Metropolitan Planning Organization meetings are on the 1st Thursday of the month. The Transportation Advisory Board (TAB) toured the Streets and Maintenance buildings at 105 W 5th Street and she encouraged a tour be organized for City Council. TAB will be sending, per a request, a letter of support for the Tiger Two grant which would extend the HOV and hot lanes up to 120th Street. She attended one of the Excel open housees regarding the pipeline reconstruction. She suggested Excel could discuss the project at a Council study session or have airtime on Comcast Channel 16. Councilor Shaffer accepted the position of Chair

on the Loveland Downtown Team. The communities along U.S. Highway 287 corridor are starting to work together as on regional issues.

Gutierrez

Mayor Gutierrez discussed several events: 1) was part of a panel on regionalism for Leadership Northern Colorado sponsored by area Chambers of Commerce 2) Loveland Stake, Church of Jesus Christ of Latter-day Saints honored Glorie Magrum, Executive Director of the House of Neighborly Services, with the 2012 Charity Never Fails Humanitarian Award. 3) gave welcome address for Emergency Manager's Conference held in Loveland.

c) City Manager Report

City Manager Cahill announced Marcia Lewis as the new Library Director. The Colorado Municipal League Conference is June in Breckenridge, Colorado. If interested please register through Rochelle Fernley. A meeting with members of the Governor's Office of Economic Development and International Trade (OEDIT) was held in Loveland last week.

d) City Attorney Report

None

PROCEDURAL INFORMATION

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

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

9. CITY CLERK

Approval of Council Minutes

Motion

Administrative Action: Councilor McEwen moved to approve Council minutes from the February 21, 2012 regular meeting. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RECUSED

Councilor Farley recused himself from hearing Item 10 and Item 11 due to a conflict of interest; specifically his direct relationship with the Loveland Community Foundation.

10. CULTURAL SERVICES

Room Names in Rialto Theater Center

Resolution #R-22-2012

Administrative Action: Cultural Service Director Susan Ison and Rialto Bridge capital campaign co-chairman Earl Sethre introduced this item. This is an administrative action requesting certain rooms in the city-owned spaces within the Rialto Theater Center be named for those persons and entities that made significant and generous contributions to the community and to the Rialto Theater Center. 100% of the donations went to Rialto Bridge. Councilor McEwen moved to approve Resolution #R-22-2012 approving the recommendations of the Community Foundation of Northern Colorado and the Cultural Services Department regarding the naming of rooms located within the Rialto Theater Center. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION #R-22-2012

A RESOLUTION APPROVING THE RECOMMENDATIONS OF THE COMMUNITY FOUNDATION OF NORTHERN COLORADO AND THE CULTURAL SERVICES DEPARTMENT REGARDING THE NAMING OF ROOMS LOCATED WITHIN THE RIALTO THEATER CENTER

WHEREAS, the City of Loveland and Rialto Bridge, LLC have partnered to build an integrated public-private project now known as the Rialto Theater Center, located at 222 and 228 E. Fourth Street in Loveland, Colorado; and

WHEREAS, in early 2011, the City received a grant from the Community Foundation of Northern Colorado ("Community Foundation") in the amount of \$700,000 to be used toward the construction and contingency funding of the Rialto Theater Center; and

WHEREAS, as part of that grant, the Community Foundation requested that the City consider a request to name certain rooms in the City-owned spaces within the Rialto Theater Center for those persons and entities that made significant and generous contributions to the community and to the Rialto Theater Center, namely the Devereaux family, Bruce and Muriel Hach, the McMurry-Spieles family, the McWhinney Foundation, and the Walbye family; and

WHEREAS, the Cultural Service Department has reviewed the naming plan presented by the Community Foundation and recommends that the City Council approve said naming plan; and

WHEREAS, the City Council desires to recognize the significant and generous contributions to the community and to the Rialto Theater Center made by the Devereaux family, Bruce and Muriel Hach, the McMurry-Spieles family, the McWhinney Foundation, and the Walbye family by naming certain rooms located within the Rialto Theater Center after them.

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

Section 1. That the City Council hereby finds that the honorary naming of rooms within the Rialto Theater Center is an appropriate way to recognize the significant and generous contributions to the community and to the Rialto Theater Center made by the Devereaux family, Bruce and Muriel Hach, the McMurry-Spieles family, the McWhinney Foundation, and the Walbye family.

Section 2. That the rooms depicted on Exhibit A, attached hereto and incorporated herein by reference, are hereby named as designated on Exhibit A in accordance with the naming plan presented by the Community Foundation of Northern Colorado and recommended for approval by the Cultural Services Department.

Section 3. That memorial plaques to be donated in honor of the Devereaux family, Bruce and Muriel Hach, the McMurry-Spieles family, the McWhinney Foundation, and the Walbye family are hereby accepted and shall be placed in the corresponding rooms within the Rialto Theater Center.

Section 4. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 6th day of March, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

11. ECONOMIC DEVELOPMENT

Lease Agreement with Community Foundation of Northern Colorado

Resolution #R-23-2012

Administrative Action: Senior Planner Mike Scholl introduced this item. As part of the \$700,000 contribution to the Rialto Theater Center project, the Community Foundation of Northern Colorado (CFNC) requested a small office space in the building to enhance their presence in Loveland. This was contemplated and approved by Council on February 15, 2011 as part of the appropriation for the Rialto Bridge project. The award letter is included as an attachment. The lease has been contemplated from the beginning of the project and the request was included in the award letter for the CFNC's contribution. The lease will be for ten years with an option to renew for an additional ten years. Councilor McEwen made a motion to approve Resolution #R-23-2012 approving a lease agreement with the Community Foundation of Northern Colorado for the use of office space located within the Rialto Theater Center. Councilor Shaffer seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION #R-23-2012

A RESOLUTION APPROVING A LEASE AGREEMENT WITH THE COMMUNITY FOUNDATION OF NORTHERN COLORADO FOR THE USE OF OFFICE SPACE LOCATED WITHIN THE RIALTO THEATER CENTER

WHEREAS, the City of Loveland is the owner of certain office space located within the Rialto Theater Center, located at 222 and 228 E. Fourth Street, Loveland, Colorado 80537; and

WHEREAS, the Community Foundation of Northern Colorado (the "Community Foundation") desires to lease the office space from the City; and

WHEREAS, the City desires to enter into a lease agreement whereby the City will lease to the Community Foundation, and the Community Foundation will lease from the City lease, the office space.

