

**LOVELAND CITY COUNCIL MEETING  
LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS  
TUESDAY, JANUARY 15, 2013  
CITY COUNCIL CHAMBERS  
500 EAST THIRD STREET  
LOVELAND, COLORADO**

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

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

#### CALL TO ORDER

#### PLEDGE OF ALLEGIANCE

#### ROLL CALL

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

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

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

#### CONSENT AGENDA

1. **CITY MANAGER** (presenter: Bill Cahill)  
**BOARD & COMMISSION APPOINTMENTS**  
Motion to approve the following appointments:
  - Appoint Richard Ball and Meg Corwin and to reappoint Jodi Radke to the Citizens' Finance Advisory Commission, each for a three year term effective until December 31, 2015.
  - Appoint Mary Bahun-Meyer and Aloria Weaver to the Creative Sector Development Advisory Commission each for a partial term effective until December 31, 2013 and to appoint Curtis Rowland as an Alternate member for a term effective until December 31, 2013.
  - Reappoint Teresa Mueller and Kris Ortmann to the Cultural Services Board, each for a four year term effective until December 31, 2016.
  - Reappoint ShawnaLee Washam to the Library Board for a five year term

- effective until December 31, 2017.
- **Appoint Ross Livingston to the Open Lands Advisory Commission for a term effective until December 31, 2016 and to appoint Jim Roode as an Alternate member for a term effective until December 31, 2013.**
  - **Appoint Deb Huffsmith to the Parks and Recreation Advisory Commission for a partial term effective until December 31, 2014 and to reappoint Gene Alvine, Deborah Manderscheid, and Leighton Millar each for a full term effective until December 31, 2015.**
  - **Reappoint Beverly Cardarelli and Dennis Soucek and to appoint Tony Adams to the Police Citizen Advisory Board, each for a term effective until December 31, 2015 and to appoint Mark Kirkpatrick as an Alternate member for a one-year term effective until December 31, 2013.**
  - **Appoint Kim Ferro to represent the Aspen Club / Senior Services (University Colorado Health) and to appoint Doug East to represent the Chilson Senior Advisory Board on the Senior Advisory Board for terms effective until January 15, 2015.**
  - **Reappoint Sherri Heckel-Kuhlman, Greg Hoff, and Margaret Rosborough and appoint Judy O'Gorman to the Visual Arts Commission, each for a three term effective until December 31, 2015.**

This is an administrative action.

2. **CITY CLERK** (presenter: Terry Andrews)  
**ESTABLISH THE LOCATION FOR MEETING NOTICES IN 2013**  
**Motion to approve Resolution #R-1-2013, establishing the location for the posting of City of Loveland notices for 2013**

This is an administrative action. Approval of the Resolution will designate the bulletin board immediately adjacent to the Loveland City Council Chambers located at 500 East 3rd Street, City of Loveland, Colorado, as the location for the posting for all of the City of Loveland's written notices in the year 2013. The Resolution also designates the City's Fire Administration Building as an Emergency Posting location if the primary designated location becomes inaccessible or is no longer in existence due to natural disaster or other similar cause.

3. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)  
**DOWNTOWN LOVELAND – BRINKMAN / NORTH CATALYST PROJECT**

This is an administrative action. The combined actions would provide the final approval of the Development and Disposition Agreement for the sale of the property located at 541 N. Lincoln Street and the appropriations necessary to facilitate the construction of a \$9.3 million, 69 unit market rate housing development in Downtown Loveland by the Brinkman Partners of Fort Collins acting through its investment entity 541 N. Lincoln L.L.C. The Brinkman/North Catalyst project is the result of both extensive planning by the City and two years of negotiations with the Brinkman Partners. On December 18, 2012 City Council unanimously approved the first reading of the ordinances.

1. **Motion to approve and order published on second reading an ordinance of the Loveland City Council authorizing a Disposition and Development Agreement among the City, the Loveland Urban Renewal Authority, and 541 N. Lincoln L.L.C. and conveyance of Lots 1 through 8, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado for the development of the North Catalyst Project at 541 N. Lincoln in Loveland, Colorado**

2. Motion to approve and order published on second reading an ordinance adopting a supplemental budget and appropriation to the 2013 City of Loveland budget for a loan to the Loveland Urban Renewal Authority in connection with the North Catalyst Project at 541 N. Lincoln in Loveland, Colorado

**ADJOURN AS CITY COUNCIL AND CONVENE AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)**

3. Motion to approve and order published on second reading an ordinance enacting a supplemental budget and appropriation to the 2013 Loveland Urban Renewal Authority budget to fund payments to the Developer of the North Catalyst Project at 541 N. Lincoln, Loveland, Colorado for public improvements

**ADJOURN AS THE BOARD OF COMMISSIONERS FOR THE LOVELAND URBAN RENEWAL AUTHORITY AND RECONVENE AS CITY COUNCIL**

4. **DEVELOPMENT SERVICES** (presenter: Karl Barton)  
**PUBLIC HEARING**  
**2013 THREE MILE PLAN**  
**Motion to approve Resolution #R-2-2013, adopting a Three Mile Plan for the City of Loveland, Colorado**

This is a public hearing to consider a legislative action to formally adopt the City of Loveland Three Mile Plan for 2013. The Three Mile Plan consists of the Loveland Comprehensive Plan and other adopted plans covering infrastructure and utility services within the area extending three miles beyond current City limits. The elements included in the Three Mile Plan are listed in the resolution.

5. **CITY ATTORNEY** (presenter: John Duval)  
**THIRD AMENDMENT REGARDING ENVIRONMENTAL FEES (HIGH PLAINS ENVIRONMENTAL CENTER)**  
**Motion to approve Resolution #R-3-2013 approving the Third Amendment to Agreement regarding Environmental Fees**

This is an administrative action to consider a Resolution approving the Third Amendment to the Agreement regarding Environmental Fees in Centerra. The Third Amendment extends the term of the Agreement so that it will expire on January 1, 2041 instead of January 1, 2031, and clarifies the process for allocating, reporting, and accounting for monies for "Open Space Purposes" and for "HPEC Purposes" under the Agreement.

6. **FINANCE** (presenter: John Hartman)  
**PUBLIC HEARING**  
**SUPPLEMENTAL APPROPRIATION – 2013 AIRPORT BUDGET**  
**Motion to approve and ordered published on first reading an ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget to increase the City’s contribution to the Ft. Collins-Loveland Municipal Airport due to the loss of commercial service**

This is an administrative action. The ordinance appropriates funding (\$92,500) to increase the City’s contribution to the Airport to partially offset revenue reductions due to the loss of commercial service.

7. **FINANCE** (presenter: John Hartman)  
**PUBLIC HEARING**  
**SUPPLEMENTAL APPROPRIATION - LOVELAND FIRE RESCUE AUTHORITY 2013 BUDGET**

1. **Motion to approve and ordered published on first reading an ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for the City share of the costs for an additional position in the Loveland Fire Rescue Authority**
2. **Motion to approve Resolution #R-4-2013 approving a supplemental budget and appropriation to the Loveland Fire Rescue Authority 2013 budget**

This is an administrative action. The ordinance appropriates funds (\$58,220) from unassigned fund balance in the General Fund for the costs of an additional position in the Loveland Fire and Rescue Authority. The resolution provides for Council approval supplemental changes to the Loveland Fire Rescue Authority 2013 Budget for an additional plans reviewer position. The Council approval of the budget is required for the Authority's budget to be in effect.

8. **PUBLIC WORKS** (presenter: Ken Cooper)  
**CONTRACT AWARD - DESIGN AND ENGINEERING OF THE SERVICE CENTER EXPANSION/REMODEL**

**Motion to approve the contract for RNL Design to design and engineer the expansion and remodel of the Service Center for the total amount of \$975,000 and to authorize the City Manager to execute the contract on behalf of the City**

This is an administrative matter approving a contract with RNL Design to design and engineer the expansion and remodel of the Service Center, located at 200 N. Wilson Ave., Loveland.

**END OF CONSENT AGENDA**

**CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA**

**CITY COUNCIL**

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

**PROCEDURAL INFORMATION**

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

## REGULAR AGENDA

## CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

9. **CITY CLERK** (presenter: Terry Andrews)  
**APPROVAL OF COUNCIL MINUTES**  
**Motion to approve Council minutes from the December 11, 2012 study session and the December 18, 2012 regular meeting**  
 This is an administrative action. This item is on the regular agenda as not all Councilors were present at the meetings
10. **ECONOMIC DEVELOPMENT** (presenter: Cindy Mackin)  
**SUPPLEMENTAL APPROPRIATION – PRO CYCLE CHALLENGE**  
**Motion to approve and order published on first reading an ordinance on first reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for costs associated with hosting the US Pro Cycling Challenge event**  
 This is an administrative action. The ordinance appropriates funds of \$100,000 associated with hosting the US Pro Cycling Challenge event. The funding is from reserves in the Lodging Tax Fund and reduces the flexibility for funding other future events or programs.
11. **AIRPORT** (presenter: Jason Licon)  
**PUBLIC HEARING**  
**SUPPLEMENTAL APPROPRIATION – 2013 AIRPORT BUDGET REALIGNMENT**  
**Motion to approve and ordered published on first reading an ordinance enacting a supplemental budget and appropriation to the 2013 Ft. Collins-Loveland Municipal Airport budget to realign the budget due to the loss of commercial service**  
 This is an administrative action. The ordinance reduces the revenue and expense budget for the Airport due to the loss of commercial service. The loss of revenues associated with commercial service requires a reduction in the operating for the Airport.
12. **CITY MANAGER**  
**COUNCIL PROCEDURAL CHANGE** (presenters: John Duval / Bill Cahill)  
**Motion to approve Resolution #R-5-2013 establishing the Rules of Procedure for City Council Meetings**  
 This is an administrative action as authorized in City Charter Section 4-1(a) to adopt by resolution rules of procedure for City Council meetings.
13. **FINANCE**  
**NOVEMBER 2012 FINANCE REPORT** (presenter: Brent Worthington)  
 This is an information only item. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending November 30, 2012.
14. **CITY MANAGER** (presenter: Alan Krcmarik)  
**INVESTMENT REPORT FOR NOVEMBER 2012**  
 This is an information only item. The budget estimate for investment earnings for 2012 was \$2,729,560. Through November 2012, the amount posted to the investment account is \$2,334,153 including realized gains. Actual year-to-date earnings are lower than the year-to-date projection by \$159,945. Based on the monthly statement, the estimated

annualized yield on the securities held by USBank was up from last month 1.24%, well under the annual target rate of 1.70% for 2012. Reinvestment rates are near record low levels, much lower than the budget projection.

15. **CITY MANAGER**  
**Proposed Executive Session concerning Klen v. City of Loveland lawsuit**

**ADJOURN**



**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:** 1/15/2013  
**TO:** City Council  
**FROM:** City Manager's Office  
**PRESENTER:** Bill Cahill

**TITLE:**

Appointments to Citizens' Finance Advisory Commission, Creative Sector Development Advisory Commission, Cultural Services Board, Library Board, Open Lands Advisory Commission, Parks and Recreation Commission, Police Citizen Advisory Board, Senior Advisory Board, and Visual Arts Commission

**RECOMMENDED CITY COUNCIL ACTION:**

Motion to appoint Richard Ball and Meg Corwin and to reappoint Jodi Radke to the Citizens' Finance Advisory Commission, each for a three year term effective until December 31, 2015.

Motion to appoint Mary Bahun-Meyer and Aloria Weaver to the Creative Sector Development Advisory Commission ("CSDAC"), each for a partial term effective until December 31, 2013.

Motion to appoint Curtis Rowland as an Alternate member of the CSDAC for a term effective until December 31, 2013.

Motion to reappoint Teresa Mueller and Kris Ortmann to the Cultural Services Board, each for a four year term effective until December 31, 2016.

Motion to reappoint ShawnaLee Washam to the Library Board for a five year term effective until December 31, 2017.

Motion to appoint Ross Livingston to the Open Lands Advisory Commission for a term effective until December 31, 2016.

Motion to appoint Jim Roode as an Alternate member of the Open Lands Advisory Commission for a term effective until December 31, 2013.

Motion to appoint Deb Huffsmith to the Parks and Recreation Advisory Commission for a partial term effective until December 31, 2014.

Motion to reappoint Gene Alvine, Deborah Manderscheid, and Leighton Millar to the Parks and Recreation Advisory Commission, each for a full term effective until December 31, 2015.

Motion to reappoint Beverly Cardarelli and Dennis Soucek and to appoint Tony Adams to the Police Citizen Advisory Board, each for a term effective until December 31, 2015.

Motion to appoint Mark Kirkpatrick as an Alternate member on the Police Citizen Advisory Board for a one-year term effective until December 31, 2013.

Motion to appoint Kim Ferro to represent the Aspen Club / Senior Services (University Colorado Health) on the Senior Advisory Board for a term effective until January 15, 2015.

Motion to appoint Doug East to represent the Chilson Senior Advisory Board on the Senior Advisory Board for a term effective until January 15, 2015.

Motion to reappoint Sherri Heckel-Kuhlman, Greg Hoff, and Margaret Rosborough and to appoint Judy O'Gorman to the Visual Arts Commission, each for a three term effective until December 31, 2015.

**OPTIONS:**

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

**DESCRIPTION:**

This is an Administrative Item recommending appointment of members to the Citizens' Finance Advisory Commission, Creative Sector Development Advisory Commission, Cultural Services Board, Library Board, Open Lands Advisory Commission, Parks and Recreation Commission, and Visual Arts Commission

**BUDGET IMPACT:**

- Positive
- Negative
- Neutral or negligible

**SUMMARY:**

**Citizens' Finance Advisory Commission** ("CFAC") has three term vacancies that expired 12/31/12. Interviews were conducted December 12, 2012 and December 17, 2012. The committee recommends the appointment of Richard Ball and Meg Corwin and the reappointment of Jodi Radke to CFAC for terms effective until December 31, 2015.

Two members resigned from the **Creative Sector Development Advisory Commission**, Leah Johnson and Kim Wheeler. Interviews were held with four applicants. The committee recommends the appointment of Mary Bahun-Meyer (formerly serving as an Alternate) and Aloria Weaver to the Creative Sector Development Advisory Commission, each for a term effective until December 31, 2013. Curtis Rowland is recommended for appointment as an Alternate to the commission for a term effective until December 31, 2013.

**Cultural Services Board** ("CSB") had two term vacancies as of December 31, 2012. The Fall Recruiting Cycle resulted in two applications from incumbents Teresa Mueller and Kris Ortmann. The board recommends the reappointment of both Ms. Mueller and Ms. Ortmann to CSB, each for a four year term effective until December 31, 2016.



The **Library Board** had one term vacancy to recruit for during the Fall cycle. One incumbent applied for reappointment. The members of the interview committee recommend the reappointment of ShawnaLee Washam to the Library Board for a five year term effective until December 31, 2017. Due to a Library Board member's resignation effective November 30, 2012, recruiting continues for a partial term member.

Ross Livingston is recommended for appointment to the **Open Lands Advisory Commission** for a term effective until December 31, 2016. Jim Roode is recommended for appointment as an Alternate member of the Open Lands Advisory Commission for a one-year term effective until December 31, 2013.

Deb Huffsmith is recommended for appointment to the **Parks and Recreation Commission** for a partial term effective until December 31, 2014. Gene Alvine, Deborah Manderscheid, and Leighton Millar are all recommended for reappointments to the Parks and Recreation Advisory Commission, each for a term effective until December 31, 2015.

Interviews were held for three term vacancies on the **Police Citizen Advisory Board** ("PCAB".) The committee recommends the reappointment of Beverly Cardarelli and Dennis Soucek and the appointment of Tony Adams to the board, each for a three year term effective until December 31, 2015. Mark Kirkpatrick is recommended for appointment as an Alternate member on PCAB for a one-year term effective until December 31, 2013.

Section 2.60.240 **Senior Advisory Board** of the Municipal Code states:

A. There is established a senior advisory board consisting of fifteen members. Nine members shall be appointed by the city council to serve terms of three years. Six members shall be nominated by the senior advisory board, and approved by the city council, to serve terms of two years. These six members shall consist of one at large member, and one member from each of the following organizations: Chilson Senior Advisory Committee, Housing Authority of the City of Loveland, Colorado, McKee Senior Services, the Poudre Valley Hospital Aspen Club, and the McKee Medical Center Seasons Club. (Ord. 5665 § 1, 2012; Ord. 5449 § 1, 2009; Ord. 5481 § 1, 2010)

Doug East has been recommended for reappointment to represent the Chilson Senior Advisory Board. The Senior Advisory Board approved this recommendation for a two year term effective until January 19, 2015.

Kim Ferro has been recommended for reappointment to represent the Aspen Club / Senior Services Department for the (formerly known as ) Poudre Valley Health Systems. The Senior Advisory Board approved this recommendation for a two year term effective until January 19, 2015.

Poudre Valley Hospital has, by merger, become the University of Colorado Health and the Poudre Valley Hospital/Aspen Club has accordingly become UCH Aspen Club / Senior Services. An ordinance amending Section 2.60.240 of the Loveland Municipal Code will be presented to City Council on first reading at the February 19, 2013 meeting.

The **Visual Arts Commission** ("VAC") had four term vacancies as of December 31, 2012. During the Fall Recruiting, applications were received from two incumbents. Another member, Greg Hoff, was appointed to a partial term on August 31, 2012. This term expired 12/31/12. Per the "Handbook for Boards and Commissions:" Any person who has served less than 50% of a full term will be eligible for consecutive reappointment for a full term, pursuant to the following process: 1. 90 days prior to the partial term expiration, a letter will be sent by the City Manager's Office to the member advising the member that he or she must notify the City Manager's Office in writing within 15 days of the date of the letter if the member desires to be reappointed to the board or commission. If the member provides such notification and if the member remains otherwise eligible to serve on the board or commission, the member shall be recommended to the City Council for reappointment without the need for solicitation of applicants and interviews."

Mr. Hoff was sent notification and responded to the City Manager's Office that he desires to be reappointed to the commission. The commission recommends the reappointment of Greg Hoff to the Visual Arts Commission for a three term effective until December 31, 2015. A subsequent application was received and Judy O'Gorman is recommended for appointment to the Visual Arts Commission for a term effective until December 31, 2015.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

None



**CITY OF LOVELAND**  
CITY CLERKS OFFICE

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2322 • FAX (970) 962-2901 • TDD (970) 962-2620

**AGENDA ITEM:** 2  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Terry Andrews, City Clerk  
**PRESENTER:** Terry Andrews

**TITLE:**

Motion approving Resolution #R-1-2013, establishing the location for the posting of City of Loveland notices for 2013.

**RECOMMENDED CITY COUNCIL ACTION:**

Approve 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 action. Approval of the Resolution will designate the bulletin board immediately adjacent to the Loveland City Council Chambers located at 500 East 3rd Street, City of Loveland, Colorado, as the location for the posting for all of the City of Loveland's written notices in the year 2013. The Resolution also designates the City's Fire Administration Building as an Emergency Posting location if the primary designated location becomes inaccessible or is no longer in existence due to natural disaster or other similar cause.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

C.R.S. Section 24-6-402(2)(c), requires City Council to designate a location for the posting for all of the City of Loveland's written notices. Due to its proximity to the City Clerk's Office and the Council Chambers, the bulletin board immediately adjacent to the Loveland City Council Chambers located at 500 East 3<sup>rd</sup> Street, City of Loveland, Colorado, has been used in preceding years and staff is recommending the same

location for 2013. Boards and Commission meeting notices would be posted at this location as well. Staff is also recommending that an alternative posting location for official notices also be identified in this Resolution, in the event the primary location is inaccessible or not in existence due to natural disaster or other similar cause. This alternative location will be the foyer of the City's Fire Administration Building.

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**REVIEWED BY CITY MANAGER:** *William D. Cabell*

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**LIST OF ATTACHMENTS:**

Resolution

**RESOLUTION #R-1-2013**

**A RESOLUTION ESTABLISHING THE LOCATION FOR THE  
POSTING OF CITY OF LOVELAND NOTICES FOR 2013**

**WHEREAS**, City Charter Section 4-4(b) requires that the notice of each regular and special City Council meeting shall be posted at least twenty-four hours in advance of the meeting; and

**WHEREAS**, under C.R.S. Section 24-6-402(2)(c) a local public body is deemed to have given full and timely notice of its meetings if the meeting notice is posted in a designated public place within the local public body's boundaries no less than twenty-four hours prior to the holding of the meeting; and

**WHEREAS**, C.R.S. Section 24-6-402 (2)(c) further provides that the public place for posting such notice shall be designated annually by the local public body at its first regular meeting in each calendar year; and

**WHEREAS**, City Council meetings are held in the Council Chambers located at 500 E. 3<sup>rd</sup> St, immediately adjacent to the City Clerks Office.

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

**Section 1.** The City Council hereby designates the place for the posting of all meeting notices for the Loveland City Council and Loveland's Boards and Commissions to be the bulletin board immediately adjacent to the Loveland City Council Chambers located at 500 East 3<sup>rd</sup> Street, City of Loveland, Colorado.

**Section 2.** In the event the designated posting location is not accessible or in existence due to natural disaster or other similar cause, the emergency posting location will be in the foyer at the City's Fire Administration Building located at 410 E. 5<sup>th</sup> Street, Loveland, Colorado.

**Section 3.** This Resolution shall go into effect on the date and time of its adoption.


ADOPTED this 15<sup>th</sup> day of January, 2013.

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

ATTEST:

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

APPROVED AS TO FORM:



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City Attorney



**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:** 3  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Mike Scholl, Economic Development  
**PRESENTER:** Mike Scholl

**TITLE:**

1. An ordinance of the Loveland City Council authorizing a Disposition and Development Agreement among the City, the Loveland Urban Renewal Authority, and 541 N. Lincoln L.L.C. and conveyance of Lots 1 through 8, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado for the development of the North Catalyst Project at 541 N. Lincoln in Loveland, Colorado
2. An ordinance adopting a supplemental budget and appropriation to the 2013 City of Loveland budget for a loan to the Loveland Urban Renewal Authority in connection with the North Catalyst Project at 541 N. Lincoln in Loveland, Colorado
3. An ordinance enacting a supplemental budget and appropriation to the 2013 Loveland Urban Renewal Authority budget to fund payments to the Developer of the North Catalyst Project at 541 N. Lincoln, Loveland, Colorado for public improvements

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the second reading ordinances as recommended.

**OPTIONS:**

1. Adopt the actions as recommended
2. Deny the actions
3. Adopt modified actions (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 combined actions would provide the final approval of the Development and Disposition Agreement for the sale of the property located at 541 N. Lincoln Street and the appropriations necessary to facilitate the construction of a \$9.3 million, 69 unit market rate housing development in Downtown Loveland by the Brinkman Partners of Fort Collins acting through its investment entity 541 N. Lincoln L.L.C. The Brinkman/North Catalyst project is the result of both extensive planning by the City and two years of negotiations with the

Brinkman Partners. (See the Staff Report for details) On December 18, 2012 City Council unanimously approved the first reading of the ordinances.

**BUDGET IMPACT:**

- Positive
- Negative
- Neutral or negligible

The City will loan the Loveland Urban Renewal Area \$1.5 million for public improvements included in the Brinkman project.

**SUMMARY:**

The Brinkman Partners responded to the City issued Downtown Request for Proposals (RFP) in April of 2011 to develop the site at 541 N. Lincoln Avenue (formerly the Home State Bank building). The site was called out in the RFP as a development opportunity. As part of the effort, the Finley's Addition Urban Renewal Plan and Plan Area will be modified to include the project site and additional properties, and to permit LURA to retain incremental tax revenue from sales taxes in addition to property taxes, in order to assist with the financing of the project. By expanding the Finley's Addition Plan Area, the combined tax increment from the Lincoln Place Urban renewal area and the Brinkman/North Catalyst project will fund the public improvements for the catalyst project, predevelopment costs, and repay the City for the purchase of 541 N. Lincoln.

On December 6, 2011, Council approved Resolution #R-85-2011 approving a minor modification to the Downtown Urban Renewal Plan to remove the project site and other properties from the Downtown Plan Area conditioned on approval of a resolution approving a major modification to the Finley's Block Urban Renewal Plan to add them to the Finley's Block Plan Area. LURA approved Resolution #R-86-2011 commissioning a Blight Study for such properties on the same date.

On December 18, 2012, Council approved Resolution #R-93-2012, which included findings of blight and approved the substantial modification of the Block 41-Finley's Addition Urban Renewal Plan to include the properties in the Finley's Block Plan Area. On that date, Council also approved on first reading the Ordinance approving the sale of the 541 N. Lincoln property pursuant to the Development and Disposition Agreement and LURA adopted a resolution approving that Agreement.

At the Council's direction, the Development and Disposition Agreement has been modified to reflect that the final payment of costs for public improvements shall be paid after a certificate of occupancy, rather than a letter of completion, has been issued. These modifications are included in Sections 18.1, 18.7, 18.8 and 19.1.2 of the Agreement attached to the Ordinance, and in Sections 15 and 18 of Schedule D to that Agreement.



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REVIEWED BY CITY MANAGER:

*William D. Cahill*

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**LIST OF ATTACHMENTS:**

1. Staff report
2. Ordinances (3)
3. Financial projections
4. Maps



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**MEMORANDUM**

**To:** Loveland City Council  
**From:** Mike Scholl, Economic Development Manager  
**Date:** January 10, 2013  
**RE:** Staff Report/Brinkman Project/Finley’s Block URA amendment

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## Introduction:

The project under consideration is for a \$9.3 million, 69-unit mixed-use development project at 541 N. Lincoln Avenue in Downtown Loveland in partnership with Brinkman Partners of Fort Collins Colorado. The negotiations and the agreement were done at the direction of City Council and guided by planning documents previously approved by City Council. The documents include the *Downtown Strategic Plan*, *Downtown Vision Book*, *Downtown Request for Proposals* and the *Downtown Urban Renewal Area Plan and Block 43 – Finley’s Addition Urban Renewal Area Plan*, which are reviewed in greater detail in this report.

The City Council will be asked to consider four actions so that this project can go forward. They include:

- Resolutions
  - a major amendment, including a finding of blight and adding the four parcels to the Block 43 – Finley’s Addition URA Plan Area
- Ordinances
  - supplemental appropriation
  - authorizing the sale of City property pursuant to the terms of the Disposition and Development Agreement

In addition, Council will be asked to consider the following actions acting on behalf of the Loveland Urban Renewal Authority (LURA):

- LURA – resolution approving the Disposition and Development Agreement, including borrowing of funds from the City and pledge of tax increment to repay City costs
- LURA – supplemental appropriation ordinance

The 2<sup>nd</sup> reading of the three Ordinances is tentatively scheduled for Tuesday, January 15, 2013.

**Project Details**

Direct cash Investment relative to project cost:

Total Project Cost: \$9.3 million  
 Cash to developer: \$1.55 million

Investment including the property discount:

Total Project Cost/w property \$10.1 million  
 Cash \$1.55 million  
 Property \$900,000

**Total Private Investment: \$7,750,000**

Total Public Participation as a cash investment 16%  
 Total Public Participation with property discount 24%

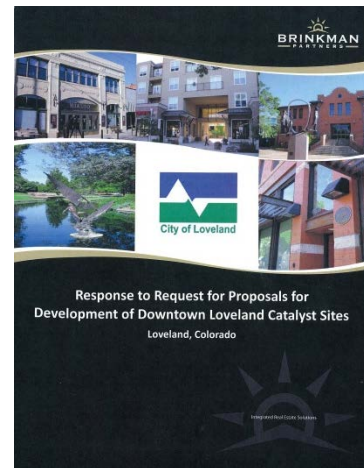
Building Size: ~64,000 square feet

Total Number of Units: 64 units+  
5 live work  
 69 total units



## Background:

On April 7, 2011, the Brinkman Partners submitted a formal response to the City's Downtown Request for Proposals (Downtown RFP) to develop the site at 541 N. Lincoln (Home State Bank Building). The RFP was issued on January 12, 2011. The Brinkman Partners were granted a non-binding exclusive right to negotiate (ERN) with the City to be the developer for 541 N. Lincoln. The term of the ERN was for 90 days and expired on July 25, 2011. At the time, there was a sense of urgency to complete the agreement to take advantage of historically low interest rates. Once it became apparent that the rates would remain low, the sense of urgency diminished and staff continued negotiations.



During the course of negotiations, it became apparent to staff that, as part of the deal, the City or developer would need to reimburse the Cultural Services CEFs for the \$1.1 million acquisition price on the Home State Bank building. The CEF reimbursement included the \$200,000 donated to the City by two local foundations (Kroh and Erion). On August 16, 2011, staff brought a motion before City Council to prepare a blight study and amendment to the Block 43 Finley's Addition Urban Renewal Project Area (Lincoln Place URA) that would add the 541 N. Lincoln to the project area for purposes of facilitating the development deal with the Brinkman Partners. Council voted unanimously to proceed and directed staff to work with Larimer County. At the August meeting, Council directed staff to continue negotiations with the Brinkman partners.

On December 6, 2011, Council acting as the Board of the Loveland Urban Renewal Area approved Resolution #R-86-2011 authorizing commission of a blight study of the parcels to be added to the Block 43-Finley's Addition Plan Area, and approved a minor modification to the Downtown Urban Renewal Area Plan to remove such parcels from the Downtown Plan Area contemporaneously with and conditioned upon the City Council's future approval of the substantial modification of the Finley's Addition Plan Area to include these parcels. Council approved these resolutions by a vote of 6 to 2. (*The URA amendment and the discussion with Larimer County are discussed in greater detail in later sections of the report.*)

On December 6, 2011, staff also brought a motion before Council to approve a binding ERN with Brinkman Partners that ran through May 25, 2012. Negotiations continued with the Brinkman Partners through this year, a Term Sheet was agreed upon by the Brinkman Partners in June, shortly after the expiration of the ERN. Following the approval of the Term Sheet, legal documents were drawn up and reviewed by both parties as well as the Brinkman Partners' investment group, Woodbury Strategic Partners Fund, L.P out of Salt Lake City, Utah.

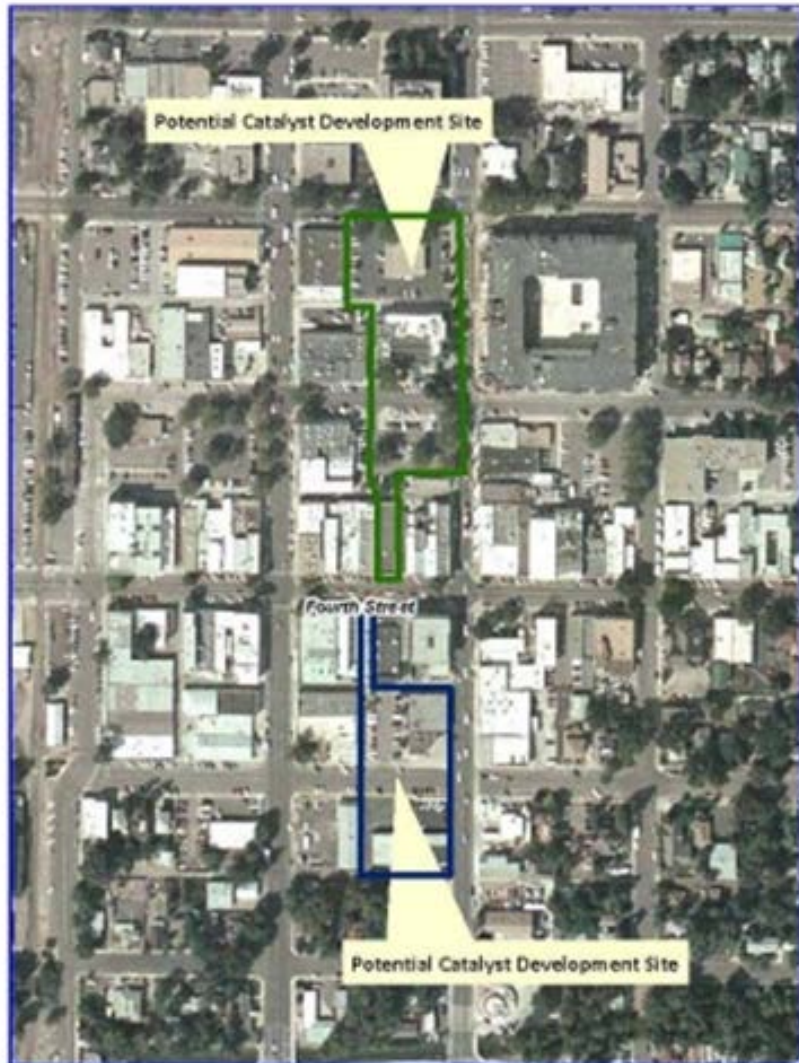
Further, in anticipation of starting the project quickly if approved by Council, Brinkman Partners has begun the process of site plan approval with the City's development review team. Staff cautioned that any expense related to the review borne by the Brinkman Partners' at this phase will not be reimbursed if the City Council does not approve the Development Agreement.

### History and Process

The City of Loveland’s recent efforts to revitalize the Downtown Commercial District include the creation of the *Urban Renewal Authority Downtown Project Area* in 2002, the inclusion of the Downtown in the Comprehensive Plan of 2005, the Lincoln Place Development in 2007 and the adoption of the *Downtown Strategic Plan* in August of 2009 as an amendment to the Comprehensive Plan.

### Downtown Strategic Plan

The *Downtown Strategic Plan* calls for increasing housing density and jobs to help drive retail and other services in the Downtown. Further, the *Downtown Strategic Plan* approved by Council calls out 541 N. Lincoln as a “Potential Catalyst Development site” (p. 69).



The proposed development is consistent with the approved *Downtown Strategic Plan* and helps advance a number of the critical goals included in the plan. The *Downtown Strategic Plan* goals and Action items are detailed in the table below:

Plan Goal/Action Items	How the project advances Strategic Goals
<p><b>Goal #1:</b> <i>Maintain and enhance the economic vitality of Downtown through private/public partnerships.</i></p> <p><b>Action Items:</b></p> <ul style="list-style-type: none"> <li>• <i>Identify and support strategic to increase Downtown density and improve the climate for employment.</i></li> <li>• <i>Improve the public infrastructure and use investments to leverage private investments.</i></li> </ul>	<ul style="list-style-type: none"> <li>• The City is entering into a private/public partnership with the Brinkman Partners, an experienced and successful developer in the Front Range.</li> <li>• If the development is approved and successful, the Brinkman Partners have signaled to the staff that they are interested in additional projects in Downtown Loveland.</li> <li>• The project will increase the density in Downtown and improve the climate for retail businesses.</li> <li>• The City is also investing \$1.5 million in public improvements that will result in \$7.75 million in private investment in Downtown.</li> </ul>
<p><b>Goal #2:</b> <i>Identify funding gaps to project development and structure tools to fill the gaps and achieve development.</i></p> <p><b>Action Items:</b></p> <ul style="list-style-type: none"> <li>• <i>Identify funding method to fill the funding gaps including equity contributions of land and site improvements that include parking.</i></li> <li>• <i>Strategically use Tax Increment Financing to incent catalyst projects.</i></li> <li>• <i>For catalyst projects, seek opportunities for streamlined development approvals and fee waivers.</i></li> </ul>	<ul style="list-style-type: none"> <li>• With City control of the land, a portion of the land equity is being contributed to help facilitate the project.</li> <li>• Equity contribution of the land and public improvements are being reimbursed to the city through Tax Increment financing through the Urban Renewal Authority.</li> <li>• The City has been working directly with the Brinkman Partners on a streamlined permit approval process.</li> </ul>
<p><b>Goal #4:</b> <i>Identify strategic catalyst projects that will significantly improvement the economic conditions in Downtown.</i></p> <p><b>Action Items:</b></p> <ul style="list-style-type: none"> <li>• <i>Increase the housing density to a level commensurate with the existing zoning, 25 units per acre. The current housing density is approximately two units per acre for the core of Downtown.</i></li> <li>• <i>Assemble smaller parcels for the purpose of creating denser vertical buildings in Downtown.</i></li> </ul>	<ul style="list-style-type: none"> <li>• The project will add up to 69 new units of housing in the Downtown on approximately 0.6 acre, increasing housing density in the Downtown.</li> <li>• The residents of the development will be customers of Downtown businesses, helping to improve the climate for retail.</li> <li>• The project will be a five stories and approximately 64,000 square feet.</li> </ul>

The *Downtown Strategic Plan* also lists a number of tools in the Implementation Tools section (p. 77). The section begins with the following:

“Implementation tools identify the sources of financing that can be used to leverage investment in Downtown Loveland. The intent is to highlight the multiple sources of funding both to the City, and to potential investors as they reach out to developers to solicit input. It is anticipated that any development package would likely require separate approval by the City Council.”

The tools identified in the plan include Public Infrastructure investments (p. 78), Land Assemblage/Equity Investments (p. 79), Tax Increment Financing (p. 81) and Fee Waivers (p. 82). There have been questions about why the City is approaching the project as it has. The “tools” section of the plan demonstrates that the City’s approach so far is in keeping with the *Downtown Strategic Plan*.

### Downtown Vision Book

Following the approval of the *Downtown Strategic Plan*, staff began implementing the plan. This includes proactively marketing the Downtown district (Downtown Strategic Plan, Goal #6).

City Council approved a proposal and appropriation to engage a team of consultants (TST Engineering) to develop a Downtown Vision Book. As part of the engagement, the team hosted a four day design charrette at the Mr. Neat’s building on 4<sup>th</sup> Street. The team of consultants worked with over 80 local stakeholders including members of Council, business and property owners and interested citizens.

Through the course of those discussions with the stakeholder groups, the idea to shift the proposed museum expansion to the parking lot at 5<sup>th</sup> and Lincoln was floated and later approved as part of the *Downtown Vision Book*. By moving the museum to the south, the parcel at 541 N. Lincoln was identified as a potential development opportunity and renamed the “*North Catalyst Project*”.

p. 27 of the *Downtown Vision Book*





The concept calls for a 65,000 square foot building on 4 to 5 floors, which matches the Brinkman Partners proposal almost exactly. The *Downtown Vision Book* later became the basis for the Downtown RFP.

### Downtown Request for Proposals

The Downtown RFP was considered by the City Council at a Study Session on October 26, 2010 and issued publically on January 12, 2011. At the Study Session, Council reviewed the RFP and directed staff to issue the RFP with some minor edits. Issuance was delayed until January so as not to coincide with the Christmas holiday season.

The Brinkman Partners was the only developer to respond to the RFP. Their proposal included three different options for a multi-family housing project with some street level live-work units. The options varied by the number of units that could be offered. Staff quickly ruled out the possibility of supporting structured parking on site, as the scale of the project would not be large enough to justify that level of private or public investment.

As part of the Downtown RFP, all nine members of the City Council signed the letter that was included in the RFP packet.

The letter states:

*“The City has taken the bold step of acquiring strategic properties to facilitate Downtown development. The details can be found among the pages of the RFP. In short, we are serious about revitalizing our Downtown and we are looking for the right partners to take it to the next level.”*

Despite receiving only one response, the City Council approved a Downtown Request for Expressions of Interest (RFEI) that allows developers an open and transparent process to propose projects. Staff continues to work diligently to identify and partner with interested developers.