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

Section 1. That the 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 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 Lease Agreement on behalf of the City.

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

ADOPTED this 6th day of March, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

SPECIAL RECOGNITION Councilor Farley thanked current and past Council members, donors and the Community Foundation. Mayor Gutierrez acknowledged city staff and the Theater Guild.

12. CITY MANAGER

Report of January 21, 2012 City Council Advance

Motion Administrative Action: City Manager Bill Cahill introduced this item. This is an administrative action accepting and approving the report of the City Council's Annual Advance held on January 21, 2012. Councilor McEwen made a motion accepting and approving the report of the City Council's Annual Advance held on January 21, 2012. Councilor Shaffer seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

13. FINANCE

January 2012 Financial Report Information Only

Acting Finance Director Bonnie Steele introduced this item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the twelve months ending January 31, 2012.

14. CITY MANAGER

Investment Report for January 2012

Information Only

Executive Fiscal Advisor Alan Krcmarik introduced this item. The budget estimate for investment earnings for 2012 is \$ 2,729,560. For January 2012, the amount posted to the investment account is \$393,527 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by \$163,527. Based on January's monthly statement, the estimated annualized yield on the U.S. agencies and corporates was 1.56%, under the annual target rate of 1.7% for 2012. Reinvestment rates have trended downward significantly over the last eight months.

ADJOURNMENT

Having no further business to come before Council, the March 6, 2012 Regular Meeting was adjourned at 8:18 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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

AGENDA ITEM: 9
MEETING DATE: 3/20/2012
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:

Approve recommended member on Senior Advisory Board

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to appoint Donita Fogle as the Housing Authority of the City of Loveland representative on the Senior Advisory Board for a two year term effective until March 20, 2014.

OPTIONS:

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

DESCRIPTION:

This is an administrative item appointing a member to the Senior Advisory Board.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

Per Section 2.60.040 of the Loveland Municipal Code:

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

At the February 1, 2012 meeting, the Senior Advisory Board nominated Donita Fogle as Senior Advisory Board representative from Housing Authority of the City of Loveland. If this

recommendation is approved, Donita Fogle will serve a two year term effective until March 20, 2014.

REVIEWED BY CITY MANAGER: *William D. Cahill*

LIST OF ATTACHMENTS:

None


CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE

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

AGENDA ITEM: 10
MEETING DATE: 3/20/2012
TO: City Council
FROM: Betsey Hale, Economic Development Director
PRESENTER: Betsey Hale

TITLE: A resolution approving Amendment Number One to the Lightning Hybrids, Inc. (LHI) Economic Incentive and Performance Agreement

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)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION: This is an administrative action. On July 7th, 2009 the Loveland City Council approved an economic incentive for the creation of 50 primary jobs at LHI. The company has not achieved the job creation expectations as outlined in the agreement and they are asking City Council to consider an amendment extending the deadline for job creation, and change the definition of qualifying jobs.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The impact is neutral if approved. They are asking for an extension of the term to satisfy the conditions pertaining to the incentive received. These funds were disbursed in 2009.

SUMMARY: In August of 2011 City staff contacted LHI for confirmation of employment numbers to satisfy the terms of their 2009 economic incentive agreement. The agreement as approved by City Council and accepted by LHI stated the City would make an initial \$50,000 payment under the agreement to LHI on July 24, 2009. LHI had 24 months (until July 24, 2011) to create 25 “qualified jobs” and maintain them for 12 consecutive months. If LHI was successful creating the 25 jobs they would then receive an additional \$50,000.00 for the

creation of 25 more jobs in an additional 24 month period. At the time of the original agreement City Council was utilizing the Economic Development Policy adopted in October of 2008.

City Staff has verified with the State Department of Labor that 11 jobs were created and maintained in the first 24 month period. Since LHI did not meet the 25 “qualified jobs” requirement for this first 24 month period, under the agreement LHI must repay \$2,000 to the City for each job short of the 25 qualified jobs and the City has no obligation to make a second payment of \$50,000. Based on 11 “qualified jobs” created within the first 24 month period, LHI is “short” 14 qualified jobs, creating a repayment obligation of \$28,000 (\$2,000 x 14). This repayment obligation is personally guaranteed by Dan Johnson and Tim Reeser, company owners.

LHI has requested that the City modify the Agreement in light of “early stage investor requirements and general economic conditions [that] have inhibited [LHI] from meeting the employee requirements”. LHI has requested changes to the Agreement that would extend the time period for creation of the remaining 14 Qualified Jobs and modify the definition of a “Qualified Job”.

The proposed modifications to the Agreement include the following:

- Provide that LHI will have until November 30, 2014 in which to create an additional 14 “Qualified Jobs” (as redefined) and maintain them for 12 consecutive months
- A “Qualified Job” would be re-defined as a job that meets the following criteria:
 - The primary office or work location for the job must be within the City of Loveland (no change);
 - The job must be a “full time equivalent job” – this is currently a requirement of a “Qualified Job”, but the proposed modification would treat two or more part-time employees in jobs that add up to 40 hours per week as a single full time equivalent job; all persons holding a job must still be employees for federal tax purposes;
 - The average annual “total compensation” (as currently defined in the Agreement) must be at least \$44,000 per year (currently \$65,000 per year);
 - A “Qualified Job” would also include outsourced work where LHI pays at least \$44,000 to a City of Loveland business or resident in any 12 consecutive month periods, as evidenced by IRS Form 1099 (provided by LHI with the recipient’s written consent).
 - The current requirement that all individuals holding a job must receive or must have been offered and declined LHI’s full benefits package, including but not limited to health insurance coverage, in order for the job to be a “Qualified Job” would need to be eliminated, since it is not compatible with the modified definition

of a “Qualified Job” (part-time employees and outsourced work are not likely to satisfy the insurance requirement).