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

Dear Prospective Investor,

We are pleased to present to you the Downtown Development Request for Proposal (RFP). The City has put a lot of effort behind this proposal and we encourage you to respond. We believe Loveland is a great place to invest and we believe that after reviewing the RFP, you will agree.

Loveland has many great virtues. The City is located in beautiful northern Colorado, the weather is mild and sunny and we're a stone's throw from the Rocky Mountains. The community is highly educated and the local economy is much stronger than the national average. We also boast a world class art community and are home to many renowned sculpture artists. Additionally, our local government is fiscally sound and in a strong position to support investment in the Downtown.

The City has also taken the bold step of acquiring strategic properties to facilitate Downtown development. The details can be found among the pages of the RFP. In short, we are serious about revitalizing our Downtown and we are looking for the right partners to take it to the next level.

On behalf of the City of Loveland, its residents and businesses, we encourage you to take a close look at our great City and the Downtown RFP. We hope to hear from you and we look forward to a bright future in Loveland.

Sincerely,

 Cecil Gutierrez, Mayor	 Larry Heckel, Mayor Pro-Tem
 Daryle Klassen, City Council Ward I	 Donna Rice, City Council Ward I
 Carol Johnson, City Council Ward II	 Joan Shaffer, City Council Ward II
 Kent Solt, City Council Ward III	 Hugh McKean, City Council Ward III
 Cathleen McEwen, City Council Ward IV	

## Project Description and Schedule

The Brinkman Partners has formed a single-purpose LLC (541 N. Lincoln, L.L.C., a Utah limited partnership) that will contract with the City and LURA to build 69 units of market rate, multi-family housing (referred to as the Project). Five units at ground level along Lincoln Avenue would be “live-work” units, which will allow the project to be considered “mixed-use,” for planning and zoning purposes.

A “*Schedule of Performance*” is included in the DDA agreement under Exhibit D. Under the agreed upon schedule, the City reserves the right to review developer financing and facade. The façade review will include one public meeting to review the designs and receive feedback. This exceeds our current site plan and building permit review requirements. City staff will conduct the public meeting with the developer’s design team.

In addition, the developer will be working with the City’s Water and Power Department and the Platte River Power Authority to identify opportunities for greater energy efficiency.

The schedule (outlined in greater detail in the **Development and Disposition Agreement - Exhibit D**):

<b>Effective Date (Council final approval of the DDA)</b>	<b>(tentatively) January 29, 2013</b>
<b>Total Period of Due Diligence</b>	<b>180 days from effective date</b>
Developer Submission of Conceptual Drawings for public review	<b>30 days from effective date</b>
Developer Submission of Construction Drawings for review	<b>120 days from effective date</b>
Approval of Construction Drawings	<b>10 days from submission</b>
Developer Submission of Applications for Site Development Plan and Building Permit	<b>10 days from approval of Construction Drawings</b>
Review and Approval of Developer Financing	<b>Within 5 days of receipt of Financing Package</b>
Closing	<b>14 days from issuance of a building permit</b>
Commence Construction	<b>45 days after receipt of the building permit</b>
Performance Payment #1 (not to exceed \$500,000)	<b>Upon receipt of invoices and field verification</b>
Performance Payment #2	<b>Upon receipt of invoices, letter of completion façade easement and field verification</b>

If Council were to approve the DDA on second reading at the January 15, 2013 Council meeting, staff would expect the developer to break ground no later than August/September of 2013. However, the developer’s design team and the City’s review team have started the preliminary review process and the project may begin as early as spring of 2013.

## Development and Disposition Agreement

The Development and Disposition Agreement is the legal document that guides both the sale of 541 N. Lincoln to the Brinkman Partners, and the development of the property.

### *541 N. Lincoln, L.L.C./Developer*

- Developer agrees to obtain all necessary building permits, financing and other items to complete the project
- Developer agrees to complete the construction of the project outlined in Exhibit B no later than 18 months after the building permit is issued
  - Not less than 50 units of market rate housing on no less than 4 stories
  - Parking at grade
- Developer agrees to guarantee a minimum of \$52,000 per year in tax increment to the LURA until the City is repaid (*payments are projected to begin in 2014*)
  - The developer agrees to an assessed valuation that will generate no less than \$52,000 in tax increment (*section 18.9*)
  - For example, if the project generates only \$40,000 in tax increment, the developer must pay the City \$12,000 (\$52,000 expected minus \$40,000 received = \$12,000)
  - The Tax Increment is also secured by the Completion Guarantee
- Developer agrees to issue LURA a façade easement to expire on September 2027
  - Requires the building owner to maintain the facade
  - Seek approval from LURA for any significant alterations to the façade
- Upon sale, the developer agrees to share with the City 25 percent of the net proceeds following the receipt of a 20 percent Internal Rate of Return by the investor and normal closing costs. (*Section 18.8 and Exhibit H – Net Sales Proceeds Calculation – Illustration*)
  - The provision expires if the Brinkman Partners maintains ownership of the property for 20 years from the issuance of the letter of completion
- The developer is also obligated to insure the project and list the City as an additional insured party. Should something unforeseen occur (Fire or other natural disaster), the developer is obligated to “restore and reconstruct the Project.” (*Section 18.10*)
- The developer will be considered in default if it (*Section 18.1*)
  - Fails to commence and pursue construction within the timeframes set by the DDA
  - Abandons or substantially suspends construction for a period of 90 days after written notice from the City
  - Fails to obtain a letter of completion as required in the DDA

### *City of Loveland*

- The City agrees to sell the property to Brinkman Partners for \$200,000 which includes:
  - All existing water taps;
  - The structure, building, improvements and fixtures on or attached to the site; and
  - Any personal property not removed by the City
- The City agrees to loan LURA \$1.5 million for public improvements on the project site

- Eligible public improvements are listed in *Exhibit B & B-1 – General Description of North Catalyst Project*
- Developer will receive partial payment for site work and full payment upon receipt of letter of completion
- The City agrees to a \$50,000 materials use tax waiver
  - LURA will reimburse the City for the materials use tax waiver ***from tax increment after satisfaction of the Lincoln Place MFA***

#### LURA

- LURA agrees to reimburse the developer for public improvements not to exceed \$1.5 million
  - LURA will repay the City at 3 percent annually for all obligations
  - Up to \$500,000 in public improvement costs will be paid as the work is completed and accepted by the City; the remainder or \$1M will be paid upon issuance of a letter of completion for the building
- LURA agrees to reimburse the City for the following from tax increment after satisfaction of the Lincoln Place MFA
  - \$50,000 materials use tax waiver
  - \$11,500 phase II Environmental Study (*Exhibit C - #4*)
  - \$3,500 URA blight study and plan amendment
- LURA agrees to reimburse the City/Cultural Services CEFs \$900,000 for the bargain sale price on 541 N. Lincoln
  - Original purchase price \$1.1 million - \$200,000 from sale = \$900,000

#### Completion Guarantee

Woodbury Strategic Partners Fund L.P., a Utah limited partnership, will guarantee developer's completion of the project, repayment of any portion of the public improvements incentive paid during construction if the project is not completed, and any portion of the minimum annual tax increment of \$52,000 per year not paid by the developer as required by the Agreement.

#### Other Practical Considerations

Payment for public improvement costs will not start until substantial site work has been completed and then only as the agreed upon public improvements are completed, up to a maximum of \$500,000. Further, full payment for the public improvement costs will not be made until letter of completion. If the developer fails to commence construction, the developer will not receive any funds from LURA.

### Block 41 – Finley’s Addition (Lincoln Place) URA/Amendment

Staff is proposing to amend the City of Loveland Urban Renewal Plan for Block 43-Finley’s Addition (Finley’s Addition Plan) include four additional parcels and specified right of way within the Finley’s Addition Plan Area. The parcels include 541 N. Lincoln (Brinkman Project), the Larimer County Building, the Loveland Museum and the City-owned parking lot at 5<sup>th</sup> and Lincoln. The area also includes all rights of way along 5<sup>th</sup> and 6<sup>th</sup> Streets and the alley.

The Council will be asked to hold a public hearing and make a finding that the parcels proposed for inclusion in the Finley’s Addition Plan Area meets the statutory requirements of blight. This is required by state law to approve the amendment.



The amendment would allow the Tax Increment collected by LURA in the Finley’s Addition Plan Area to be added to the anticipated Tax Increment from the Project. The combined Tax Increment would fund the public improvements for the Project, repay the use tax waiver, repay the City for other costs of the transaction and reimburse the Cultural Services CEFs for the purchase of the Home State Bank building. The amendment would also add the sales tax to the tax increment LURA is authorized to retain and expend for urban renewal projects within its boundaries. This was done at the request of Larimer County.

### Finley's Addition (Lincoln Place) Plan Area/History:

The City, in partnership with the owner of the property at 6<sup>th</sup> and Lincoln, issued an RFP for development that resulted in the Lincoln Place mixed-use project. Initially, the City had agreed to invest over \$3 million in the project largely to cover the cost of the parking. In exchange, some of the parking spaces were to become public parking for the benefit of the Downtown district. The investment was to be financed using the Tax Increment (both the sales tax and property taxes) from the Lincoln Place project.

Because of the cost of the Lincoln Place project, staff including the Legal Department, the developer and the City's bond council, decided that it should be carved out of the Downtown Plan Area and into its own URA plan area. This would allow **all** of the Tax Increment from the Lincoln Place project and for the full term of the URA to be redirected back into the project, ensuring repayment.

However, prior to the completion of the Lincoln Place project, the original developer, Terry O'Connor of the O'Connor Group died unexpectedly. His heirs, interested in converting Lincoln Place to a condominium project over time, asked to renegotiate the deal with the City. The new deal, approved by Council in 2007, called for roughly \$900,000 in public improvements with no public parking.

Had this been the original deal, the Lincoln Place project could have gone forward without the need to create the separate it from the Downtown Plan Area. The renegotiated plan also excluded the sales tax from the increment to be retained because the anticipated increment from the property tax would be more than sufficient to fund the public improvements. In hindsight, if the Lincoln Place project had been left in the Downtown Project area, there would be no need for a plan amendment today.

Regardless, the Lincoln Place Plan Area is inextricably linked to the Downtown Plan Area. When the Lincoln Place Plan Area was created, on the advice of the City's bond counsel, it was created as a Plan Area under the LURA and is subject to the term already established for the LURA and applicable to the Downtown Plan Area. Thus, the Lincoln Place Plan will sunset in 2027 at the same time as the Downtown Plan.

In addition, language was included in the Lincoln Place Plan amendment that refers back to the goals listed in the Downtown Plan. It states, *"The City and the Authority desire to develop a catalyst project, as that term is described and defined in the Downtown Urban Renewal Plan, on a parcel of property within the Downtown Plan Area ("Catalyst Project Site") and anticipate the redevelopment of the Catalyst Project site will benefit the city and the entirety of the Downtown Plan Area."*

The plan further states, *"The Authority and the City acknowledge that the Improvements are necessary to the redevelopment and will benefit the Catalyst Project Site, the Downtown Plan Area and the City."*

The Finley's Addition Plan , as approved by City Council, intended the Lincoln Place project to serve as a catalyst for development in Downtown. The amendment under consideration would allow for the return on investment from the Lincoln Place project be used to help finance the Brinkman Project as the next large catalyst project for Downtown.

**City of Loveland/Loan to LURA:**

The City will loan the LURA \$1,500,000 for the public improvements payments to the developer and LURA agrees to repay the City for the loan amount, Use Tax waiver, repayment of Cultural Services CEF Fund, and additional predevelopment expenses.

- \$1,500,000 public improvements

*(Additional obligations to be paid over time)*

- \$50,000 use tax waiver
- \$15,000 for predevelopment *(phase II environmental study & URA blight study and plan amendment)*
- \$900,000 for acquisition price of the 541 N. Lincoln Avenue

The \$900,000 repayment of the Cultural Services CEFs will reimburse the CEF fund for the cost of acquiring the building/site. The repayment schedule is shown in the attached cash flow projections as spread out over the remaining life of the Urban Renewal Authority. However, it is expected that the obligation can be repaid within 10 years. The City currently receives an aggregate return of 1.2 percent on its portfolio.

A full spreadsheet is attached as an appendix.

**Loan Terms:**

The loan amounts are split into three payments based on when the obligation is due. The second payment (\$1,000,000) will not be paid to the developer until the receipt of a letter of completion expected in 2014. The first payment to the Cultural Services CEFs will not occur until 2016. The payment was pushed out to allow for project completion and receipt of Tax Increment payments.

The DDA calls for the \$1.5M to be appropriated not later than December 31, 2013. This was a requirement of the developer (and its lender). The \$900,000 in CEFs is to be repaid by LURA from the Tax Increment at 3 percent interest.

Amount	Term/Interest	Repayment	Return
\$565,000	3%	14 years	\$ 700,243
\$1,000,000	3%	13 years	\$1,222,000
\$900,000	3%	11 years	\$ 1,070,850
<b>TOTAL \$2,465,000</b>			<b>TOTAL \$ 2,993,093</b>

**Project Financing and Appropriations:**

Staff is proposing to spread the loan over a number of different funds to limit the impact on any one fund or potential capital project. The funds will be repaid a prorated share of the annual payment from LURA plus 3 percent interest collected annually. The amount above represents the estimated total repayment if the repayment is extended to the term of the URA. If the payments were to be accelerated, the total repayment would change.

The \$50,000 materials use tax waiver is a non-cash expense that will be part of LURA’s obligation. It will be repaid to the City’s general fund at 3 percent interest.

	<b>Amount</b>	<b>Estimated Repayment</b>
Materials Use Tax Waiver (repaid to the general fund)	\$50,000	\$61,468

The \$900,000 discount on the sale price of 541 N. Lincoln is also considered a non-cash expense that will be part of LURA’s obligation. It will be repaid to the Cultural Services CEFs at 3 percent interest.

	<b>Amount</b>	<b>Estimated Repayment</b>
Cultural Services CEF	\$900,000	\$1,070,850



## Larimer County

At the August 16, 2011 City Council meeting, City Council directed staff to engage in discussion with Larimer County regarding the plan amendment and opportunities to partner with the County.

On Tuesday, November 22, 2011, City Manager Bill Cahill and Economic Development Manager Mike Scholl presented information to the Larimer County Board of Commissioners at their regular administrative meeting. The County Board expressed appreciation that the City made the effort to engage the County in advance of any amendments and indicated a general willingness to move forward with the City in partnership. The County also expressed a desire that the City include the sales tax increment as part of the Finley's Addition plan amendment.

As a result of that discussion, staff adjusted the boundaries of the amendment to the Finley's Addition plan amendment to include the Larimer County building at 6<sup>th</sup> and Lincoln. Through staff's ongoing discussion with Larimer County, the City was made aware of planned improvements to the building by the County Facilities Department. The City's Water and Power Department worked with the County on some immediate energy efficiency improvements to reduce the cost of the operating the building.

Further, the City discussed a possible investment of \$100,000 from the Finley's Addition tax increment in the County Building. This idea has now been shelved at the request of Larimer County. Instead the City staff will remain in communication with Larimer County to negotiate an agreement with the County to compensate it for additional County infrastructure and services required to serve the Project during the period of LURA's collection of tax increment from the modified plan area. This is expected to return to the Council for consideration on January 15, at the same time as the second readings of appropriations.

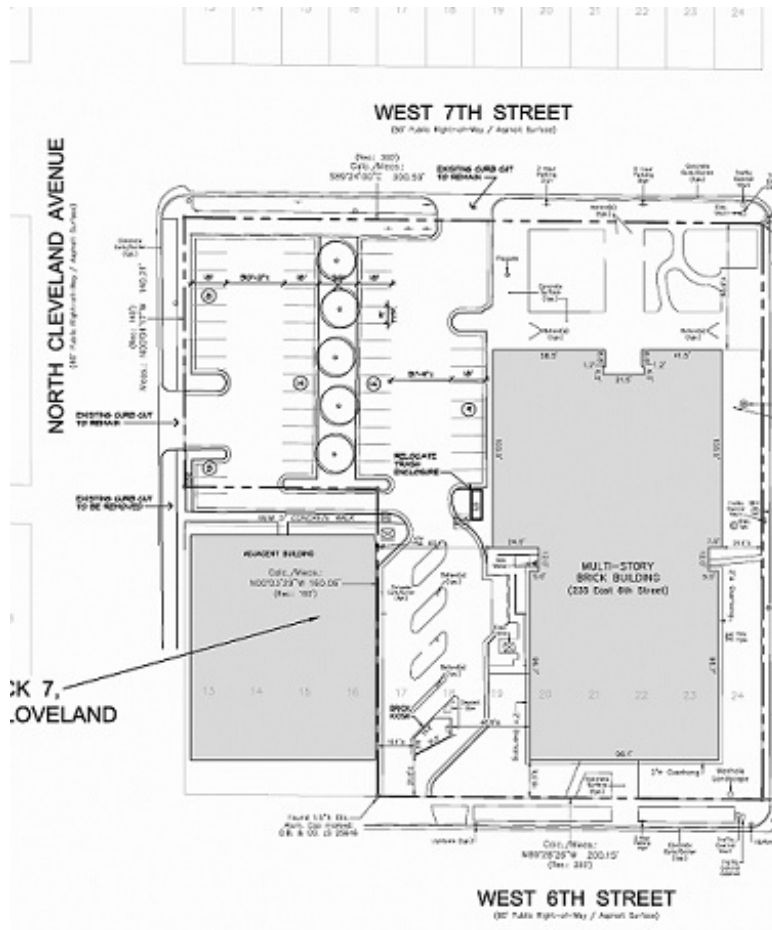
## Parking

The Project is not required by code to provide additional parking. However, at the December 6, 2011 City Council meeting, staff was directed to identify ways to offset the loss of 44 parking spaces at 541 N. Lincoln that the public has become accustomed to using.

Working with the Public Works Department, through restriping along 6<sup>th</sup> Street and Jefferson, the City added 19 additional parking spaces. In addition, a new parking lot at 4<sup>th</sup> Street and Railroad will add an additional 37 new spaces to the Downtown.

There was also a concern expressed that customers of the Larimer County building would no longer be able to park at 541 N. Lincoln. As a result, staff engaged in discussion with the private property owners to the north of the Larimer County Building.

The owners are agreeable to leasing the City or General Improvement District No. 1 (GID) a portion of the lot to be dedicated to short term parking (less than 2 hours) for use by customers of the Larimer County building in exchange for improvements to the parking lot. The design below would add approximately 25 new spaces along Cleveland Avenue that would be designated as short-term public. The spaces would be maintained by the City as part of any lease agreement.



This provides an option for more parking, should the Council desire. There is no mandate for this parking but Council may choose to add it. The estimated cost of the improvement is between \$70,000 and \$110,000 and the annual lease cost would be \$24,000 per year plus maintenance cost. The cost of the improvements to the lot would be credited as a lease payment. (If the improvements totaled \$70,000/\$24,000 = 2.9 years pre-paid or 35 months)

The improvements could be financed through a combination of GID funds, Downtown LURA Funds and perhaps a contribution from Larimer County, who would be the main beneficiary of the additional parking. The County, as a tax exempt body, does not pay taxes to the GID.

In addition, Council is separately considering an acquisition of the House of Neighborly Services Building. This may provide up to 20 parking spaces in the vicinity if Council directs.

## Conclusion

Staff recommends approval of the Development and Disposition Agreement, supplement appropriation of the necessary funds, a finding of blight and the amendment to the Block 41-Finley's Addition Urban Renewal Plan.

1. Project has substantial benefit, stimulating about \$8 million private investment in Downtown Loveland. This is the largest private investment since Lincoln Place.
2. The proposed project advances the strategic goals outlined in the approved *Downtown Strategic Plan* and the *Downtown Vision Book* and was completed at the direction of Loveland City Council.
3. The proposed project will add 69 units of market rate housing into Downtown adding new customers to Downtown business and shops strengthening Downtown retail.
4. The Brinkman Partners are interested in partnering with the City on additional projects in Downtown Loveland.
5. Revenue collected in the URA is being reinvested in the Downtown and the project will not impact the City's general fund.