In addition, although not proposed as a part of the modifications by LHI, the following amendments to the Agreement are recommended by staff:

- Amend paragraph 4 to include the following additional events in the definition of a default:
 - LHI’s sale, transfer or conveyance without the prior written consent of the Loveland City Council (“Council”), of: (i) any or all of its interest in the Property; (ii) all or substantially all of the assets of LHI; or (iii) a controlling ownership interest in LHI;
- Acknowledgement that the existing personal guarantees remain in effect.

Council has the authority to amend the existing Agreement to include the foregoing provisions (or others as it deems appropriate) if it determines that such modifications will serve the public purposes of providing significant social and economic benefits to the citizens of Loveland (primarily in the form of jobs and economic development) and are therefore in the best interest of the public and the City.

City Staff is recommending support for the amendment based on the following:

1. The difficulty finding investors in the past three years.
2. The company still employs 11 people.
3. They are located in Downtown.
4. They renovated a property in downtown that was an eyesore on a major transportation corridor.
5. The company does hire contract work with Loveland businesses.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:

1. Resolution and amended performance agreement
2. Letter of Request
3. Original Agreement

RESOLUTION #R-26-2012

**A RESOLUTION APPROVING AMENDMENT NUMBER ONE TO
LIGHTNING HYBRIDS, INC. ECONOMIC INCENTIVE AND
PERFORMANCE AGREEMENT**

WHEREAS, Lightning Hybrids, Inc. (“LHI”) is a start –up company established in 2008 and engaged in green technology automotive research, development and manufacturing in Loveland, Colorado; and

WHEREAS, LHI and the City entered into that certain Lightning Hybrids, Inc. Economic Incentive and Performance Agreement dated July 10, 2009 (the “Agreement”), approved by City Council by adoption of Resolution #R-64-2009; and

WHEREAS, pursuant to the Agreement, the City made an incentive payment in the amount of \$50,000.00 to LHI for LHI’s creation and maintenance for 12 consecutive months of 25 “Qualified Jobs” within a 24 month period, as more fully set forth therein; and

WHEREAS, the Agreement further provided that in the event that LHI failed to satisfy the requirement of creating 25 Qualified Jobs and maintaining them for at least 12 full consecutive months within the 24 month period, it shall pay to the City two thousand dollars (\$2,000.00) for each Qualified Job short of the 25 Qualified Jobs; and

WHEREAS, the Owners, as the controlling principals of LHI, guaranteed LHI’s obligations under the Agreement, as more fully set forth therein; and

WHEREAS, early stage investor requirements and general economic conditions have inhibited LHI from meeting the job creation requirements under the Agreement, and LHI and the Owners have requested that the deadline for creation and maintenance of the remaining “Qualified Jobs” be extended and that the definition of “Qualified Jobs” be modified, all as more fully set forth in Amendment Number One to Lightning Hybrids, Inc. Economic Incentive and Performance Agreement attached hereto as **Exhibit A** and incorporated herein by this reference (“Amendment Number One”); and

WHEREAS, the City Council believes the execution of Amendment Number One will further the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased property tax revenues to the City, that were served by the Agreement and, therefore, that the provisions of Amendment Number One are in the best interests of the public and the City.

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

Section 1. That the City Council finds that the Amendment Number One will further the public purposes of providing the social and economic benefits to the citizens of Loveland in the form of jobs and economic development, that were served by the Agreement and, therefore, that Amendment Number One is in the best interest of the public and the City.

Section 2. That Amendment Number One is hereby approved.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to modify Amendment Number One in form or substance as deemed necessary to effectuate the purposes of this resolution or to protect the interests of the City.

Section 4. That the City Manager and the City Clerk are hereby authorized and directed to execute Amendment Number One on behalf of the City of Loveland.

Section 5. That this Resolution shall be effective as of the date and time of its adoption.

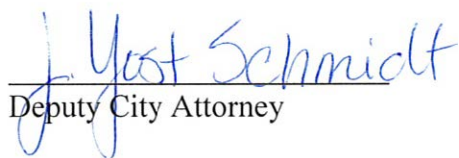
ADOPTED this 20th day of March, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

**AMENDMENT NUMBER ONE TO LIGHTNING HYBRIDS, INC. ECONOMIC
INCENTIVE AND PERFORMANCE AGREEMENT**

THIS AMENDMENT NUMBER ONE TO LIGHTNING HYBRIDS, INC. ECONOMIC INCENTIVE AND PERFORMANCE AGREEMENT (Amendment Number One”) is made this ___ day of March, 2012, by and between the **City of Loveland, Colorado**, a home rule municipality (“City”), **LIGHTNING HYBRIDS, INC.**, a Colorado corporation (“LHI”); and **DANIEL S. JOHNSON AND TIMOTHY R. REESER** (collectively “the Owners”).

WHEREAS, LHI is start-up company established in 2008 and engaged in green technology automotive research, development and manufacturing in Loveland, Colorado; and

WHEREAS, LHI and the City entered into that certain Lightning Hybrids, Inc. Economic Incentive and Performance Agreement dated July 10, 2009 (the “Agreement”), approved by City Council by adoption of Resolution #R-64-2009; and

WHEREAS, pursuant to the Agreement, the City made an incentive payment in the amount of \$50,000.00 to LHI for LHI’s creation and maintenance for 12 consecutive months of 25 “Qualified Jobs” within a 24 month period, as more fully set forth therein; and

WHEREAS, the Agreement further provided that in the event that LHI failed to satisfy the requirement of creating 25 Qualified Jobs and maintaining them for at least 12 full consecutive months within the 24 month period, it shall pay to the City two thousand dollars (\$2,000.00) for each Qualified Job short of the 25 Qualified Jobs; and

WHEREAS, the Owners, as the controlling principals of LHI, guaranteed LHI’s obligations under the Agreement, as more fully set forth therein; and

WHEREAS, early stage investor requirements and general economic conditions have inhibited LHI from meeting the job creation requirements under the Agreement, and LHI and the Owners have requested that the deadline for creation and maintenance of the remaining “Qualified Jobs” be extended and that the definition of “Qualified Jobs” be modified, all as more fully set forth in this Amendment Number One; and

WHEREAS, by adoption of Resolution #R-__-2012, the City Council has made a finding that the execution of this Amendment Number One will further the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased property tax revenues to the City, that were served by the Agreement and, therefore, that the provisions of this Amendment Number One are in the best interests of the public and the City.

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

1. Modification to Economic Incentive Payment Provisions

A. As an economic incentive under the Agreement, the City agreed, to pay to LHI Two Thousand Dollars (\$2,000.00) for every Qualified Job (as defined therein) created and maintained for a period of 12 consecutive months, up to a maximum payment of One Hundred Thousand Dollars (\$100,000.00) for 50 Qualified Jobs, subject to the terms and conditions set forth therein, including but not limited to the following:

1. The City advanced Fifty Thousand Dollars (\$50,000.00) (the "First Payment") to LHI on July 24, 2009 for LHI's creation of 25 Qualified Jobs. LHI had 24 months after the date on which the First Payment was made by the City, or until July 24, 2011 (the "First 24 Month Period") in which to create 25 Qualified Jobs and maintain such Qualified Jobs for at least 12 full consecutive months.
2. If LHI created and maintained such 25 Qualified Jobs for at least 12 full consecutive months no later than the expiration of the First 24 Month Period, the City agreed to advance another Fifty Thousand Dollars (\$50,000.00) (the "Second Payment") to LHI for an additional 25 Qualified Jobs, in accordance with Paragraph 1 of the Agreement.

B. The parties acknowledge and agree that LHI created and maintained 11 of the required 25 Qualified Jobs during the First 24 month Period. Accordingly, in the absence of this Amendment Number One, LHI would be obligated under Paragraph 2 of the Agreement to pay to the City the sum of Twenty Eight Thousand Dollars (\$28,000.00), being Two Thousand Dollars (\$2,000.00) for each of the 14 Qualified Job short of 25. The parties further acknowledge and agree that the City has no further obligation to pay the Second Payment to LHI under the Agreement.

C. Notwithstanding the provisions of Paragraph 2 of the Agreement, LHI shall have until November 30, 2014 in which to create and maintain for 12 consecutive months the remaining 14 "Qualified Jobs" (as that term is re-defined in this Amendment Number One). In determining whether LHI has created 14 "Qualified Jobs" on or before November 30, 2014, the following shall constitute a "Qualified Job" under this Amendment Number One:

1. A "Qualified Job" for the purpose of determining whether LHI has created the 14 remaining Qualified Jobs under this Amendment Number One (and

notwithstanding any differing definition in the Agreement) shall mean a job that meets all of the following criteria:

- a) The primary office or work location for the job must be within the City of Loveland;
- b) The job must be a full time equivalent job. One or more employees working a total of at least 40 hours per work week shall constitute one full time equivalent job; and
- c) The individual holding the job must be considered an “employee” under the Internal Revenue Code; and
- d) The average annual “total compensation” paid by LHI for a full time equivalent job must be at least Forty Four Thousand Dollars (\$44,000.00). As used in this Amendment Number One and in calculating this average, “total compensation” shall be defined to include only the annual amounts paid by LHI to or for the benefit of the individual holding the job related to gross wages or salary, the employer’s share of FICA, medical insurance, life insurance, and long-term disability insurance. However, any total compensation paid by LHI to the Owners shall not be included in calculating the average annual total compensation.

2. In addition to the foregoing, outsourced services purchased by LHI from an independent contractor (as opposed to an employee) or business residing or located within the City of Loveland in a total amount of Forty Four Thousand Dollars (\$44,000.00) in any 12 consecutive month period shall constitute one full time equivalent “Qualified Job”.

E. If LHI fails to satisfy the requirement of creating and maintaining the remaining 14 Qualified Jobs on or before November 30, 2014, LHI shall pay to the City two thousand dollars (\$2,000.00) for each Qualified Job short of the 14 remaining Qualified Jobs. By way of example, but not by way of limitation, if LHI creates only 10 Qualified Jobs on or before November 30, 2014, LHI shall pay to the City Eight Thousand Dollars (\$8,000.00), being Two Thousand Dollars (\$2,000.00) for each of the four Qualified Jobs short of 14.

2. **Modification of Remedies upon Default.** Paragraph 4 of the Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

4. Remedies Upon Default

Default by LHI shall be deemed to have occurred under this Agreement upon the occurrence of any one of the following events:

- a) Application for appointment of a receiver for any of LHI’s assets;

- b) Commencement of any proceeding under any bankruptcy or insolvency laws by or against LHI;
- c) The failure of LHI to timely make any payment required under the Agreement, as amended by Amendment Number One; and
- d) LHI's sale, transfer or conveyance, without the prior written consent of the Loveland City Council, of (i) any or all of its interest in the Property; (ii) all or substantially all of the assets of LHI; or (iii) a controlling ownership interest in LHI.

Upon the occurrence of any one or more of these events of default and the failure by LHI to cure such default within thirty (30) days of receiving written notice from the City of the default, the City may pursue any and all remedies available to it under the law or in equity to collect any or all of the amounts owed to it under the Agreement, as amended, including, without limitation, by judicially enforcing the Owners' personal guarantee under Section 14. of the Agreement, as amended.