**FIRST READING**      December 18, 2012

**SECOND READING**    January 15, 2013

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

**AN ORDINANCE OF THE LOVELAND CITY COUNCIL  
AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT  
AMONG THE CITY, THE LOVELAND URBAN RENEWAL  
AUTHORITY, AND 541 N. LINCOLN L.L.C. AND CONVEYANCE OF  
LOTS 1 THROUGH 8, BLOCK 12, ORIGINAL PLAT OF THE CITY OF  
LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO FOR  
THE DEVELOPMENT OF THE NORTH CATALYST PROJECT AT 541  
N. LINCOLN IN LOVELAND, COLORADO**

**WHEREAS**, the City of Loveland is the owner Lots 1 through 8, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado, which real property is also known as 541 N. Lincoln Street (the “Property”); and

**WHEREAS**, the Loveland City Council (the “Council”) created the Loveland Urban Renewal Authority, a body corporate and politic (“LURA”) by adopting Resolution #R-44-2002 on July 2, 2002 and vested with it the legal authority to exercise all the rights and power granted to urban renewal authorities by the Colorado Urban Renewal Law, C.R.S. §31-25-101, et seq. (the “Act”); and

**WHEREAS**, by adopting Resolution #R-74-2002 on October 1, 2002, Council approved the City of Loveland Urban Renewal Plan (the “Plan”) and authorized LURA to retain revenues generated by the levy of property taxes based on the incremental increase in property values (the “Tax Increment”) within the area designated as the Downtown Urban Renewal Area described therein (the “Downtown Plan Area”) until September 30, 2027; and

**WHEREAS**, by adopting Resolution #R-33-2005 on April 26, 2005, Council approved the Block 41-Finley’s Addition Urban Renewal Plan (the “Finley’s Addition Urban Renewal Plan”), created the Block 41-Finley’s Addition Urban Renewal Area (the “Finley’s Addition Plan Area”) as a plan area separate from the Downtown Plan Area, and authorized LURA to retain the Tax Increment within the Finley’s Addition Plan Area until September 30, 2027; and

**WHEREAS**, the Tax Increment within the Finley’s Addition Plan Area received prior to May 22, 2015, up to a maximum of \$917,456.00 (the “Lincoln Place Tax Increment”), has been pledged by LURA under that certain Amended and Restated Master Financing Agreement dated May 22, 2007 to facilitate completion of an urban renewal project in the Finley’s Addition Plan Area known as “Lincoln Place”; and

**WHEREAS**, the City and LURA desire to facilitate the redevelopment of the Property to

include a mixed-use commercial, live/work, and multifamily development referred to as the North Catalyst Project, and

**WHEREAS**, to facilitate the North Catalyst Project, the Council has previously approved a minor modification to remove the Property, and other specified properties, from the Downtown Plan Area and is in the process to approve a substantial modification to the Finley's Addition Urban Renewal Plan to add the Property, and the other specified properties, to the Finley's Addition Plan Area (the Finley's Addition Plan Area, the Property, and such other specified properties are collectively referred to as the "Modified Finley's Addition Plan Area") and to authorize LURA's retention of revenues generated by the City's sales taxes, in addition to revenues generated by property taxes, as a part of the Tax Increment from the Modified Finley's Addition Plan Area; and

**WHEREAS**, the City desires to convey the Property to 541 N. Lincoln, L.L.C., a Utah limited liability company ("Developer"), in return for Developer's commitment to redevelop the Property and complete the North Catalyst Project in accordance with the Disposition and Development Agreement attached as **Exhibit A** and incorporated by reference (the "Agreement"); and

**WHEREAS**, the North Catalyst Project is to be financed, in part, by the Tax Increment attributable to the Modified Finley's Addition Plan Area, which will include the Lincoln Place Tax Increment, all of which shall be used by LURA to repay a loan from the City for the cost of the public investment in the North Catalyst Project and other costs incurred in connection with the sale of the Property as set forth in Agreement; and

**WHEREAS**, after reviewing the Agreement, receiving information from the City staff, and receiving input from citizens at a public hearing, the Council has determined that the Agreement is in the best interests of the City and of its citizens; and

**WHEREAS**, LURA and the City are authorized under C.R.S. §31-25-112 to cooperate and contract with one another to pursue and accomplish urban renewal plans and projects under the Act.

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

**Section 1.** That Council hereby finds and determines that the Agreement, including the loan to LURA for the cost of the public investment in the North Catalyst Project and other costs incurred in connection with the North Catalyst Project will serve the public purposes of: (a) providing significant economic benefits to the City; (b) furthering the City's economic goals as established in the City's Economic Development Plan; (c) generally benefitting the public's health, safety and welfare; and (d) eliminating blight in the Loveland downtown area as authorized in the Act.

**Section 2.** That Council hereby finds and determines that conveyance of the Property on the terms and conditions set forth in the Agreement is in the best interests of the City and that the Property is not needed for any governmental purpose.

**Section 3.** That the Agreement, including the transfer of fee title to the Property as called for therein, is hereby approved.

**Section 4.** That the Council further approves the loan of \$1,500,000 to LURA (the “Loan”) for payment of the cost of Public Improvements (as defined in the Agreement) in an amount not to exceed \$1,500,000 to the developer of the North Catalyst Project as set forth in the Agreement in consideration of LURA’s promise in the Agreement to pay to the City all of LURA’s Tax Increment from the Modified Finley’s Addition Plan Area until the City has been paid in full for: (a) the Loan; and (b) \$965,000 for other costs of the transaction incurred by the City consisting of the City’s grant of a \$50,000 construction materials use tax waiver to the Developer as provided in the Agreement and Section 5 below, repayment of \$900,000 to the City’s Cultural Services capital expansion fee fund originally used by the City to purchase the North Catalyst Project Site, reimbursement of the City for \$15,000 in predevelopment costs it incurred for the North Catalyst Project; and (c) the financing costs as provided in the Agreement.

**Section 5.** That pursuant to and in accordance with the terms and conditions of Section 19.3 of the Agreement, the Developer is hereby granted for the North Catalyst Project a \$50,000 waiver of the City’s use tax levied in City Code Section 3.16.160 on the Developer’s construction and building materials for the Project.

**Section 6.** That the City Manager and City Clerk are hereby authorized and directed to execute, on behalf of the City, the Agreement and all other documents, the form of which has been approved by the City Attorney, as are necessary and appropriate under the Agreement to consummate the transfer of the City’s interest in the Property, perform the City’s obligations, and implement and close the transactions called for in the Agreement.

**Section 7.** That the City Manager, in consultation with the City Attorney, is authorized to approve changes to the Agreement that are minor in nature such as typographical errors and mistakes of fact that do not change the material terms or conditions of the Agreement.

**Section 8.** That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

**Section 9.** This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

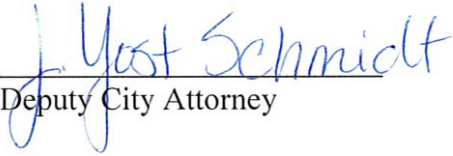
ADOPTED this \_\_\_ day of January, 2013.

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

ATTEST:

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

APPROVED AS TO FORM:

  
Deputy City Attorney

**DISPOSITION AND DEVELOPMENT AGREEMENT**

By and Among  
The City of Loveland, Colorado

("City")

The Loveland Urban Renewal Authority  
("Authority")

and

541 N. Lincoln, L.L.C.

("Developer")



## DISPOSITION AND DEVELOPMENT AGREEMENT

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (this "**Agreement**") is entered into to be effective as of \_\_\_\_\_, 2013, by and among the **CITY OF LOVELAND**, a Colorado home rule municipality ("**City**"), the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate ("**Authority**") and **541 N. LINCOLN, L.L.C.** a Utah limited liability company ("**Developer**"). The City, Authority and Developer shall be collectively referred to hereafter as "**Parties**."

### RECITALS:

**WHEREAS**, City is the owner of that certain real property located at 541 N. Lincoln Street in the City of Loveland, County of Larimer, and State of Colorado, the legal description of which is set forth on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "**North Catalyst Project Site**" or "**Site**"); and

**WHEREAS**, Authority is an urban renewal Authority organized and existing pursuant to the Colorado Urban Renewal Law, C.R.S. §31-25-101 et seq. (the "**Act**") to assist and further the redevelopment of certain urban renewal areas under the City of Loveland Urban Renewal Plan approved by Resolution #R-74-2002 adopted by the Loveland City Council ("**Council**") on October 1, 2002 (the "**Plan**") and the proposed City of Loveland Modified and Restated Urban Renewal Plan: Block 41-Finley's Addition as contemplated by the Council's adoption of Resolution #R-85-2011 (the "**Modified and Restated Plan**"); and

**WHEREAS**, the City issued a Request for Proposals, Downtown Redevelopment Sites dated January, 2011 seeking development proposals for urban renewal projects in downtown Loveland, including potential redevelopment proposals for the North Catalyst Project Site (the "**RFP**"); and

**WHEREAS**, Developer filed a response to the RFP dated April 7, 2011 for the North Catalyst Project – Scheme 1, which response was selected as the City's preferred redevelopment alternative for the North Catalyst Project Site, and the City and Developer entered into that certain Letter Agreement for Exclusive Right to Negotiate dated December 7, 2011 pertaining to the Site (the "**ERN**"); and

**WHEREAS**, the City and the Developer have subsequently agreed upon the scope and nature of the redevelopment project to be constructed by Developer on the Site, which is more fully described on **Exhibit "B"** attached and incorporated by this reference (the "**Project**"); and

**WHEREAS**, the City and Authority believe that development of the Project on the Site will eliminate conditions of blight which constitute economic and social liabilities to the community, prevent further physical and economic deterioration within the Block 41-Finley's Addition Urban Renewal Area as defined by the Modified and Restated Plan, by stimulating redevelopment of downtown Loveland through the attraction of capital

investment, assisting in the expansion and retention of existing business, and by serving the public interests of the Authority, the City, and the citizens of Loveland; and

**WHEREAS**, the Parties desire to set forth their agreement regarding the terms and conditions upon which the City shall sell the Site to the Developer for redevelopment and completion of the Project, the incentives for such redevelopment to be provided by the City and/or the Authority, and the Developer's undertaking to redevelop the Site and complete the Project.

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

**1. Purpose of this Agreement.** The purpose of this Agreement is to further the goals of the Modified and Restated Plan and effectuate the redevelopment of the Site by providing for the sale of the Site to and construction of the Project by the Developer on the terms and conditions set forth herein. The Project shall be carried out in accordance with the provisions of the Modified and Restated Plan, as it now exists or may be subsequently amended, and the Modified and Restated Plan is incorporated into this Agreement by this reference and made a part hereof as though fully set forth herein. However, in the event the Loveland City Council ("Council") amends, without the Developer's prior written consent, the Modified and Restated Plan in any way that causes the "TIF Revenue," as such term is defined in Section 18.9 below, to be less than \$52,000.00 during any full tax year (or prorated amount in any partial year) of the "Repayment Period," as this term is also defined in Section 18.9 below, all of the Developer's obligations for the payment of minimum TIF Revenue arising under Section 18.9 of this Agreement after the effective date of that amendment shall be deemed terminated at the Developer's election.

**2. Agreement to Sell and Purchase.** In accordance with and subject to all the terms and conditions of this Agreement, City agrees to sell, assign and convey the Site to Developer, and Developer agrees to purchase and accept the Site from City, on the Closing Date (defined below), together with the following:

- 2.1** Any City water taps currently issued and appurtenant to the Site;
- 2.2** Any structure, building, improvements and fixtures on or attached to the Site; and
- 2.3** Any personal property not removed by the City and remaining on the Site on the Closing Date.

**3. Purchase Price; Payment.**

**3.1 Purchase Price.** The total purchase price for the Site shall be Two Hundred Thousand Dollars (US \$200,000.00) (the "**Purchase Price**"). The Purchase Price shall be paid as set forth below.

**3.2 Earnest Money Deposit.** Within five (5) Business Days after the Effective Date (defined below), Developer shall deliver to Fidelity National Title Company located at 3003 East Harmony Road, Suite100, Fort Collins, Colorado 80528 (the "**Title Company**"), a total earnest money deposit in the amount of Five Thousand Dollars (US \$5,000.00) (the "**EM Deposit**"). Except as otherwise provided herein, the EM Deposit and all accrued interest thereon shall be applied toward the Purchase Price at Closing. The failure of Developer to deliver the EM Deposit to the Title Company in a timely fashion shall be a material default under this Agreement and shall entitle City, at City's sole option, to terminate this Agreement by giving written notice of such default to Developer. As used in this Agreement, the "**Effective Date**" is the date upon which an ordinance of the City of Loveland City Council approving this Agreement and the sale of the Site on the terms and conditions set forth herein, goes into effect. "**Business Day(s)**" shall mean any day of the week except Saturday, Sunday and any federally-recognized holiday.

**3.3 Interest on EM Deposit.** The EM Deposit shall be held by the Title Company in an interest-bearing account in accordance with the provisions of this Agreement, with interest accruing to the benefit of Developer prior to its release to City. The term "**EM Deposit,**" when used in this Agreement, shall include any and all interest then accrued.

#### **4. Closing and Pre-Closing Matters.**

**4.1 Closing.** The purchase and sale of the Site as contemplated by this Agreement, including but not limited to the delivery of the Deed (defined below), payment of the Purchase Price and receipt thereof by City, and the completion of the other matters required by this Agreement to be done contemporaneously shall occur at the offices of the Title Company (the "**Closing**"), and the Closing shall occur and be completed no later than 5:00 p.m. on the fourteenth (14<sup>th</sup>) Business Day after the building permit for the Project has been approved by the City (the "**Required Closing Date**"). The date on which the Closing actually occurs shall be referred to herein as the "**Closing Date**".

**4.2 Pre-Closing Matters.** Until the earlier of the Closing Date or the termination of this Agreement, City agrees as follows: (i) to maintain any insurance coverage relating to the Site that is currently maintained by City, in the amounts and coverages currently in effect; (ii) to maintain the Site in its present condition ("**AS IS**"), subject to normal wear and tear and with acts of God, casualty and condemnation excepted; (iii) to notify Developer promptly upon receiving notice of any (a) fact or event that could make any of the representations or warranties of City contained in Section 10 of this Agreement untrue or misleading in any material respect, (b) pending or threatened litigation that materially and adversely affects the Site or that would materially and adversely affect the transaction contemplated hereby, or (c) material damage or destruction (excluding normal wear and tear) to the Site or any part thereof; (iv) not to intentionally do anything or knowingly permit anything to be done that would materially and adversely affect the status of title to the Site as shown in the Title Commitment (defined below), without the prior written consent of Developer, which

consent shall not be unreasonably withheld; (v) to deliver to Developer copies of all notices relating to the physical condition of the Site that are received by City after the Effective Date from any governmental agency; (vi) to notify Developer promptly upon receiving actual notice of any spilling, leaking, disposing, discharging, or migration of hazardous or toxic materials on the Site in violation of applicable law occurring after the Effective Date; and (vii) not to enter into any leases, occupancy agreements, or service or other contracts affecting the Site that would remain in effect after the Closing without in each case obtaining Developer's prior written consent thereto, which consent shall not be unreasonably withheld.

## 5. Inspection.

**5.1 Documents.** City has provided Developer with electronic or paper copies of all of the information described on attached **Exhibit "C"** (collectively, the "**Site Information**"). City has not undertaken any independent investigation as to the truth or accuracy of the Site Information and is providing the same solely as an accommodation to Developer. In the event this Agreement is terminated or Developer fails to perform hereunder, Developer shall promptly return to City all Site Information, Additional Information (as defined below) and any other statements, documents, schedules, exhibits and other written information obtained from City in connection with this Agreement or the transaction contemplated herein. Following the Closing, Developer shall be entitled to retain and employ all Site Information and Additional Information with respect to the Site as reasonably required in connection with the ownership and redevelopment of the Site.

**5.2 Due Diligence.** Developer shall have until 5:00 p.m. Mountain Time on that date which is one hundred and eighty (180) calendar days after the Effective Date (the "**Due Diligence Period**") in which to: (a) examine, inspect, and investigate the Site and the Site Information and, in Developer's sole and absolute judgment and discretion, to determine whether the same is satisfactory to Developer and suitable for redevelopment and construction of the Project; (b) obtain such commitments as may be acceptable to Developer, in its discretion, for (i) design, development, and construction services for completion of the Project, and (ii) financing the cost of the Project, net of the Public Improvement Payment (defined below) and other incentives to be provided by the Authority under Section 19. below; and (c) obtain all land use and development plan approvals from the City's Development Services Department as necessary to permit construction of the Project in accordance with Section 18 below. Developer may terminate this Agreement pursuant to this Section 5.2 by giving written notice of termination (the "**Due Diligence Termination Notice**") to City and the Title Company on or before 5:00 p.m. Mountain Time on the last day of the Due Diligence Period. This Agreement shall continue in full force and effect if Developer does not give a Due Diligence Termination Notice on or before 5:00 p.m. Mountain Time on the last day of the Due Diligence Period, and Developer's failure to provide such notice shall constitute Developer's approval of each item included in the Site Information, the condition of the Site, suitability of the site for the Project, and the financial feasibility of the Project. In the event Developer elects to terminate this Agreement pursuant to this Section 5.2, promptly upon such termination, (i) Developer shall deliver to City the Site Information

and all information, materials and data that Developer or Developer's Agents (defined below) discover, obtain or generate in connection with or resulting from Developer's investigation of the Site (collectively, the "**Additional Information**"); however, such Additional Information shall not include internal analyses produced by Developer or Developer's Agents of a proprietary nature or items that are reasonably subject to the attorney-client privilege, and (ii) the EM Deposit shall be released to Developer, whereupon each of the Parties shall not have any further obligation or liability to the other Parties, save and except for the waivers, releases, indemnity, document return, and other obligations of Developer that are stated herein to survive the termination of this Agreement (the "**Surviving Obligations**").

**5.2.1** Developer, and Developer's agents, employees, representatives, consultants and contractors (collectively, "**Developer's Agents**"), shall have access to the Site and building located on the Site at reasonable times (subject to City's prior approval of the specific time and activities to be conducted by Developer and Developer's Agents during such access, and City's security requirements) during the term of this Agreement for the purpose of conducting inspections, tests and sampling of the Site reasonably required by Developer (collectively, the "**Inspections**"). City shall have the right to have one or more of its employees or agents accompany Developer and Developer's Agents at all times while Developer and Developer's Agents are on the Site. Developer shall provide City with copies of any work plans for any testing or sampling the Developer wishes to conduct for City's prior written approval, which work plan City may modify, limit or disapprove in its sole but reasonable discretion. Developer shall also provide City with a certificate of insurance from Developer and Developer's Agents inspecting the Site (from an insurance carrier reasonably acceptable to City) evidencing the existence of: (a) commercial general liability insurance, in an amount not less than One Million Dollars (US \$1,000,000.00) combined limits for any injuries, deaths or property damage sustained as a result of any one accident or occurrence; and (b) worker's compensation insurance with coverage required by Colorado law. The commercial general liability insurance shall name City as an additional insured. Additionally, Developer, on behalf of itself and Developer's Agents, hereby waives any claims against the Indemnitees (defined below) for any injury to persons or damage to property arising out of any Inspections, including, without limitation, any damage to the personal property, tools or equipment of Developer or Developer's Agents, all of which shall be brought onto the Site at the sole risk and responsibility of Developer and Developer's Agents.