3. **Guarantee Remains in Effect.** By their signature below, the Owners acknowledge and agree that their unconditional guarantee of LHI's full and punctual performance of any and all obligations under the Agreement, as amended, including but not limited to repayment of any amounts due under Paragraph 1 of this Amendment Number One, shall remain in full force and effect in accordance with the provisions of the Agreement, as modified by this Amendment Number One.

4. **Agreement Remains in Effect.** Except as expressly modified by this Amendment Number One, the Agreement shall remain in full force and effect in accordance with its terms.

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

[remainder of page intentionally left blank]

LIGHTNING HYBRIDS, INC.,
a Colorado corporation

By: _____
Daniel S. Johnson, President

STATE OF COLORADO)
) ss.
County of Larimer)

The foregoing instrument was acknowledged before me this ____ day of March, 2012 by Daniel S. Johnson as President of Lightning Hybrids, Inc., a Colorado corporation.

Notary Public

(SEAL)

“ONWERS”

Daniel S. Johnson, individually

STATE OF COLORADO)
) ss.
County of Larimer)

The foregoing instrument was acknowledged before me this ____ day of March, 2012 by Daniel S. Johnson, an individual.

Notary Public

(S E A L)

Timothy R. Reeser, individually

STATE OF COLORADO)
) ss.
County of Larimer)

The foregoing instrument was acknowledged before me this ____ day of March, 2012 by Timothy R. Reeser, an individual.

Notary Public

(S E A L)

CITY OF LOVELAND,
a Colorado home rule municipality

By: _____
William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM

Deputy City Attorney

STATE OF COLORADO)
) ss.
County of Larimer)

The foregoing instrument was acknowledged before me this _ day of March, 2012 by William D. Cahill, City Manager, City of Loveland, Colorado.

Notary Public

(S E A L)



December 1, 2011

Betsey Hale
 Business Development Manager
 City of Loveland
 500 East Third Street Suite 330
 Loveland CO 80537

Betsey:

Although Lightning Hybrids has invested over \$4 million dollars in the Loveland economy in the last 3 years on employees, tooling, and remodeling of our new building downtown, the early-stage investor environment and general economic conditions have inhibited us from meeting the employee requirements of our \$50,000 grant. We remain appreciative of Loveland's support, and request a change and extension of the terms to allow us more time to provide more value to the City. With that in mind, we are proposing the following change in terms:

Lightning Hybrids will have 25 "Qualified Jobs" by November, 2014. "Qualified Jobs" will be re- defined based on the criteria listed below:

- Primary work location in the City of Loveland
- Full time equivalent job
- Any outsourced work to a City of Loveland business where LHI spends at least an average of \$44k per year will add one "Qualified Job" to our total by November of 2014.
- Average annual total compensation of at least \$44k per year

The total jobs will be calculated as 1 full year of payroll and contract work of at least \$1.1 million.

Please let us know if this is acceptable, and we will provide progress toward our 25 "Qualified Jobs" to you on a yearly basis starting at the end of 2012 for the 2012, 2012, and 2014 calendar years.

Thank you for your consideration!

Sincerely,

Dan Johnson
 CEO, Lightning Hybrids and Mercury Plaza

Tim Reeser
 President, Lightning Hybrids

LIGHTNING HYBRIDS, INC.
ECONOMIC INCENTIVE
AND PERFORMANCE AGREEMENT

This Economic Incentive and Performance Agreement ("Agreement") is made and entered into this 10th day of July, 2009, by and between THE CITY OF LOVELAND, COLORADO, a home rule municipality ("the City"); LIGHTNING HYBRIDS, INC., a Colorado corporation ("LHI"); and DANIEL S. JOHNSON and TIMOTHY R. REESER (collectively "the Owners").

WHEREAS, LHI is start-up company established in 2008 and engaged in green technology automotive research, development and manufacturing in Loveland, Colorado; and

WHEREAS, LHI has its offices and facilities at 320 North Railroad Avenue, in Loveland; and

WHEREAS, LHI expects to employ 17 green tech research and development employees by the end of 2009, 34 in 2010, and 39 in 2011 at its downtown Loveland facility. In addition, LHI expects to create 51 manufacturing jobs by the middle of 2010, growing to 300 in 2013, at a Loveland-based manufacturing facility, building retrofit drive trains and 6,000 cars per year by the end of 2013; and

WHEREAS, LHI anticipates that such new primary research and development jobs will pay an average of \$65,000.00 per year (160% of the Larimer County average annual wage) and provide employee benefits such as health insurance; and

WHEREAS, LHI requested that the City provide up-front economic incentives of \$2,000.00 per projected job in order to assist it in creating these new primary jobs; and

WHEREAS, on July 7, 2009, the City Council approved this Agreement in Resolution #R-64-2009 and made a finding that the economic incentives provided herein will serve the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs and economic development and, therefore, the monetary incentives granted in this Agreement are in the best interests of the public and the City; and

WHEREAS, the Owners, as the controlling principals of LHI, are willing to guarantee LHI's obligations under this Agreement and are therefore made parties to this Agreement for the sole purpose of guaranteeing LHI's obligations under this Agreement as set forth in Section 14. below.