**5.2.2** Developer shall, at its sole cost and expense, comply with all applicable federal, state and local laws, rules, statutes, regulations, ordinances, or policies in conducting the Inspections. Developer acknowledges that the building on the Site contains asbestos, as described in City's asbestos survey which is included in the Site Information provided to Developer under Section 5.1 above. Developer shall conduct all Inspections in a manner consistent with the existing asbestos conditions. Developer shall keep the Site free and clear of any liens and shall hold harmless, protect, defend (with legal counsel acceptable to City) and indemnify the City and the Authority and their officers and employees (collectively, the "**Indemnitees**") from and against any liabilities, claims, demands, causes of action, losses, costs, damages,

penalties, fines, taxes, remedial actions, removal and disposal costs, investigation and remedial costs and expenses (including, without limitation, attorney fees and expert and consultant fees), whether direct or indirect, known or unknown arising out of or relating to the work or activities conducted on the Site by Developer or Developer's Agents (collectively, "**Claims**"), including, without limitation, any Claims for: (i) any injuries to persons (including death) or damage to any property except that the foregoing indemnity shall not extend to any liabilities to the extent arising as a result of the mere discovery by Developer or Developer's Agents of a pre-existing condition that has a deleterious effect on the Site; and (ii) any mechanic's or other liens on the Site, by reason of or relating to the work or activities conducted on the Site by Developer or Developer's Agents. The foregoing provisions shall not be limited in any way by any other terms of this Agreement and shall survive the Closing and termination of this Agreement.

**5.2.3** To the extent that Developer or Developer's Agents damage, soil, or disturb the Site or any improvements during their entry thereon, Developer shall, at its sole cost and expense, clean up, repair, and restore the Site and such improvements in whatever manner necessary after Developer's or Developer's Agents' entry thereon so that the Site and all improvements thereon shall be returned to the same condition that existed prior to Developer's or Developer's Agents' entry on the Site.

**5.2.4** City shall promptly be provided with a copy of all Additional Information that Developer or Developer's Agents discover, obtain or generate in connection with or resulting from their Inspections and work under this Section 5.2.

## **6. Title and Survey.**

**6.1 Delivery of Title Commitment.** Not later than twenty-one (21) calendar days after the Effective Date, City shall deliver to Developer a title commitment issued by the Title Company (together with copies of any recorded documents listed as exceptions on Schedule B of the commitment) for the Site for an ALTA 2006 Owner's form policy (the "**Title Commitment**").

### **6.2 Title Review and Cure.**

**6.2.1** Developer shall review title to the Site as disclosed by the Title Commitment. Developer shall have until 5:00 p.m. Mountain Time on the last day of the Due Diligence Period to object, in its sole and absolute discretion, by written notice of objections delivered to City (the "**Title Objections**"), to any title matters shown on the Title Commitment or matters disclosed on the ALTA-ACSM Urban Survey of the Site (the "**Survey**") which the City at its sole cost and expense has caused to be prepared and provided to the Developer ("**Survey Objections**"). Developer's failure to provide written notice of Title Objections or Survey Objections to City on or before the expiration of the Due Diligence Period shall constitute Developer's approval of the Title Commitment and the Survey. If Developer timely notifies City of any Title Objections or Survey Objections, then City may notify Developer in writing within seven (7) Business Days after City's receipt of such notification that: (i) City will remove the Title or Survey

Objections on or before the Closing, or (ii) City will not remove any or certain specified Title or Survey Objections. City's failure to address any Title or Survey Objections in any notice, or failure to give a timely notice as to any Title or Survey Objections, shall constitute City's election not to remove such Title or Survey Objections.

**6.2.2** If City does not provide Developer with timely written notice that it shall remove all Title and Survey Objections, then Developer may, as its sole and exclusive remedy, terminate this Agreement by giving City written notice of such termination within five (5) Business Days after the expiration of City's 7-Business Day notice period. Developer's failure to terminate this Agreement within such 5-Business Day period shall constitute Developer's waiver of all Title and Survey Objections. In the case of Developer's waiver (or deemed waiver) of Title and Survey Objections, City shall have no obligation to remove or otherwise address such Title or Survey Objections, and such Title and Survey Objections shall be deemed approved by the Developer. The matters shown by the Title Commitment and any encumbrances arising from the acts of Developer or Developer's Agents are collectively referred to herein as the "**Permitted Exceptions**". However, "Permitted Exceptions" shall not include Title or Survey Objections the City removes or agrees to remove. After the expiration of the Due Diligence Period, Developer may, at or prior to Closing, notify City in writing of any objection(s) to title exceptions raised by the Title Company after the expiration of the Due Diligence Period and prior to the Closing and not otherwise known to Developer prior to the expiration of the Due Diligence Period (the "**Subsequent Title Defects Notice**"), provided that Developer must notify City of such objection(s) to title within five (5) Business Days of being made aware of the existence of such exceptions. If Developer gives a Subsequent Title Defects Notice to City, City shall have five (5) Business Days after receipt of the Subsequent Title Defects Notice to notify Developer that either (a) City will remove such objectionable exceptions from title on or before the Closing, provided that City may extend the Closing for such period as shall be required to effect such cure, but not beyond thirty (30) days, or (b) City elects not to cause such exceptions to be removed. If City fails to give such notice timely to Developer, City shall have been deemed to have given notice to Developer under clause (b). City shall have no obligation to remove any title exceptions to which Developer objects. The procurement by City of a commitment of the Title Company for the Title Policy (defined below) or an endorsement thereto insuring Developer against any title exception that was disapproved pursuant to this Section 6.2.2, shall be deemed a cure by City of such disapproval so long as such title exception does not materially adversely affect: (i) Developer's access to, use of, or intended operations on the Site; or (ii) the market value of the Site. If City gives or is deemed to have given notice under clause (b) above, Developer shall have two (2) Business Days from the date on which such notice to Developer is given in which to notify City that Developer will nevertheless proceed with the purchase and take title to the Site subject to such exceptions (collectively, the "**New Exceptions**") or that Developer will terminate this Agreement. If Developer fails to give such notice in a timely fashion, Developer shall be deemed to have elected to proceed with the purchase and take title to the Site subject to the New Exceptions. If this Agreement is terminated pursuant to the foregoing provisions of this Section 6.2.2, then (i) promptly upon such termination, Developer shall deliver to City the Site Information and Additional Information, and (ii) the EM Deposit shall be released to

Developer, whereupon each of the Parties shall not have any further obligation or liability to the other Parties, save and except for the Surviving Obligations and any other obligations that are expressly provided herein to survive the Closing.

**6.2.3** Developer's obligation to purchase the Site shall be conditioned upon the Title Company issuing at Closing to Developer an ALTA 2006 owner's form of title insurance policy in the amount of the Purchase Price insuring that fee simple title to the Site is vested in Developer subject only to the Permitted Exceptions and any New Exceptions (the "**Title Policy**"). Developer shall be entitled to request that the Title Company provide such endorsements to the Title Policy as Developer may reasonably require, provided that such endorsements shall be at no cost or additional liability to City and the Closing shall not be delayed as a result of Developer's request.

## **7. Conditions to Closing.**

**7.1 Conditions Benefiting City and Authority.** The obligation of City to sell and convey the Site pursuant to this Agreement and the obligations of the City and Authority to provide the Public Improvement Payment (defined below) under this Agreement, are subject to the satisfaction on or before the Required Closing Date, or such earlier date as specified below, of all of the following conditions precedent, which conditions are for the benefit of City or Authority only and the satisfaction of which may be waived only in writing by the City and Authority:

**7.1.1** Approval by the Council, for the City and, acting as the Board of Commissioners of the Authority, on behalf of the Authority, of such ordinances and resolutions as may be necessary and appropriate to:

(a) authorize the sale of the Site on the terms and conditions set forth in this Agreement;

(b) authorize, finance, and, to the extent necessary appropriate, funding for: (i) the Public Improvement Payment as defined in Section 19.1 below; (ii) the "Price Incentive" and "CEF Repayment" as defined in Section 19.4 below; (iii) the Use Tax Waiver as defined in Section 19.3 below; and (iv) the costs incurred in connection with the Modified and Restated Plan and financing the Public Improvement Payment and CEF Repayment ("Finance Costs"); (collectively, the "Incentive Costs"); and

(iii) adopt the Modified and Restated Plan so as to include the Site (and other property) in the Plan area for purposes of tax increment financing of the Incentive Costs.

City staff shall use its best efforts to seek such approvals according to the schedule attached hereto as **Exhibit "D"** and incorporated herein by this reference;



**7.1.2** Approval on or before the last day of the Due Diligence Period of Conceptual Drawings and Construction Drawings (defined below) for the Project as set forth in Section 17 of this Agreement;

**7.1.3** Delivery and execution by Developer of all monies, items and instruments required to be delivered by Developer pursuant to this Agreement, including, but not limited to, the City Deed of Trust pursuant to Section 18.8, and Title Company's delivery and release of the EM Deposit to be applied at Closing to payment of the Purchase Price;

**7.1.4** Developer's warranties and representations set forth herein shall be true and correct in all material respects as of the Closing Date and, at City's request, Developer shall so certify;

**7.1.5** Delivery at Closing by the Developer of the insurance policy required in Section 18.10 below; and

**7.1.6** Delivery at Closing by Woodbury Strategic Partners Fund, L.P., ("Guarantor") of the fully executed Completion Guaranty substantially in the form attached hereto as **Exhibit I** and incorporated herein by reference; and

**7.1.7** Developer shall have performed each and every other obligation to be performed by Developer pursuant to this Agreement.

**7.2 Conditions Benefiting Developer.** The obligation of Developer to acquire the Site and construct the Project pursuant to this Agreement is subject to the satisfaction on or before the Closing Date, or such earlier date as specified below, of all of the following conditions precedent, which conditions are for the benefit of Developer only and the satisfaction of which may be waived only in writing by Developer:

**7.2.1** Delivery and execution by City of all instruments and other items required to be delivered by City pursuant to this Agreement;

**7.2.2** City's warranties and representations set forth herein shall be true and correct in all material respects as of the Closing Date and, at Developer's request, City shall so certify;

**7.2.3** City shall have performed each and every obligation to be performed by City pursuant to this Agreement; and

**7.2.4** As of the Closing, the Title Company shall have committed to issue the Title Policy to Developer upon the sole conditions of the payment of Title Company's regularly-scheduled premium and satisfaction of all requirements of the Title Commitment.

**7.3 Failure of Conditions.** If any of the conditions set forth in Sections 7.1 or 7.2 are not timely satisfied for any reason and such condition is not waived by the party for whose benefit the condition exists, then the party for whose benefit the

unsatisfied condition exists may, in its sole discretion, either delay the Closing until the condition is satisfied by up to (but not in excess of) thirty (30) additional days (after which time this Agreement shall automatically terminate if the condition is not satisfied or waived by the end of this 30-day period), or terminate this Agreement by giving written notice thereof to the other party. In the event of a termination under this Section 7.3, Developer shall deliver the Site Information and Additional Information to City, the Title Company shall promptly pay the EM Deposit to Developer and thereafter each of the Parties shall have no further obligation or liability to the other Parties under this Agreement, save and except for the Surviving Obligations and any other obligations that are stated herein to survive termination.

**7.4 Satisfaction of Conditions.** The occurrence of the Closing shall constitute satisfaction of the conditions set forth in Sections 7.1 and 7.2 not otherwise specifically satisfied or waived by Developer, the City, or the Authority, except that the City's and the Authority's warranties and representations in Section 10 and the Developer's warranties and representations in Section 11 and all other obligations that are specifically stated to survive the termination of or the Closing under this Agreement, shall survive the Closing.

## **8. Deliveries at Closing.**

**8.1 Deliveries by City.** At the Closing, City shall deliver or cause to be delivered to Developer all of the following documents duly executed and acknowledged where appropriate:

**8.1.1** A special warranty deed conveying the Site and all improvements thereon substantially in the form attached as **Exhibit "E"** (the "**Deed**"). The Deed includes provisions prohibiting certain uses on the Site, which prohibitions shall run with the land and bind Developer and all future owners of the Site.

**8.1.2** A certificate of non-foreign status from City to confirm that Developer is not required to withhold part of the Purchase Price pursuant to Section 1445 of the Internal Revenue Code.

**8.1.3** Affidavits and similar instruments as are reasonably required by the Title Company (i) to close this transaction and to issue the Title Policy, and (ii) for the satisfaction of any Internal Revenue Service disclosure and reporting requirements, including, but not limited to, Form 1099B. All such affidavits and similar instruments shall be in form and substance reasonably satisfactory to City and the Title Company.

**8.1.4** Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

**8.2 Deliveries by Developer.** At the Closing, Developer shall deliver or cause to be delivered to City all of the following funds and documents duly executed and acknowledged where appropriate:

**8.2.1** The EM Deposit shall be applied at Closing to the Purchase Price and Developer shall deliver those certified funds that are necessary to pay the balance of the Purchase Price and Developer's share of closing costs, prorations and any fees, as more particularly set forth in Section 9 below.

**8.2.2** Affidavits and similar instruments as are reasonably required by the Title Company (i) to close this transaction and to issue the Title Policy, and (ii) for the satisfaction of any Internal Revenue Service disclosure and reporting requirements. All such affidavits and similar instruments shall be in form and substance reasonably satisfactory to Developer and the Title Company.

**8.2.3** Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

**8.2.4** Delivery at Closing by Woodbury Strategic Partners Fund, L.P., ("Guarantor") of the fully executed Completion Guaranty substantially in the form attached hereto as Exhibit I and incorporated herein by reference.

## **9. Taxes; Apportionments; Costs.**

**9.1 Closing Fees and Transfer Taxes.** Fees to the Title Company for real estate closing services shall be paid one-half by Developer and one-half by City. Any realty transfer or sales taxes imposed by law on the sale of the Site pursuant to this Agreement shall be paid by Developer.

**9.2 Utilities and Real and Personal Property Taxes.** Water, sewer, electric, and natural gas charges and all other apportioned charges shall be prorated between City and Developer as of the Closing Date on a per diem basis, based on the fiscal year or billing period, as applicable, of the charging utility. To the extent possible, City shall cancel its utility accounts for the Site as of the Closing Date, and any such accounts that are terminated by City shall not be prorated. The Site is currently exempt from real and personal property taxes. Developer shall be responsible for all real and personal property taxes accruing from and after the Closing Date.

**9.3 Other Costs.** Each Party shall pay all its own expenses incurred in connection with this Agreement and the transaction contemplated hereby, including, and without limitation, their respective accounting, legal and appraisal fees. City shall pay all premiums for the Title Policy, and Developer shall pay for all additional costs to obtain extended coverage or endorsements to the Title Policy. Developer shall pay for all recording and documentary fees.

**9.4 Colorado Withholding.** City acknowledges that the Title Company will be required to withhold a portion of the Purchase Price in accordance with Colorado law, unless City provides an executed Colorado Form 1083 that confirms such withholding is not required.

**10. City's and Authority's Representations and Warranties.** The City and the Authority hereby make, as hereafter specifically stated, the following representations

and warranties, each of which shall be continuing and shall survive Closing subject to any applicable statute of limitations under Colorado law. Whenever a representation or warranty is being made "**to the City's knowledge**" or "**to the Authority's knowledge**" such qualification indicates that the warranty is being made to the current actual knowledge of the following employees of the City and without any implied, imputed or constructive knowledge and without any independent investigation having been conducted by any of these employees: William D. Cahill, City Manager; Betsey Hale, Economic Development Director; Ken Cooper, Facilities Operations Manager; Mike Scholl, Economic Development Manager; and Tracy Turner-Naranjo, Environmental Compliance Administrator. Except as expressly set forth in this Agreement, Developer agrees that the City and the Authority have not made any other warranties or representations, express or implied, written or oral, concerning the Site. The City and the Authority acknowledge that the representations and warranties contained in this Section 10 are material to Developer and will be relied upon by Developer in proceeding with this transaction.

**10.1 Notices of Violation.** Except to the extent disclosed in the Site Information, or disclosed to Developer through any Inspections of the Site or otherwise, to the City's knowledge, City has not received any notice from any governmental authority that any condition of the Site violates any material provision of applicable building codes, zoning or land use laws, other local, state or federal laws and regulations, or restrictive easements or covenants affecting the Site.

**10.2 City's Authority and Execution.** City has been duly organized and is validly existing as a home rule municipality under the laws of the State of Colorado. The person executing this Agreement on behalf of City is duly and validly authorized to do so on behalf of City, and City has full right and authority to enter into this Agreement and perform all of its obligations hereunder subject to the conditions precedent in Section 7.1 above. To the City's knowledge, execution of this Agreement will not result in any breach of, or constitute a default under, any contract or other agreement to which City is a party. To the City's knowledge, there is no action or proceeding pending or threatened against City that challenges or impairs City's ability to execute or perform its obligations under this Agreement.

**10.3 Possession.** To the City's knowledge, there are no existing leases of the Site and there will not be any third-parties in occupancy of the Site or any parts thereof on the Closing Date.

**10.4 Condemnation.** To the City's knowledge, there is no existing or pending condemnation or taking by eminent domain of any part of the Site.

**10.5 Litigation.** To the City's knowledge, no litigation has been filed against City or City's predecessors in title that arise out of the ownership of the Site and that would materially affect the Site or use thereof, or City's ability to perform hereunder. To the City's knowledge, City has not received written notice of any threatened litigation relating to the Site.

**10.6 Authority's Authority and Execution.** The Authority has been duly organized and is validly existing as an urban renewal authority under the Act. The person executing this Agreement on behalf of the Authority is duly and validly authorized to do so on behalf of the Authority, and the Authority has full right and authority to enter into this Agreement and perform all of its obligations hereunder subject to the conditions precedent in Section 7.1 above. To the Authority's knowledge, execution of this Agreement will not result in any breach of, or constitute a default under, any contract or other agreement to which the Authority is a party. To the Authority's knowledge, there is no action or proceeding pending or threatened against the Authority that challenges or impairs the Authority's ability to execute or perform its obligations under this Agreement.

**11. Developer's Representations and Warranties.** Developer hereby makes the following representations and warranties, each of which shall survive the Closing subject to any applicable statute of limitations under Colorado law:

**11.1 Authority to Execute; Organization.** Developer has been duly organized and is validly existing as a Colorado limited liability company and is in good standing and authorized to do business in the State of Colorado. Developer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transaction contemplated herein. This Agreement has been, and all of the documents to be delivered by Developer at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligations of Developer, enforceable in accordance with their terms.

**11.2 Conflicts and Pending Action.** There is no agreement to which Developer is a party or to Developer's knowledge binding on Developer which is in conflict with this Agreement. There is no action or proceeding pending or, to Developer's knowledge, threatened against Developer which challenges or impairs Developer's ability to execute or perform its obligations under this Agreement.

**11.3 No Encumbrance.** Prior to the Closing, Developer shall neither encumber nor cause any liens to be created against the Site in any way, nor shall Developer, at any time prior to the Closing record this Agreement or a memorandum thereof.

**11.4 Principal; Financial Resources.** Developer is acting as a principal in connection with the transaction contemplated by this Agreement and, subject to obtaining financing prior to the end of the Due Diligence Period, presently possesses and will possess as of the Closing the financial resources to timely consummate the purchase and sale transaction and construction of the Project as contemplated by this Agreement.

**11.5 No Reliance on Documents.** Developer acknowledges and agrees that all materials, data and Site Information delivered by City to Developer in connection with this transaction are provided to Developer as a convenience only and that any reliance on or use of such materials, data and Site Information by Developer shall be at

its sole risk. Neither City, nor the person or entity that prepared any report or reports delivered by City to Developer, shall have any liability to Developer for any inaccuracy in or omission from any such reports, except as otherwise expressly agreed in writing by such person or entity and excluding any claims for fraudulent or intentional misrepresentation by City or its employees relating to such materials, data or Site Information.

**11.6 Developer's Investigation.** Except for the express representations and warranties of City set forth herein, Developer acknowledges and agrees that there are no representations or warranties of any kind whatsoever, express or implied, made by City or the Authority in connection with this Agreement, the purchase of the Site by Developer, the physical condition of the Site, whether the Site complies with applicable laws, or whether the Site is appropriate for Developer's intended use. At or prior to the end of the Due Diligence Period, Developer will have (or will have chosen not to have) fully investigated the Site and all matters pertaining thereto. Except for the express representations and warranties of the City and the Authority set forth herein, Developer also acknowledges and agrees that: (i) Developer is not relying on any statements or representations of the City or the Authority and their officers, employees, agents, consultants or its representatives; (ii) Developer, in entering into this Agreement and in completing its purchase of the Site and construction of the Project, is relying entirely on its own investigation of the Site; (iii) at or prior to the end of the Due Diligence Period, Developer will be aware (or chosen not to be aware) of all zoning regulations, other governmental requirements, prior and current site and physical conditions, and other matters affecting the use and condition of the Site; and (iv) Developer's decision, at or prior to the end of the Due Diligence Period, of whether to purchase the Site and construct the Project on the terms and conditions hereof shall be made solely in reliance on the City's and the Authority's express representations and warranties in this Agreement and on Developer's review, inspection and investigation of the Site and of materials, documents, information and studies relating to the Site. **EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE CITY AND THE AUTHORITY SET FORTH HEREIN, THE SALE OF THE SITE AS PROVIDED FOR HEREIN IS MADE ON A STRICTLY "AS IS" "WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS" AS OF THE CLOSING DATE, AND THE CITY AND THE AUTHORITY MAKE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SITE, ANY IMPROVEMENTS LOCATED THEREON OR ANY SOIL CONDITIONS RELATED THERETO.**

**12. Release.** Except for claims based on breach of the City's or the Authority's representations and warranties in Section 10, Developer, for itself and Developer's successors, lessees and assigns (collectively, "**Developer's Assigns**"), hereby releases the City and the Authority from, and waives, any and all claims and liabilities against the City and the Authority for, related to, or in connection with, any prior or current environmental or physical condition of the Site (or the presence of any matter or substance relating to the environmental condition of the Site), including, but not limited

to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances previously or now located in, at, about or under the Site, or for any and all claims or causes of action (actual or threatened) based upon, in connection with, or arising out of, the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, and as it may be further amended from time to time, the Federal Resource Conservation and Recovery Act, as amended and as it may be further amended from time to time, the Colorado Hazardous Waste Act, as amended, and as it may be further amended from time to time, or any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to, or affecting, the Site. Upon Closing, Developer and Developer's Assigns shall assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Developer's investigations, and upon Closing Developer and Developer's Assigns, shall be deemed to have waived, relinquished and released the City and the Authority and their successors from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorney fees and court costs) of any and every kind or character, known or unknown, which Developer or Developer's Assigns might have asserted or alleged against the City or the Authority, at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws) and any and all other acts, omissions, events, circumstances or matters regarding the Site, with the exception of claims based on breach of the City's and the Authority's express representations and warranties in Section 10. Developer acknowledges and agrees that the waivers, releases and other provisions contained in this Section 12 were a material factor in City's acceptance of the Purchase Price and the City's agreement to the economic incentives in Section 19 and that City is unwilling to sell the Site to Developer and provide such incentives unless City is released as expressly set forth above. Developer further acknowledges and agrees that the waivers, releases and other provisions contained in this Section 12 were a material factor in the Authority's agreement herein to provide the Developer with the economic incentives in Section 19 and that the Authority is unwilling to provide such incentives unless the Authority is released as expressly set forth above. Developer, with Developer's counsel, has fully reviewed the disclaimers and waivers set forth in this Agreement, and understands the significance and effect thereof. The terms and conditions of this Section 12 will expressly survive the Closing and will not merge with the provisions of any Closing documents.

### **13. Remedies.**

**13.1 Developer's Default.** If (i) Developer fails to complete the Closing in accordance with the terms of this Agreement, or (ii) Developer otherwise defaults in the performance of any obligation under this Agreement other than the obligations to redevelop the Site after Closing under Section 18 below, then in either event (referred to herein as a "**Default**") the EM Deposit shall be paid to and retained by City as liquidated damages for such Default. Developer and City agree that in the event of a Default, damages would be difficult if not impossible to ascertain. Developer and City agree that

the EM Deposit is the best estimate of the damages due to City in the event of a Default. Developer and City agree that City's receipt of the EM Deposit shall be City's sole remedy for such Default, whereupon Developer shall deliver to City the Site Information and Additional Information and this Agreement shall terminate, except for the Surviving Obligations and any other obligations the Parties have expressly agreed herein will survive the Closing. This limitation of liability shall not apply to Developer's other obligations under this Agreement, including without limitation, Developer's indemnity obligations, Developer's obligations to redevelop the Site in accordance with Section 18 below and the Developer's obligation to pay the City's reasonable attorney fees, court costs and other reasonable costs of collection the City may incur if a Default occurs but Developer fails to authorize the release of the EM Deposit by the Title Company to City.

**13.2 City's Default.** If City shall fail to convey the Site to Developer in accordance with the provisions of this Agreement, and such failure constitutes a default by City hereunder, Developer's sole and exclusive remedies shall be either to (i) sue for specific performance, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of City hereunder, or (ii) terminate this Agreement and obtain a refund of the EM Deposit, which refund shall operate to terminate this Agreement and release City from any and all liability hereunder. Developer shall be deemed to have elected to terminate this Agreement and receive back the EM Deposit if Developer fails to file suit for specific performance against City in Larimer County, Colorado District Court on or before sixty (60) days following the date upon which the Required Closing Date was to have occurred. Except for, and in consideration of, the foregoing right of Developer to sue for specific performance, or alternatively, to obtain a refund of the EM Deposit, Developer hereby waives any other remedies available at law or in equity for any default by City prior to the Closing, provided Developer shall have the right to recover reasonable attorney fees, court costs and other reasonable costs of collection incurred in the event City defaults but fails to authorize the release of the EM Deposit by the Title Company to Developer in the event that the Closing does not occur on the Closing Date.

**13.3 Authority's Default.** If the Authority shall fail to make the Public Improvement Payment when due as required in Section 19.1, such failure shall constitute a default by the Authority hereunder and Developer's sole and exclusive remedy shall be to sue for recovery of the amount of the Public Improvement Payment due under Section 19.1 as of the date of default. Developer hereby waives any other remedies available at law or in equity for any default by the Authority with respect to the Public Improvement Payment; provided, however, Developer shall have the right to recover reasonable attorney fees, court costs and other reasonable costs of collection incurred in the event the Authority fails to make such payment.

**13.4 Limitations on Liability.** Notwithstanding anything to the contrary contained in this Agreement, in no event will any Indemnitee be liable to Developer in contract, tort or otherwise with respect to any indirect, consequential, special, exemplary or incidental damages arising from or relating to this Agreement or any closing document other than any intentional or fraudulent misrepresentation by any Indemnitee.



**13.5 Survival of Waivers and Release.** The foregoing waivers and releases by Developer set forth in Sections 13.2, 13.3 and 13.4 above shall survive any termination of this Agreement, the Closing and recording of the Deed.

**14. Casualty; Condemnation.**

**14.1 Casualty.** If prior to Closing, any part of the Site or improvements thereon is damaged or destroyed by flood, fire or other casualty, City shall promptly notify Developer in writing of such casualty loss. If within twenty (20) days after Developer's receipt of City's notice of the damage, Developer shall deliver written notice to City and the Title Company, electing either to (i) proceed with this transaction and the Closing in accordance with this Agreement notwithstanding such damage; or (ii) terminate this Agreement, in which event this Agreement shall terminate and promptly upon such termination, Developer shall deliver to City all Site Information and Additional Information and the EM Deposit shall be returned to Developer. Developer's failure to deliver either such notice to City and Title Company within such twenty (20) day-period shall constitute Developer's election to proceed to the Closing. If Developer elects (or is deemed to have elected) not to terminate this Agreement, then the Closing shall nevertheless occur as otherwise provided in this Agreement, and City shall have no obligation to repair such damage or destruction.

**14.2 Condemnation.** In the event that all or any substantial portion of the Site shall be taken in condemnation or under the right of eminent domain after the Effective Date and before the Closing, Developer may, at its option either (i) terminate this Agreement by written notice thereof to City, whereupon Developer shall deliver the Site Information and Additional Information to City, and the Title Company shall promptly return to Developer the EM Deposit, or (ii) proceed to close the transaction contemplated herein pursuant to the terms hereof in which event City shall assign and turn over to Developer, and Developer shall be entitled to receive and keep all awards for the taking by eminent domain which accrue to City and there shall be no reduction in the Purchase Price. For purposes of this provision, a "**substantial portion**" of the Site shall mean: (a) more than ten percent (10%) of the Site is taken; or (b) the access to the Site is materially reduced or restricted in a manner that will have an adverse impact on the Project. In the event that a portion of the Site less than a substantial portion is taken, or Developer elects not to terminate this Agreement, Developer shall proceed to close the transaction contemplated herein and there shall be no reduction in the Purchase Price and City shall assign and turn over to Developer and Developer shall be entitled to receive and keep all awards for the taking by eminent domain which accrue to City.

**15. Brokerage Commissions.** Developer shall indemnify and hold harmless the City and the Authority from any and all commissions claimed by any broker or third party representing Developer arising by virtue of this transaction whose commissions

might legally arise from acts of Developer. To the extent that Developer or any principal or affiliate of Developer is a licensed real estate professional that may seek to receive a commission, Developer waives, for itself and any such principal or affiliate, any claim to a commission with respect to the sale of the Site under this Agreement. The obligations of indemnity and waiver as contained in this Section 15 shall survive the Closing or the earlier termination of this Agreement.

**16. Notices.** Any notice or report required or desired to be given regarding this Agreement shall be in writing and may be given by personal delivery, by certified mail return receipt requested, by courier service, or by facsimile (provided such notice is also given by personal delivery or courier service). Any notice or report addressed to Developer, City or Authority at their respective addresses set forth below shall be deemed to have been given (i) when personally delivered, (ii) if properly addressed and deposited in the mail (certified, return receipt requested) on the first Business Day after the date shown on the return receipt for acceptance or rejection, (iii) if properly addressed and deposited with a reputable overnight carrier, on the Business Day next following the date of deposit, or (iv) if properly addressed and sent by facsimile transmission, on the day of receipt by the sender of a "confirmation copy" of the facsimile transmission (confirming transmission of all pages), provided that (a) a copy of such facsimile notice is also sent on the same date by certified mail or overnight courier, and (b) if the date on which such facsimile notice is given falls on a Saturday, Sunday or federally-recognized holiday, then such date shall automatically be extended to the next Business Day thereafter.

A copy of each notice to City shall be delivered to:

William D. Cahill  
 City Manager  
 City of Loveland  
 500 East Third Street, Suite 330  
 Loveland, CO 80537  
 Facsimile No.: 970-962-2900  
 Email: [Bill.Cahill@cityofloveland.org](mailto:Bill.Cahill@cityofloveland.org)

with a copy to:

John R. Duval  
 City Attorney  
 City of Loveland  
 500 East Third Street, Suite 330  
 Loveland, CO 80537  
 Facsimile No.: 970-962-2900  
 Email: [John.Duval@cityofloveland.org](mailto:John.Duval@cityofloveland.org)

A copy of each notice to Developer shall be delivered to:

Kevin Brinkman  
Brinkman Partners, LLC  
3003 E. Harmony Road, Suite 300  
Fort Collis, CO 80525  
Facsimile No.: 970-206-1011  
Email: [Kevin.Brinkman@brinkmanpartners.com](mailto:Kevin.Brinkman@brinkmanpartners.com)

With a copy to:

Jeffrey J. Johnson  
Myatt Brandes & Gast, PC  
323 S. College Ave., Suite 1  
Fort Collins, CO 80524  
Facsimile No.: 970-482-3038  
Email: [jjohnson@myattbrandesgast.com](mailto:jjohnson@myattbrandesgast.com)

A copy of each notice to Authority shall be delivered to:

Loveland Urban Renewal Authority  
City of Loveland  
Attn: William D. Cahill, City Manager  
500 East Third Street, Suite 330  
Loveland, CO 80537  
Facsimile No.: 970-962-2900  
Email: [Bill.Cahill@cityofloveland.org](mailto:Bill.Cahill@cityofloveland.org)  
with a copy to:

John R. Duval  
City Attorney  
City of Loveland  
500 East Third Street, Suite 330  
Loveland, CO 80537  
Facsimile No.: 970-962-2900  
Email: [John.Duval@cityofloveland.org](mailto:John.Duval@cityofloveland.org)

**17. Developer Pre-Closing Covenants.**

Developer shall, at its cost and expense, prepare Conceptual and Construction Drawings (defined below) for redevelopment of the Site and construction of the Project according to the scope and general description set forth on **Exhibit "B"** attached and incorporated by this reference, and in accordance with the following:

**17.1. Conceptual Drawings.** On or before thirty (30) days after the Effective Date, Developer shall prepare and submit to the City for approval basic concept and design drawings and related documents containing the overall plan for

redevelopment of the Site and construction of the Project, which shall be a logical extension of and consistent with the general description set forth on **Exhibit B** and the Modified and Restated Plan (the “**Conceptual Drawings**”). The Conceptual Drawings shall specifically identify and include in general terms all public improvements to be completed by Developer in connection with the Project, including but not limited to: (i) remediation of environmental contamination of the Site or buildings thereon; (ii) building demolition; (iii) repair or removal of deteriorated site improvements; (iii) utility and infrastructure improvements in the public right-of-way, including street and alley improvements; (iv) sidewalk and streetscape improvements; (v) incremental energy efficiency and conservation modifications or improvements in excess of basic levels as established by applicable codes and regulations; and (vi) façade improvements for all portions of the building facing a public right-of-way (collectively, the “**Public Improvements**”). Developer shall conduct at least one (1) public outreach meeting (in addition to any meetings or notices that may be required under the Loveland City Code in connection with the City’s land use and development review process) to make the Conceptual Drawings available for public review and input by the citizens of Loveland. Developer shall make a reasonable record of such input and commentary as may be received and shall consider such input in further design and development activities. The City shall have ten (10) days after receipt of the Conceptual Drawings to review and approve or disapprove by written notice to the Developer building elevations of all portions of the building visible from the public right-of-way, and which Drawings the Parties acknowledge are intended to be consistent with the description of the Project set forth on **Exhibit “B.”** Failure of the City to give such written notice of approval or disapproval within the required period shall be deemed an approval of the Conceptual Drawings for purposes of this Agreement.

**17.2 Construction Drawings.** On or before one hundred twenty (120) days after the Effective Date, Developer shall prepare and submit to the City for architectural approval final construction drawings, plans and specifications and related documents for redevelopment of the Site and construction of the Project, which shall be a logical extension of and consistent with the approved Conceptual Drawings and shall be in sufficient detail to obtain a building permit (the “**Construction Drawings**”). The Construction Drawings shall identify and include all Public Improvements (including each element thereof and the building façade) and the estimated costs of the Public Improvements and each element thereof. The City shall have ten (10) days after receipt thereof to approve or disapprove by written notice to Developer the Construction Drawings on the basis of such Drawings’ consistency with the Conceptual Drawings and the estimated scope and costs of the Public Improvements set forth herein. Failure of the City to give written notice of approval or disapproval within the required period shall be deemed an approval of the Construction Drawings for the purposes of this Agreement.

During the preparation of the Construction Drawings and prior to submission of the final Construction Drawings to the City for approval, the City and Developer shall hold such progress meetings to coordinate the preparation of, submission to, and review of the Construction Drawings by the City as may be reasonable and appropriate. Approval of progressively more detailed drawings and

specifications will be promptly granted by the City if they are consistent with the Conceptual Drawings and are a logical extension of drawings that have been previously approved in the City's reasonable judgment. During this process, the Developer and City shall communicate and consult informally as frequently as necessary to insure that formal submittal of Construction Drawings can receive prompt and speedy consideration.

If Developer desires to make any substantial change in the Construction Drawings after the City's approval, Developer shall submit the proposed change to the City for its approval, which approval shall not be withheld so long as such change is consistent with the Conceptual Drawings and does not reduce the nature, scope and size of the Project as described on **Exhibit "B."** Any such change shall be deemed approved by the City unless disapproved in whole or in part by written notice to the Developer setting forth the inconsistencies within five (5) Business Days after submission to the City.

**17.3 Application for Building Permit.** Within thirty (30) calendar days after City's approval of the Construction Drawings, Developer shall submit an application to the City's Current Planning and Building Divisions for a site development plan, building permit, and all other governmental approvals required to clear the Site and to construct the Project in accordance with the Construction Drawings.

**17.4 City's Right to Conceptual and Construction Drawings.** In the event that Closing does not occur for any reason other than default by the City, upon request by the City the Developer shall provide the Conceptual and Construction Drawings, or so much thereof as may exist at the time of such request, to the City and, subject to the approval of any third-party preparer thereof, the City shall have the right to ownership and utilization of such Drawings by itself or any third party for future redevelopment of the Site.

## **18. Developer's Post-Closing Covenants – Redevelopment of Site**

**18.1 Commencement and Completion of Construction.** Within forty five (45) days after receipt of a building permit and other governmental approvals, Developer shall commence the remediation and demolition of the existing structures on the Site and thereafter promptly commence construction of the Project, including the Public Improvements, in accordance with the Construction Drawings. Developer shall thereafter diligently pursue and complete construction of the Project in accordance with the approved Construction Drawings and obtain a certificate of occupancy for the building from the City's Building Division ("**Certificate of Occupancy**") on or before that date which is eighteen (18) months after the building permit for the Project is issued, subject to delays beyond Developer's reasonable control. In the event the City's Building Division shall notify the Developer of additional conditions to obtain the Certificate of Occupancy, the Developer shall not be in default hereunder so long as Developer is proceeding with reasonable diligence to satisfy such conditions. For purposes of this Section 18.1, delays due to lack of or delay in funding for the Project shall not constitute a delay beyond Developer's reasonable control.

If Developer:

(i) fails to commence and pursue construction of the Project as required in this Agreement for a period of ninety (90) days after written notice thereof from the City; or

(ii) abandons or substantially suspends construction for a period of ninety (90) days after written notice thereof from the City; or

(iii) fails to obtain the Certificate of Occupancy as required herein;

then any such occurrence shall be deemed a material default in the Developer's performance of its obligations under this Section 18.1 to redevelop the Site and construct the Project as required by this Agreement.

**18.2 City's Right to Inspect.** For purposes of assuring compliance with this Agreement and to inspect and verify completion of the Project described herein, including the Public Improvements, representatives of the City shall have the right to enter the Site without charges or fees during normal construction hours during the period of construction. Upon completion of each construction element approved as a part of the Public Improvements in the Construction Drawings (the "**Public Element**"), the Developer shall notify the City of such completion. The City, including such third party representatives or consultants as it may desire, shall inspect the Public Element within ten (10) Business Days after such notice to determine whether it has been satisfactorily completed and is acceptable to the City.

**18.3 Cost and Conformity with Approved Drawings.** The cost of redeveloping the Site and constructing the Project in accordance with the approved Construction Drawings shall be borne by the Developer, except as expressly provided in Section 19 below. Developer shall carry out redevelopment of the Site and construction of the Project in conformity with the approved Construction Drawings and all applicable laws.