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

1. Economic Incentive Payment

The City agrees, as an economic incentive for LHI's creation of new primary jobs, to pay to LHI \$2,000.00 for every Qualified Job (as defined below) created which is maintained for a period of 12 consecutive months, up to a maximum payment of \$100,000.00 for 50 Qualified Jobs, subject to all of the following terms and conditions:

- A. Within 30 days after execution of this Agreement by all parties, the City shall advance \$50,000.00 (the "First Payment") to LHI for LHI's creation of 25 Qualified Jobs. LHI shall have 24 months after the date on which the First Payment is made by the City (the "First 24 Month Period") in which to create 25 Qualified Jobs and sustain such Qualified Jobs for at least 12 full consecutive months.
- B. If LHI has created 25 Qualified Jobs and maintained such 25 Qualified Jobs for at least 12 full consecutive months no later than the expiration of the First 24 Month Period, the City shall advance another \$50,000.00 ("Second Payment") to LHI for an additional 25 Qualified Jobs. The Second Payment shall be made by the City within 30 days after its receipt of the Job Documentation (as defined in Paragraph 2.D below) for the First 24 Month Period, provided such Job Documentation establishes to the City Manager's satisfaction, that LHI has satisfied the requirement of creating 25 Qualified Jobs and maintaining them for at least 12 full consecutive months during the First 24 Month Period; if such requirement has not been satisfied in the judgment of the City Manager, the City shall have no obligation to make the Second Payment.
- C. LHI shall have an additional period of 24 months commencing on the date on which the Second Payment is made by the City and expiring 24 months thereafter (the "Second 24 Month Period") in which to create an additional 25 Qualified Jobs and sustain such Qualified Jobs for at least 12 consecutive months.
- D. In no event shall the City be obligated under this Agreement to pay to LHI a total cumulative amount of more than one hundred thousand dollars (\$100,000.00).

2. Non-Performance Payback

The parties acknowledge that the primary goal of this Agreement is for the City to provide economic incentives to LHI to bring new Qualified Jobs to Loveland. Therefore, LHI agrees that if it does not accomplish this goal as contemplated in this Agreement, that it will pay to the City, in accordance with the following terms and conditions, all or a portion of the First Payment and the Second Payment, but not to exceed one hundred thousand dollars (\$100,000.00) plus any costs of collection and default interest:

- A. In determining whether LHI has created each Qualified Job called for under this Agreement, each job must satisfy all of the following applicable criteria:

- (1) the primary office or work location for the job must be within the City of Loveland;
- (2) the job must be a full time equivalent job;
- (3) the individual holding the job must be considered an "employee" for Internal Revenue Code purposes, and must receive, or must have been offered and declined, LHI's full benefits package customarily offered to all of its employees, including but not limited to health insurance coverage; and
- (4) the average annual "total compensation," as "total compensation" is hereafter defined, paid by LHI for all jobs must be at least sixty-five thousand dollars (\$65,000.00) (160% of the Larimer County average annual wage). As used in this Agreement and in calculating this average, "total compensation" shall be defined to include only the annual amounts paid by LHI to or for the benefit of the individual holding the job related to gross wages or salary, the employer's share of FICA, medical insurance, life insurance, and long-term disability insurance. However, any total compensation paid by LHI to the Owners shall not be included in calculating the average annual total compensation.

LHI jobs that satisfy these criteria shall be hereinafter referred to collectively as "Qualified Jobs" or individually as a "Qualified Job". Notwithstanding the foregoing, jobs held by the Owners shall not be counted as Qualified Jobs in calculating the number of LHI Qualified Jobs.

B. If LHI fails to satisfy the requirement of creating 25 Qualified Jobs and maintaining them for at least 12 full consecutive months on or before the expiration of the First 24 Month Period, it shall pay to the City two thousand dollars (\$2,000.00) for each Qualified Job short of the 25 Qualified Jobs. By way of example, but not by way of limitation, if LHI creates only 22 Qualified Jobs on or before the expiration of the First 24 Month Period, LHI shall pay to the City six thousand dollars (\$6,000.00), being two thousand dollars (\$2,000.00) for each of the three Qualified Jobs short of 25 and the City shall have no obligation to make the Second Payment.

C. If LHI satisfies the requirement of creating 25 Qualified Jobs within the First 24 Month Period and receives the Second Payment, but fails to satisfy the requirement of creating 25 additional Qualified Jobs and maintaining them for at least 12 full consecutive months on or before the expiration of the Second 24 Month Period, it shall pay to the City two thousand dollars (\$2,000.00) for each Qualified Job short of the 25 additional Qualified Jobs. By way of example, but not by way of limitation, if LHI creates only 20 Qualified Jobs (in addition to the 25 Qualified Jobs created during the First 24 Month Period) on or before the expiration of the Second 24 Month Period, LHI shall pay to the City ten thousand dollars (\$10,000.00), being two thousand dollars (\$2,000.00) for each of the five Qualified Jobs short of the additional 25 Qualified Jobs required during the Second 24 Month Period.

D. LHI shall file with the City on or before the 30th day after the expiration of the First 24 Month Period and, if the First Payment is made in accordance with Paragraph 1

above, after the Second 24 Month Period, such documentation as the City Manager may require to verify the number of Qualified Jobs created during such Periods, including information to verify LHI's average annual total compensation to be calculated pursuant to subparagraph 2.A(4) above (collectively, the Job Documentation"). However, the City shall also have the right at any time after the expiration of the First or Second 24 Month Period to have its representatives physically inspect the books and records of LHI to determine whether it has met the requirements to create 25 new Qualified Jobs during each of the First and Second 24 Month Periods. LHI shall cooperate as reasonably necessary and appropriate to provide the City with such information as may be requested to confirm that the First Payment No. and/or the Second Payment have in fact been used to create such Qualified Jobs. LHI's failure to allow such inspection or to provide information reasonably requested, or its use of any of the funds for any purpose not authorized under this Agreement, shall each be deemed a material default under this Agreement and the City shall be entitled to a full refund of all amounts paid to LHI under this Agreement.

E. In addition, the City shall have the option to hire an accounting firm reasonably acceptable to LHI to inspect and audit the books and records of LHI to confirm the number of Qualified Jobs, including information to verify LHI's average annual total compensation to be calculated pursuant to subparagraph 2.A(4) above. LHI agrees to pay for the cost of any such audit. The City agrees that it will consider all the information it obtains or that its auditor obtains from LHI in any such audit to be confidential commercial and proprietary and the City agrees to keep such information confidential to the extent permitted by the Colorado Open Records Act. The City also agrees that the auditor shall not be allowed to remove any original payroll records from LHI's possession or to provide the City with copies of such records without LHI's consent, except that the auditor may provide the City with a written report of the results of its audit. LHI agrees that its failure to allow the City or the accounting firm to so inspect and audit LHI's records or to pay for the cost of the audit shall each be deemed a material default under this Agreement and the City shall be entitled to a full refund of all amounts paid to LHI under this Agreement.

F. In addition to the foregoing, LHI agrees that its Chief Executive Officer and its Chief Financial Officer shall meet semi-annually with the City's Business Development Manager and provide the City's Business Development Manager with up-to-date information concerning LHI's number of Qualified Jobs and LHI's general overall performance, which information may be shared with the Loveland City Council.

3. Multi-Year Fiscal Obligation

The City's obligation to make the First Payment and the Second Payment as provided in Section 1. above, may extend beyond December 31, 2009 and such continuing obligation under this Agreement is considered a multi-year fiscal obligation under Article X, Section 20 of the Colorado Constitution and the City's Charter Section 11-6. As such, it is a multi-year fiscal obligation subject to annual appropriation by the Loveland City Council. The City shall have no obligation for payment of the First Payment or the Second Payment as provided in Section 1. above if payment is to be paid on or after December 31, 2009, unless the necessary appropriation

has been made by the City Council to authorize such payments. However, the City agrees that the City Manager shall include in the annual budget and appropriation ordinances for 2010 and subsequent years when needed for City Council's consideration the necessary appropriation to pay up to a total of one hundred thousand dollars (\$100,000.00) as provided in Section 1. above.

4. Remedies upon Default

Default by LHI shall be deemed to have occurred under this Agreement upon the occurrence of any one of the following events:

- (a) application for appointment of a receiver for any of LHI's assets;
- (b) commencement of any proceeding under any bankruptcy or insolvency laws by or against LHI; or
- (c) the failure of LHI to timely make any payment required in Section 2. above.

Upon the occurrence of any one or more of these events of default and the failure by LHI to cure such default within thirty (30) days of receiving written notice from the City of the default, the City may pursue any and all remedies available to it under the law or in equity to collect any or all of the amounts owed to it under this Agreement including, without limitation, by judicially enforcing the Owners' personal guarantee under Section 14. of this Agreement.

5. Expenses and Costs of Collection

In the event that LHI is in default under this Agreement and, as a result, the City pursues collection efforts through suit or otherwise, LHI agrees to pay all reasonable expenses and costs of collection incurred by the City in connection with any such collection efforts and/or suit, in addition to the other amounts owed under this Agreement, which expenses and costs of collection shall include, without limitation, the following: attorneys fees; receiver's fees and costs; expert witness fees; deposition costs; filing fees; the cost of mailing notices and other documents; the cost of serving process, notice and other documents; and copy costs.

6. Default Interest

Upon LHI's default under this Agreement to timely pay any or all of the amounts owed to the City by LHI under this Agreement, which amounts shall include, without limitation, the costs and expenses of collection as described in Section 5. above, such amounts in default shall bear interest at the defaulting rate of eight percent (8%) per annum compounded annually from the date of default until paid in full.

7. Applicable Law and Venue

This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the parties hereto acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and by the City Charter and Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any

other provisions of this Agreement to the contrary, in no event shall any of the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall be in the District Court for Larimer County, Colorado.

8. Time is of the Essence

Time shall be of the essence for the performance of all obligations under this Agreement.

9. Assignment

LHI and the Owners shall not assign or transfer any or all of their interests, rights or obligations under this Agreement without the prior written consent of the City.

10. Construction

This Agreement shall be construed according to its fair meaning and as if it was prepared by all of the parties hereto and shall be deemed to be and contain the entire Agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by the City and LHI.

11. Headings

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

12. Notices

Any written notice given under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested, to the following addresses:

If to the City: Don F. Williams
City Manager
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537

With Copy to: John R. Duval
City Attorney
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537

If to LHI: Lightning Hybrids Inc.
 320 N. Railroad Avenue
 Loveland, CO 80537

If to the Owners: Daniel S. Johnson
 3310 Morey Court
 Loveland, CO 80537

Timothy R. Reeser
 506 Saturn Drive
 Fort Collins, CO 80525

Any party hereto may at any time designate a different address or person receiving notice by so informing the other parties in writing.

13. Binding Effect

This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the personal representatives, estates, heirs, successors and assigns of the respective parties hereto.

14. The Owners' Guarantee

- A. The Owners unconditionally guarantee to the City and to the City's successors and assigns, LHI's full and punctual performance of any and all of its obligations under this Agreement. The Owners waive notice of any breach or default by LHI under this Agreement. If LHI defaults in the performance of its obligations under this Agreement, upon the City's written request, the Owners shall promptly perform all such obligations.
- B. The Owners agree that any act of the City consisting of a waiver of any of the terms and conditions of this Agreement, or the giving of any consent to any matter or thing related to this Agreement, or the granting of any indulgences or extensions of time to LHI, may be done without prior notice to the Owners and without affecting the Owners' obligations under this Section 14.
- C. The Owners agree that their obligations under this Section 14 shall not be released by any modification of this Agreement and, in case of any such modification, that their liability under this Section 14. shall be deemed modified in accordance with the terms of any such modification.
- D. The Owners agree that their liability under this Section 14 shall not be affected by: (1) the release or discharge of LHI from its obligations under this Agreement in any creditors', receivership, bankruptcy, or other proceeding, or the commencement or pendency of any such proceeding; (2) the impairment, limitation, or modification of the liability of LHI or of the estate of LHI in bankruptcy, or of any remedy for the enforcement of LHI's liability under this Agreement, resulting either from the operation of any present or future

bankruptcy code or other statute or from the decision of any court; (3) the rejection or disaffirmance of this Agreement in any such proceeding; (4) the assignment or transfer of this Agreement by LHI or by operation of law; (5) any disability or other defense of LHI; or (6) the cessation from any cause whatsoever of the liability of LHI under this Agreement.