**18.4 No Transfer Before Completion.** Prior to recordation by the City of a Certificate of Performance (defined below) pursuant to Section 18.7 below, Developer shall not transfer, convey, assign or lease or suffer any involuntary transfer of the whole or any part of the Site or the buildings or structures thereon without the prior written consent of the City. In the absence of such written consent from the City, any such transfer, assignment or lease shall be deemed void and a material default under this Agreement and shall not relieve the Developer from any obligations under this Agreement until completion of the Project as evidenced by the recording of the Certificate of Performance. The prohibition set forth herein shall not be deemed to prevent the granting of easements or permits to facilitate redevelopment of the Site and construction of the Project, to restrict the leasing of all or any part of a building or structure when such improvements are under construction, or to prevent the granting of a deed of trust, mortgage, or other security for financing permitted under Section 18.5

below or any transfer of all or any portion of the Project arising out of the exercise by an Authorized Lender of its remedies under any such deed of trust, mortgage, or other security interest, including, without limitation any foreclosure or delivery of a deed in lieu of foreclosure. The foregoing prohibition shall not apply subsequent to the recordation of the Certificate of Performance and shall be deemed to expire and terminate as of the date of such recordation.

**18.5 Authorized Lender.** Notwithstanding the provisions of Section 18.4, mortgages, deeds of trust, or similar conveyances required for any reasonable method of financing are permitted before the recording of the Certificate of Performance, but only for the purpose of securing loans of funds to be used for construction and/or permanent financing of the redevelopment of the Site and construction of the Project. Developer shall submit its proposed financing for review and approval by the City Manager or his designee, which approval shall not be unreasonably withheld. Such proposed financing shall be deemed approved unless disapproved in whole or in part by written notice to the Developer setting forth the reasons therefor within five (5) Business Days after submission to the City. The holder of any mortgage, deed of trust, or other security interest authorized by this Section 18.5, including Zions First National Bank as the Lender of the initial construction financing, (hereinafter “**Authorized Lender**”) shall have no obligation to construct or complete the Project or to guarantee such construction or completion, nor shall any covenant or other provision in the Deed for the Site be construed to create such an obligation. However, nothing in this Agreement shall be deemed to construe, permit, or authorize an Authorized Lender or any successor or assign of an Authorized Lender to (i) construct any improvements on the Site or devote the Site to any uses other than those improvements and uses authorized by this Agreement; or (ii) devote the Site to any uses prohibited by the Deed.

**18.6 Notice of Default to Authorized Lender.** Whenever the City gives Developer any notice of default under this Agreement, the City shall, at the same time, deliver notice to any Authorized Lender that has notified the City of its interest in the Site. Each such Authorized Lender shall have the right, at its option, to cure or remedy any such default within the same time as Developer may cure or remedy such default under this Agreement. Nothing in this Agreement shall permit or authorize an Authorized Lender to undertake or continue the construction or completion of the Project (beyond steps necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer’s obligations hereunder by written agreement satisfactory to the City.

**18.7 Façade Easement & Certificate of Performance.** Promptly after completion of the Project in accordance with this Agreement and issuance of the Certificate of Occupancy:

18.7.1 Developer shall prepare a legal description of the façade of the building constructed on the Site and deliver to the Authority a fully executed façade easement in the form attached hereto as **Exhibit F** and incorporated herein by this reference (the “**Façade Easement**”). The Façade Easement shall be accepted by the

Authority and recorded in the real property records of the Larimer County Clerk and Recorder at its cost; and

18.7.2 At any time after receipt of the fully executed Façade Easement, the City shall furnish the Developer with a certificate of performance upon written request therefor by the Developer ("**Certificate of Performance**"). The Certificate of Performance shall be in a form suitable for recording in the real property records of the Larimer County Clerk and Recorder and shall state that Developer has completed the redevelopment of the Site and construction of the Project as required by this Agreement. Recording of the Certificate of Performance shall conclusively establish Developer's compliance with the terms of this Agreement and that each party then owning or thereafter purchasing, leasing, or otherwise acquiring an interest in the Site shall not incur any obligation or liability under this Agreement, except that such parties shall be bound by any covenants and deed restrictions contained in the Deed.

**18.8 Net Sales Proceeds.** In consideration of the City's contribution to the Project, upon sale by Developer of: (a) the Project; or (b) a controlling interest in the Developer, at any time after receipt of the Certificate of Occupancy, the City shall receive twenty-five percent (25%) of the "Net Sales Proceeds," if any, from the sale. For purposes of this Agreement, "**Net Sales Proceeds**" shall mean the gross sales price received by Developer minus (1) Developer's equity (capital) contribution, estimated to be \$1,000,000; (2) customary and reasonable costs of sale; (3) Developer's federal and state taxes due on gain; and (4) payment of Developer's unpaid loan balances, if any, of loans from Authorized Lenders; and (5) Developer's twenty percent (20%) cumulative annual internal rate of return ("IRR") on its equity (capital) contribution based on actual dates of investments and payments received from the Project as illustrated in **Exhibit H** attached hereto. Notwithstanding any other provisions, the City's right to a portion of the Net Sales Proceeds shall be extinguished and expire on that date which is twenty (20) years from the date on which the Certificate of Occupancy is issued. This provision shall have no application to a disposition of the Project by an Authorized Lender. The Developer's obligations to the City, pursuant to this Section 18.8, shall be secured by a Deed of Trust in favor of the City ("City Deed of Trust"), provided that such City Deed of Trust shall be expressly subordinate to the lien and any rights of any Authorized Lender whether arising before or after the City Deed of Trust and the City agrees to confirm such subordination in writing by an instrument reasonably requested by an Authorized Lender.

**18.9 Annual Certification of Assessed Valuation/Payment in Lieu of Taxes.** Commencing with the tax year in which the Project is assessed as completed for the purposes of property taxes, but not later than tax year 2014 (the "**First Full Tax Year**"), the Developer shall provide to Authority and the City a copy of its annual notice of assessed valuation from the Larimer County Assessor no later than 30 days after receipt thereof. It is anticipated that the assessed value for the Project will be sufficient to generate actual real property tax increment revenue as provided in the Act and that would be delivered to the Authority if the Project was the only real property located in the Plan Area ("**TIF Revenue**") in the amount of at least Fifty Two Thousand Dollars (\$52,000.00) for each full tax year, or a prorated amount for any partial tax year, until



the expiration of the Amended and Restated Plan on October 1, 2027 (the “**Repayment Period**”). The Parties acknowledge and agree that the annual TIF Revenue amount of Fifty Two Thousand Dollars (\$52,000.00) has been agreed to on the basis of an anticipated assessed value for the Project after completion of the \$10M Project, generating annual tax revenue which is Fifty Two Thousand Dollars (\$52,000.00) more than the annual tax revenue generated by the Site for tax year 2012. In the event that the real property tax increment monies for the Project are insufficient for any reason to generate the minimum annual TIF Revenue required in this Section 18.9 for any applicable tax year, the Developer, no later than April 30<sup>th</sup> of the year immediately following such tax year, shall make a payment in lieu of taxes in an amount equal to any such revenue shortfall to the Authority. During the Repayment Period, Developer, for itself, its successors and assigns, covenants not to seek any reduction in assessed valuation of the Project for property tax purposes which would reduce such value below the amounts required to produce the minimum TIF Revenue described herein, and the Developer, for itself, its successors and assigns, further covenants not to seek an abatement of taxes for the applicable tax years which would result in such a reduction of TIF Revenue. The obligation of Developer, its successors and assigns, to make any payment in lieu of taxes to provide the minimum annual TIF Revenues required in this Section 18.9 is intended to ensure receipt of a minimum amount of TIF Revenue by the Authority to contribute to the reimbursement of the City and the Authority over the Repayment Period for the cost of the incentives they are providing to the Developer under Section 19 below. The provisions of this Section 18.9 shall be of no effect if the Project is not included within the Plan Area by the end of tax year 2013.

**18.10 Obligations to Insure Project and to Reconstruct in Event of Damage or Destruction.** Subject to the obligations of Developer to any Authorized Lender, Developer agrees to restore and reconstruct the Project in the event of the Project's destruction, in whole or in part, due to fire or any other casualty and to maintain and keep in effect through the Repayment Period an insurance policy in an amount, form, and with an insurance company acceptable to the City to effect such restoration and reconstruction and which names the City as an additional insured. A copy of such insurance policy shall be provided by the Developer to the City at Closing.

**18.11 Survival of Post-Closing Covenants.** Developer's covenants and obligations as set forth in this Section 18 (collectively referred to as the "**Developer's Post-Closing Covenants**") shall survive Closing.

**19. City and Authority Incentives.**

**19.1 Payment for Public Improvements.** The Authority shall reimburse the Developer for the cost of constructing the Public Improvements in a total cumulative amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "**Public Improvement Payment**") in accordance with the following:

19.1.1. From time to time during construction of the Project, the Authority shall reimburse Developer for the cost of constructing a Public Element within thirty (30) days after: (a) the Public Element has been inspected and accepted by the

City under Section 18.2 above; and (b) Developer has delivered to the Authority an invoice for the cost of the Public Element, including underlying documentation confirming the cost for which reimbursement is sought. The maximum amount of reimbursement for construction of all Public Elements during construction of the Project shall not exceed Five Hundred Thousand Dollars (\$500,000.00).

19.1.2 Within thirty (30) calendar days after: (a) issuance of the Certificate of Occupancy by the City's Building Division; and (b) the Authority's receipt of the Façade Easement; and (c) the Authority's receipt from Developer of an invoice for the cost of constructing the Public Improvements for which reimbursement has not previously been paid during construction of the Project, including underlying documentation confirming the cost for which reimbursement is sought, the Authority shall reimburse Developer for the cost of constructing the remaining Public Improvements in a total cumulative amount not to exceed the unpaid balance of the total Public Improvement Payment of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

19.1.3 The total reimbursement due from the Authority under this Section 19.1 shall not exceed a total of One Million Five Hundred Thousand Dollars (\$1,500,000.00). All costs in excess of One Million Five Hundred Thousand Dollars (\$1,500,000.00) incurred by Developer in constructing all of the Public Improvements included in the approved Construction Drawings shall be borne by the Developer.

**19.2 Fee Waivers.** City acknowledges that the Site is located in Historic Downtown Loveland and capital expansion fees and building permit fees imposed upon a construction project by the City are not charged or collected on projects within Historic Downtown Loveland pursuant to Section 16.38.072 of the Loveland Municipal Code. County fees, school district fees, and fees due to the City's utility enterprises are not waived and shall remain due and payable in accordance with the Loveland Municipal Code. A fee estimate reflecting estimated fees and use taxes for the Project is attached as **Exhibit "G"** and incorporated by this reference.

**19.3 Construction Material Use Tax.** On the express condition that Developer completes the redevelopment of the Site and construction of the Project in compliance with and within the time frames set forth in Section 18.1, the City use tax imposed pursuant to Loveland Municipal Code Section 3.16.040 upon the construction and building materials used for the Project, up to a maximum total amount of \$50,000 (the "**Use Taxes**"), shall be waived (the "**Use Tax Waiver**"). If Developer fails to complete the redevelopment of the Site and construction of the Project in compliance with and within the time frames set forth in Section 18.1, the Use Taxes that would have been due with respect to the Project in the absence of the foregoing waiver shall be deemed to have been deferred and shall be paid to the City by Developer on or before December 31, 2014. If not timely paid, the City may use any or all collection remedies available to it under City Code Chapter 3.16. Any portion of the Use Tax Waiver not utilized by December 31, 2014 shall expire at that time and the City shall have no obligation to waive the Use Taxes due with respect to the Project after such date. The Use Taxes waived or deferred pursuant to this Section 19.3, shall not include any

amounts for use taxes or fees payable to Larimer County in connection with the Project, which shall be paid by Developer as required by law.

**19.4 Price Incentive and CEF Repayment.** Developer acknowledges that the Purchase Price of \$200,000.00 is discounted from the current market value of the Site, which the Parties agree is not less than \$560,000.00, resulting in an immediate economic incentive of \$360,000.00 to Developer, which incentive shall be referred to herein as the “**Price Incentive.**” In addition, the City’s sale of the Site for the Purchase Price requires repayment of Nine Hundred Thousand Dollars (\$900,000.00) in City Museum Capital Expansion Funds, which is the difference between the cost of the Site (\$1.1M) and the Purchase Price and is referred to as the “**CEF Repayment**”. The City is extending the Price Incentive to the Developer and the Authority is incurring the CEF Repayment in consideration of Developer’s promise to redevelop the Site and fulfill Developer’s Post-Closing Covenants.

**19.5 Standby Agreement for South Catalyst Project.** The RFP issued by the City included, in addition to the Site, a second site identified the “**South Catalyst Property.**” City agrees that until the earlier of (i) the termination of this Agreement and eighteen (18) months following the Closing under this Agreement; or (ii) until the Project is more than eighty percent (80%) leased (the “**Standby Period**”), the City shall not issue a building permit for multi-family housing on any portion of the South Catalyst Property owned by the City.

City and Developer agree that this Standby Period is warranted given the current economic conditions and the requirements of lenders offering multi-family financing in the market place. The Standby Period is calculated to provide Developer sufficient opportunity to construct and lease the Project and to stabilize occupancy to increase the likelihood of obtaining permanent financing to payoff construction loans. City and Developer agree that simultaneous or immediately sequential development of the Project and multi-family housing on the South Catalyst Property without the Standby Period could saturate the market putting the Project and any multi-family housing constructed on the South Catalyst Property both at risk.

On or before the end of the Due Diligence Period, City and Developer shall negotiate and agree upon a mutually acceptable "Standby Agreement" incorporating these terms to be executed and recorded at Closing.

**19.6 Delegation of Authority for City Approvals.** The City and the Authority hereby delegate to the City Manager or his designee the authority to: (1) review and approve or disapprove, as permitted by this Agreement, the Conceptual Drawings, Construction Drawings (including the Public Improvements), Developer’s proposed financing, the Standby Agreement; and (ii) for good cause shown, grant requests for extensions of time to satisfy requirements set forth in this Agreement.

**19.7 Survival of Obligations.** The City’s and the Authority’s obligations under this Section 19 shall survive Closing and shall inure to the benefit of an

Authorized Lender if the Project has been transferred to such Authorized Lender through foreclosure, delivery of a deed in lieu of foreclosure or similar occurrence.

## **20. Obligations Between the City and the Authority.**

**20.1 City's Obligation to Authority.** The City agrees to loan to the Authority, and shall disburse to the Authority within thirty (30) days after the Effective Date, the full amount of \$1.5M needed by the Authority to make the Public Improvement Payment to the Developer as provided in Section 19.1 above (the "**City Loan**"). The City shall provide to the Developer a copy of its ordinance appropriating the \$1.5M for the City Loan within thirty (30) days after Closing.

**20.2 The Authority's Obligations to the City.** In consideration of the City's conveyance of the Site to the Developer, the City Loan to the Authority under Section 20.1 above, and the other incentives the City is providing in Section 19 above, the Authority agrees that when it receives a TIF Revenue payment and receives, after payment of all tax increment revenue amounts owed under the Lincoln Place MFA, any other tax increment revenues under the Modified and Restated Plan, the Authority shall promptly pay all such amounts to the City until the City has: (1) been paid the full amount of the City Loan; (2) been reimbursed in full for the Use Tax Waiver; (3) been reimbursed in full for the CEF Repayment; and (4) been reimbursed in full for the Finance Costs. This total amount owed by the Authority to the City shall accrue interest at the rate of 3%. In addition, if for any reason the Authority does not timely pay the Public Improvement Payment as provided in Section 19.1 above, the Authority shall, upon receiving written demand from the City, promptly repay to the City the full amount of the City Loan. These obligations shall survive Closing. The City and the Authority shall have the right to amend the obligations set forth in this Section 20.2 pertaining to the Authority's payment of TIF Revenue to the City, from time to time, without the consent of the Developer or the Guarantor.

## **21. Miscellaneous**

**21.1 SPECIAL DISTRICT DISCLOSURE STATEMENT.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. DEVELOPER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES. **Developer is hereby notified by the City and**

**Authority that the Site is located within the boundaries of and subject to taxation by the City of Loveland General Improvement District No. 1.**

**21.2 Time.** Time is of the essence of each and every term, provision and covenant of this Agreement. Except as expressly provided otherwise herein, the expiration of any period of time prescribed in this Agreement shall occur at 11:59 p.m. of the last day of the period. Should any period of time prescribed herein end on a Saturday, Sunday or legal holiday (as recognized by the Federal government), the period of time shall automatically be extended to 11:59 p.m. (or such other time as is expressly provided herein) of the next full Business Day.

**21.3 No Waiver.** No waiver by any party of the performance or satisfaction of any covenant or condition herein shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder.

**21.4 Entire Agreement.** This Agreement contains the entire agreement between the Parties regarding the Site and supersedes all prior agreements, whether written or oral, between the Parties regarding the same subject including, without limitation, the ERN. This Agreement shall not be modified by any party by any oral representation made before or after the execution of this Agreement, and except as provided in Section 20.2, all modifications must be in writing signed by City, Authority, and Developer.

**21.5 Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of City, Authority, and Developer; provided, however, that except for assignments to Authorized Lenders, Developer shall not, prior to the recording of a Certificate of Performance by the City pursuant to Section 18.7, assign Developer's rights, benefits and/or obligations pursuant to this Agreement to any party or transfer a controlling interest in Developer without the prior written consent of the Council. Any such assignment without the Council's prior written consent shall be deemed null and void and without any affect and shall be considered a material default of this Agreement. However, no assignment of this Agreement by Developer, whether or not such assignment requires the consent of City, shall relieve Developer of its personal and primary obligation to perform all of the obligations to be performed by Developer hereunder.

**21.6 Survival.** The waiver, release, indemnity, insurance, redevelopment and public improvement cost incentive provisions of this Agreement and the other obligations expressly stated herein to survive Closing, shall survive the Closing and shall not merge with the delivery of the Deed.

**21.7 Severability.** In the case that any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**21.8 Captions.** Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

**21.9 Exhibits.** All exhibits attached to this Agreement shall be incorporated by reference as if set out herein in full.

**21.10 Relationship of the Parties.** The Parties acknowledge that no party is an agent for any other party and that no party shall or can bind or enter into agreements for the other Parties.

**21.11 Governing 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 and Authority by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the City by its Charter and Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall the Parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall only be in the District Court for Larimer County, Colorado.

**21.12 Review by Counsel.** The Parties acknowledge that each party and its legal counsel have reviewed and approved this Agreement, and the Parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**21.13 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement shall only be effective if the same agreement is, or identical counterparts are, signed by the City, the Authority and the Developer.

**21.14 Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Developer, the City and the Authority and their respective members, principals, partners and successors and no third party shall be entitled to the benefit of any of the provisions of this Agreement. However, to the extent applicable to the Title Company's duties, the Title Company may rely on the terms and conditions of this Agreement.

**21.15 Facsimile or PDF Signatures.** City, Authority, and Developer each (i) has agreed to permit the use from time to time, where appropriate, of facsimile or emailed pdf signatures in order to expedite the transaction contemplated by this Agreement, (ii) intends to be bound by its respective facsimile or emailed pdf signature, (iii) is aware that the other will rely on the facsimile or emailed pdf signature, and (iv) acknowledges such reliance and waives any defenses to the enforcement of this

Agreement and the documents affecting the transaction contemplated by this Agreement based on the fact that a signature was sent by facsimile or emailed pdf only.

**21.16 Mutual Cooperation.** The Parties each agree to execute, acknowledge and deliver or to cause to have executed, acknowledged and delivered, such other and further instruments and documents as may reasonably be requested another party to carry out this Agreement. Each party hereto shall use its good faith efforts to cause satisfaction of all conditions to its obligation under this Agreement, and to exercise good faith in fulfilling its obligations under this Agreement.