- E. Until all of LHI's obligations under this Agreement are fully performed, the Owners agree to subordinate any liability or indebtedness of LHI held by the Owners to LHI's obligations to the City under this Agreement.
- F. The Owners agree that their obligations under this Section 14. may not be discharged or terminated orally or in any manner other than by agreement in writing signed by both of the Owners and the City.
- G. The Owners agree that they are primarily, jointly, and severally liable and obligated under this Agreement and that the City may, at its option, proceed against any one or both of the Owners for collection under this Agreement without proceeding against LHI or against anyone else obligated under this Agreement.
- H. The Owners agree to pay to the City on demand all of the City's reasonable attorneys fees and costs incurred by the City in connection with its enforcement of the Owners' obligations under this Section 14. and this Agreement.
- I. The Owners agree that their obligations under this Section 14. Shall apply and extend to the obligations and agreements under this Agreement of any and all successors and assigns of LHI and such obligations and agreements shall inure to the benefit of the City's successors and assigns.
- J. The Owners agree that their obligations under this Section 14. shall be binding upon the Owners and their respective personal representatives, estates and heirs.

15. Severability

If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those in which it was held invalid, shall not be affected.

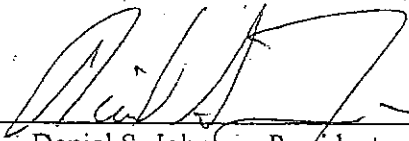
16. Amendment 54

If and only to the extent this Agreement constitutes a "sole source government contract" within the meaning of Article XXVIII of the Colorado Constitution ("Article XXVIII"), then the provisions of Sections 15 through 17 of Article XXVIII ("Amendment 54") are hereby incorporated into this Agreement, and the parties hereto shall comply with the provisions of Amendment 54. In such case, for purposes of this Agreement, LHI and Owners shall constitute a "contract holder" for purposes of Amendment 54, as shall any additional persons, officers, directors, or trustees related to Contractor who qualify as "contract holders" pursuant to the

definition set forth in Article XXVIII. In addition, if and only to the extent this Agreement constitutes a "sole source government contract," LHI and Owners hereby certify that they are not ineligible to hold any "sole source government contract" pursuant to Amendment 54 or any contract thereunder, and hereby agree to notify City immediately if, at any point during the term of this Agreement, they shall become ineligible to hold any "sole source government contract" pursuant to Amendment 54 or any contract thereunder. If any provision or provisions of Amendment 54 are held to be unconstitutional or otherwise invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to this Agreement, such provision or provisions shall no longer be incorporated into this Agreement, and the parties hereto shall have no obligations under such provision or provisions.

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


LIGHTNING HYBRIDS, INC., a Colorado corporation

By: 
Daniel S. Johnson, President

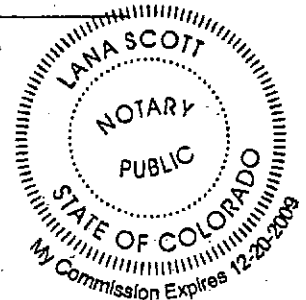
STATE OF COLORADO)
) ss.
County of Larimer)

The foregoing instrument was acknowledged before me this 10th day of July, 2009 by Daniel S. Johnson as President of Lightning Hybrids, Inc, a Colorado corporation.

Witness my hand and official seal. My commission expires: 12/26/2009


Notary Public

(SEAL)



OWNERS

[Handwritten Signature]
 Daniel S. Johnson, individually

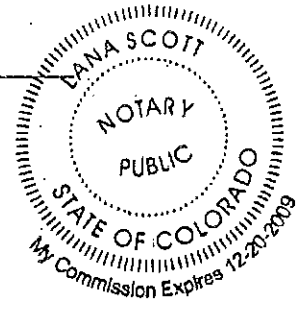
[Handwritten Signature]
 Timothy R. Reeser, individually

STATE OF COLORADO)
) ss.
 County of Larimer)

The foregoing instrument was acknowledged before me this 10th day of July, 2009 by Daniel S. Johnson.

Witness my hand and official seal. My commission expires: 12/20/2009

[Handwritten Signature]
 Notary Public



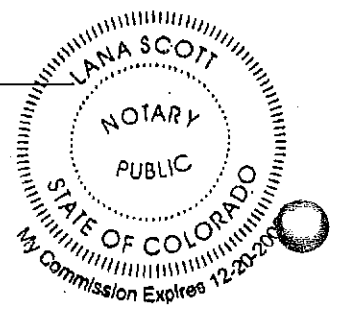
(SEAL)

STATE OF COLORADO)
) ss.
 County of Larimer)

The foregoing instrument was acknowledged before me this 10th day of July, 2009 by Timothy R. Reeser.

Witness my hand and official seal. My commission expires: 12/20/2009

[Handwritten Signature]
 Notary Public



(SEAL)

CITY OF LOVELAND, COLORADO

By: Don F. Williams
Don F. Williams, City Manager

ATTEST:

Teresa B. Andrews
City Clerk



APPROVED AS TO FORM:

Mark R. Hines
City Attorney

STATE OF COLORADO)
) ss...
County of Larimer)

The foregoing instrument was acknowledged before me this 10th day of July, 2009 by Don F. Williams, as City Manager of the City of Loveland, Colorado, a home rule municipality and by Teresa Andrews as City Clerk of the City of Loveland, Colorado, a home rule municipality.

Witness my hand and official seal. My commission expires 2-28-2012.

Shirley L. Meyer
Notary Public

(SEAL)