**21.17 Disclosure.** Developer understands and acknowledges that under the Colorado Open Records Act, C.R.S. §§ 24-72-201 et al., (“**CORA**”) this Agreement is subject to public inspection. In addition to the public inspection requirements of CORA, the Developer also understands and acknowledges that the Colorado Open Meetings Law, C.R.S. § 24-6-402, (“**COML**”) may also require a disclosure of the terms and conditions of this Agreement at public meetings of the Council and of the Authority's governing body. Therefore, any such disclosures of the terms and conditions of this Agreement under CORA or COML are permitted under this Agreement and shall not be considered a breach of any provision of this Agreement. Additionally, Developer understands and acknowledges that if and to the extent the disclosure under CORA or COML requirements are in conflict with this Agreement, then the disclosure requirements under CORA and/or COML shall be deemed to control.

**21.18 Waiver of Jury Trial.** To the extent permitted by applicable law, the Parties hereby irrevocably waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement, or the transactions contemplated hereby.

**21.19 Recording.** This Agreement shall not be recorded in any place or office of public record and any action by a party in violation of this provision shall be deemed to be a material default hereunder and permit the other Parties hereto to terminate this Agreement immediately and without further notice; provided, however, that the filing of this Agreement as part of any proceedings instituted in any court of proper jurisdiction to enforce the provisions of this Agreement shall not be deemed to be a breach of this Section 22. Notwithstanding the foregoing, a memorandum of agreement setting forth the restrictions on conveyance set forth in Section 18.4 shall be executed by the Parties and recorded upon the Effective Date and the Certificate of Performance shall be recorded as set forth in Section 18.7.2. A Notice of Termination of such memorandum of agreement shall be filed with or included in the Certificate of Performance.

**21.20 Attorney Fees and Costs.** If any party commences an action to enforce or interpret any portion of this Agreement, the prevailing party in such action shall be paid by the non-prevailing or defaulting party the prevailing party's costs and reasonable attorney fees, to be awarded by the court.

**IN WITNESS WHEREOF**, the Parties have entered into this Agreement on the date set forth above.

**CITY:**

**CITY OF LOVELAND, a**  
Colorado home rule municipality

By: \_\_\_\_\_  
William D. Cahill  
Title: City Manager

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**AUTHORITY:**

**LOVELAND URBAN RENEWAL**  
**AUTHORITY, a Colorado urban renewal**  
authority

By: \_\_\_\_\_  
Cecil A. Gutierrez  
Title: Chairman, Board of  
Commissioners

**DEVELOPER:**

**541 N. LINCOLN, L.L.C.**



a Utah limited liability company

By: \_\_\_\_\_  
Kevin Brinkman, Authorized Representative

**ACCEPTANCE BY TITLE COMPANY**

The Title Company acknowledges receipt of the foregoing Agreement and accepts the instructions contained therein.

Dated: \_\_\_\_\_, 2012

**Fidelity Title Insurance Company**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**Legal Description of North Catalyst Project Site**

**Lots 1 through 8, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado**

## EXHIBIT B

### General Description of North Catalyst Project

**Site Design:**

The property shall be developed according to the basic concept drawings shown below and identified as substantially similar to the preliminary concept plan “Scheme 1” submitted for review by the buyer and similar to the design in *Exhibit 4 – Preliminary Concept Plan* submitted in response to the City’s Request for Proposals. It is acknowledged that the conceptual design is general and approximate.

Generally, the property shall be developed as a multi-family rental with not less than 50 units on three to four stories with at grade parking. The building will be developed lot line to line maximizing the developable ground.

The property design shall acknowledge and work to enhance the special character of Downtown Loveland. The design shall be consistent with the existing standards set forth in the BE Zone guidelines.

**Public Improvements:** Public improvements shall mean the following improvements that are of a public nature and/or serve a public purpose, which are to be constructed by Developer as a part of the Project:

- a. Existing building remediation and demolition
- b. Repair or removal of deteriorated site improvements
- c. Utility and infrastructure improvements in the public right of way, including street and alley improvements
- d. Sidewalk and streetscape improvements
- e. Incremental energy efficiency and conservation improvements for fixed building systems in excess of basic levels as established by the governing codes and regulations in place as of the date of this agreement (HVAC, mechanical etc.)
- f. Façade improvements for all visible portions of the building facing a public right of way
- g. The specific items listed on Exhibit B-1 attached hereto.

Driveway entrances will be located at 6<sup>th</sup> Street and the street, sidewalk and alley improvements shall be consistent with City standards for such improvements.



1 3D View 2



1 EAST ELEVATION



2 NORTH ELEVATION



6TH & LINCOLN  
LOVELAND, CO

PROJECT: 15068.02  
OWNER: AT  
DESIGNED: Under  
APPROVED: Approved  
DATE: 06/27/2017  
BY: [Signature]



6TH & LINCOLN  
LOVELAND, CO

PROJECT: 15068.02  
OWNER: AT  
DESIGNED: Under  
APPROVED: Approved  
DATE: 06/27/2017  
BY: [Signature]

6TH & LINCOLN  
LOVELAND, CO



**ARCHITECTURE**  
 1800 29th Street  
 Suite 2004  
 Boulder, Colorado 80502  
 Phone 303.442.8800

**6TH & LINCOLN**  
 LOVELAND, CO

PROJECT: 170404-00  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 DATE: 08/03/17  
 SCALE: AS SHOWN

NOT FOR CONSTRUCTION

DATE: 08/03/17  
 TIME: 10:00 AM

**A4.02**



**ARCHITECTURE**  
 1800 29th Street  
 Suite 2004  
 Boulder, Colorado 80502  
 Phone 303.442.8800

**6TH & LINCOLN**  
 LOVELAND, CO

PROJECT: 170404-00  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 DATE: 08/03/17  
 SCALE: AS SHOWN

NOT FOR CONSTRUCTION

DATE: 08/03/17  
 TIME: 10:00 AM

**A4.52**

**EXHIBIT B-1**

- |                                  |                                    |
|----------------------------------|------------------------------------|
| SITE GENERAL CONDITIONS          | BIKE RACKS                         |
| STREET AND ALLEY CLOSURE PERMITS | MONUMENT SIGN                      |
| DEMOLITION                       | TREE GRATES                        |
| CLEAR, GRUB, FINE GRADE          | ARCHITECTURAL CMU                  |
| IMPORT/EXPORT                    | MASONRY VENEER                     |
| OVEREX RECOMPACT                 | PRE-CAST CAPS, LEDGERS, ETC.       |
| STRUCTURAL EX BACKFILL           | BALCONY RAILS                      |
| WATER- DOMESTIC                  | BALCONY FRAMES AND DECK GRATE      |
| WATER- METER PIT                 | GARAGE GRILLS                      |
| WATER- FIRE SERVICE              | ROOF SCREENS                       |
| WATER- STREET CUTS               | WINDOW AND PATIO DOOR INSTALL      |
| SANITARY SEWER                   | HARDI PLANK SIDING & TRIM          |
| MANHOLES                         | METAL EYEBROWS AT PARAPET          |
| STREET CUTS- SEWER               | METAL EYEBROWS at WINDOWS          |
| SAND/ OIL OR GREASE INTERCEPTORS | LEVEL 5 ROOF CANOPIES              |
| SITE WALLS                       | METAL WALL PANEL                   |
| POLE BASES                       | STUCCO                             |
| CURB & GUTTER                    | UNIT PATIO SLIDERS                 |
| CONCRETE PAVING                  | VINYL WINDOWS                      |
| SIDEWALKS                        | CURTAIN WALL                       |
| ASPHALT PAVING                   | ALUMINUM STOREFRONT                |
| ASPHALT PATCHING                 | ALUMINUM STOREFRONT ENTRIES (PAIRO |
| PAVEMENT MARKINGS & SIGNAGE      | LIGHT GAGE FRAMING AND DRYWALL     |
| LANDSCAPING                      | CLUB PARAPET RAILING               |
| TRASH ENCLOSURE                  | CLUB ROOF CANOPIES                 |
| PARKING BLOCKS                   | CLUB STOREFRONT WINDOWS            |
| SITE FURNISHINGS                 |                                    |

**EXHIBIT C**

**SITE INFORMATION**

- 1. Phase I Environmental Assessment prepared by Nation Inspection Services and dated September 18, 2011.**
- 2. Phase II Environmental Assessment prepared by National Inspection Service dated July 14, 2012**
- 3. Asbestos Survey prepared by CTL Thompson dated May 11, 2009.**
- 4. Survey prepared by Northern Engineering dated August 22, 2011.**



## Exhibit D Schedule of Performance

Action	Date
<p>1. <b>Consideration of Development and Disposition Agreement (DDA).</b> Upon the signature of the DDA by Developer, the City Council shall consider whether to (a) authorize the execution of the DDA agreement; (b) authorize, finance and appropriate funding for Incentive Costs; and (c) adopt the Modified and Restated Plan.</p>	<p>Within sixty (60) calendar days of the Developer signing the DDA, the City Council shall schedule consideration of the ordinance approving the Disposition and Development Agreement.</p> <p>(Section 7.1.1)</p>
<p>2. <b>Consideration of Resolution Adopting the Modified and Restated Plan.</b></p>	<p>Within forty five (45) calendar days after approval of DDA on 1<sup>st</sup> reading.</p> <p>(Section 7.1.1)</p>
<p>3. <b>Approval of the DDA by City Council.</b> Approval of DDA and financing of Incentive Costs is by ordinance, which requires two (2) readings by Council. The ordinance takes effect 10 days after publication of the ordinance after approval on second reading (“Effective Date” as defined in Section 3.2). The City shall execute the DDA after approvals received.</p>	<p>Within forty five days (45) calendar days after approval on 1<sup>st</sup> reading.</p> <p>(Section 7.1.1)</p>
<p>4. <b>Execution of the DDA and Payment of Earnest Money Deposit.</b> Developer shall pay an earnest money deposit of \$5,000 to Fidelity National Title to be held in escrow and paid to City on conveyance of the Property to the Developer.</p>	<p>Within five (5) business days after Effective Date of the ordinance approving the sale by the City.</p> <p>(Section 3.2)</p>
<p>5. <b>Due Diligence Period.</b></p>	
<p style="padding-left: 40px;">A. Developer shall have Due Diligence Period in which to inspect Site, obtain design, development, construction and financing commitments and all land use and development approvals for the Project.</p>	<p>Due Diligence Period expires one hundred eighty (180) calendar days after Effective Date.</p> <p>(Section 5.2)</p>
<p style="padding-left: 40px;">B. <b>Title and Survey.</b> City to deliver Title Commitment and copies of exceptions. City has delivered Survey to Developer.</p>	<p>Delivery of title work twenty one (21) calendar days after Effective Date.</p> <p>(Section 6.2)</p>

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Developer has until end of Due Diligence Period to give written notice of Title and Survey Objections.	By end of Due Diligence Period. (Section 6.2)
<b>C. City Deed of Trust.</b> Developer and City shall agree upon form of City Deed of Trust.	By end of Due Diligence Period. (Section 18.8)
<b>D. Standby Agreement.</b> City and Developer shall agree upon mutually acceptable Standby Agreement for South Catalyst Project.	By end of Due Diligence Period. (Section 19.5)
6. <b>Developer Submission of Conceptual Drawings for the Project.</b> City shall review Conceptual Drawings to ensure consistency with DDA. The City in conjunction with the Developer's design team shall hold one (1) public meeting to solicit input from the community. This does not exempt the Project from meeting the basic requirements of the City Code for development approvals.	Within thirty (30) calendar days after Effective Date. (Section 17.1.1)
<b>Approval of Conceptual Drawings.</b> Written comments will be provided by the City to the Developer and the Developer's design team.	Within ten (10) calendar days after receipt of Conceptual Drawings by the City. Conceptual Drawings are deemed to be approved if no written comments are given within ten (10) calendar days. (Section 17.1.1)
8. <b>Developer Submission of Construction Drawings for the Project.</b> The Developer shall submit Construction Drawings, including all Public Improvements, for City approval. Construction Drawings shall be consistent with the Conceptual Drawings submitted by the Developer and approved by the City.	Within one hundred twenty (120) days after the Effective Date. (Section 17.2)
9. <b>Approval of Construction Drawings.</b> Written comments will be provided by the City to the Developer and the Developer's design team.	Within ten (10) calendar days after receipt of Construction Drawings by the City. Conceptual Drawings are deemed to be approved if no written comments are given within ten (10) calendar days. (Section 17.2)

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| 10. <b>Developer Submission of Applications for Site Development Plan and Building Permit.</b><br>Developer shall submit applications after City's approval of Construction Drawings.   | Within thirty (30) calendar days of City's approval of Construction Drawings.<br><br>(Section 17.3)  |
| 11. <b>Review and Approval of Developer Financing.</b><br>The City shall approve or disapprove the Developer's evidence of equity capital including lender and mortgage financing for development of parcel. Review and approval will not be reasonably withheld. | Within five (5) Business Days after receipt by the City of the financing. Financing is deemed to be approved if no written comments are given within those five (5) Business Days.<br><br>(Section 18.5)                               |
| 12. <b>Closing.</b> Upon receipt of \$200,000, including earnest money, by Fidelity National Title, and satisfaction of conditions the City shall convey title to Developer for purpose of completing the Project.  | Within fourteen (14) Business Days after approval of the building permit.<br><br>(Section 4.1)   |
| 13. <b>Commence construction.</b> Developer shall commence construction of the building as evidenced by the remediation and demolition of the structure at the Site.  | Within forty five (45) days after receipt of building permit.<br><br>(Section 18.1)  |
| 14. <b>Verification and field inspections.</b> Developer shall submit invoices and other verification for completion of the Public Improvements as outlined in the DDA.   | Ongoing – during construction<br><br>(Sections 18.2 and 19.1)  |
| 15. <b>Façade Easement.</b> Developer shall prepare legal description and submit Façade Easement to City.   | Promptly after Certificate of Occupancy<br><br>(Sections 18.7.1 and 18.7.2)  |
| 16. <b>Certificate of Performance.</b> City shall issue Certificate of Performance evidencing Developer's completion of redevelopment and performance under the DDA.  | After receipt of executed Façade Easement and request by Developer.<br>(Section 18.7.2)  |
| 17. <b>Payment for Public Improvements.</b> City shall pay up to \$500,000 for Developer cost of Public Improvements from time to time during development per Section 19.1.1.   | Upon completion of the work, Developer shall submit invoices to the City subject to field verification. Payment shall be made within thirty (30) business days after submission of invoices and City acceptance.<br><br>(Section 19.1) |

18. **Payment for Remaining Unpaid Public Improvements.** City shall pay the Developer remaining unpaid cost of Public Improvements incurred for the Project up to \$1,500,000.

Within thirty (30) calendar days after issuance of permanent Certificate of Occupancy and receipt of the Façade Easement, receipt of invoices and City acceptance of work.

(Section 19.2)

**EXHIBIT E****SPECIAL WARRANTY DEED**

**THIS SPECIAL WARRANTY DEED** is made this \_\_\_ day of \_\_\_\_\_, 2012, between the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality ("**Grantor**"), and **541 N. LINCOLN, L.L.C.**, a Utah limited liability company ("**Grantee**"), whose address is 3003 East Harmony Avenue, Suite 300, Fort Collins, Colorado 80525.

**WITNESSETH**, that Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, and conveyed and by these presents does grant, bargain, sell, and convey to Grantee, subject to the exceptions, restrictions and reservations hereafter described, that certain real property located in Larimer County, Colorado, as more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Property**");

**TO HAVE AND TO HOLD** the Property, together with all and singular the rights and appurtenances thereof, to the same belonging or in any way appurtenances thereof, to the same belonging or in any way appertaining, to the only proper use and benefit of Grantee in fee simple.

**THIS DEED** is made expressly subject to the title exceptions set forth on **Exhibit B** attached hereto and incorporated herein by reference (collectively, the "**Title Exceptions**").

**GRANTEE ACKNOWLEDGES AND AGREES**, that in accepting this deed, it does for itself and its successors and assigns, covenant and agree with Grantor and its successors, notwithstanding any applicable City of Loveland, Colorado, zoning ordinances to the contrary, to the following use restrictions for the Property or any portions thereof (collectively, the "**Deed Restriction**");

No portion of the Property or any building, structure or improvement presently or subsequently erected on the Property, shall be used for any of the following uses: (a) indoor housing or raising of animals; (b) pawn shop; (c) skateboard park; (d) retail motor vehicle sales, rental or repair; (e) check cashing or payday loan business; (f) manufacturing or processing of an end product from a natural raw material source, whether animal, mineral or vegetable; (g) tattoo parlor; (h) self-storage units; (i) gun store; (j) recycling collection and / or processing facilities; (k) retail car wash; (l) clubs and lodges; (m) place of worship or assembly; (n) hospital; (o) crematorium; (p) junkyard; (q) jails, detention and penal centers and facilities; (r) retail gas station; (s) long-term care facility; (t) dairy processing plant; (u) laundry and dry-cleaning plants; (v) boarding and rooming houses; (w) retail laundry and dry-cleaning establishments; and (x) retail sale, rental or repair of equipment.

Grantee agrees that this Deed Restriction shall attach to and run with the Property and that Grantor and its successors shall be entitled to judicially enforce this Deed Restriction by

mandatory injunction and any other remedy available at law or in equity. Grantee and Grantor agree, for themselves and their respective successors and assigns, that venue for any judicial action to interpret or enforce the Deed Restriction shall only be in the District Court for Larimer County, Colorado.

**SUBJECT TO** real property taxes for the current year, encumbrances created by Grantee or Grantee's agents, and the Title Exceptions, Grantor agrees to warrant and forever defend the right and title to the Property to the Grantee against the claims of all persons claiming by, through or under Grantor, and not otherwise.

**GRANTEE**, for itself and its successors, lessees and assigns (collectively, "Grantor's Assigns"), hereby releases the City and the Authority from, and waives, any and all claims and liabilities against Grantor for, related to, or in connection with, any prior or current environmental or physical condition of the Property (or the presence of any matter or substance relating to the environmental condition of the Property), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances previously or now located in, at, about or under the Property, or for any and all claims or causes of action (actual or threatened) based upon, in connection with, or arising out of, the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, and as it may be further amended from time to time, the Federal Resource Conservation and Recovery Act, as amended and as it may be further amended from time to time, the Colorado Hazardous Waste Act, as amended, and as it may be further amended from time to time, or any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action) related to environmental matters or liability with respect to, or affecting, the Property. Grantee and Grantee's Assigns hereby assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Grantee's investigations, and Grantee and Grantee's Assigns, hereby waive, relinquish, and release Grantor from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorney fees and court costs) of any and every kind or character, known or unknown, which Grantee or Grantee's Assigns might have asserted or alleged against the Grantor, at any time by reason of or arising out of any latent or patent construction defects or physical conditions, violations of any applicable laws (including, without limitation, any environmental laws) and any and all other acts, omissions, events, circumstances or matters regarding the Property, with the exception of claims based on breach of the Grantor's express representations and warranties set forth in Section 10 of the Disposition and Development Agreement dated {INSERT} pertaining to the Property.

**IN WITNESS WHEREOF**, Grantor has executed this Special Warranty Deed on the day and year first above written.

**GRANTOR:**

CITY OF LOVELAND, COLORADO, a Colorado home rule municipality

By: \_\_\_\_\_

Name: William D. Cahill

Title: City Manager

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**STATE OF COLORADO**            )  
  ) ss.  
**COUNTY OF LARIMER**            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by William D. Cahill as City Manager of the City of Loveland, Colorado, and Teresa G. Andrews as City Clerk of the City of Loveland, Colorado.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A TO SPECIAL WARRANTY DEED**

**LEGAL DESCRIPTION OF THE SITE/NORTH CATALYST PROJECT SITE**



**EXHIBIT B TO SPECIAL WARRANTY DEED**

**TITLE EXCEPTIONS**

## EXHIBIT F

### GRANT OF EASEMENT FOR FACADE

541 N. LINCOLN, L.L.C., a Utah limited liability company, (“**Grantor**”) is the owner of the following described real property located in the City of Loveland, County of Larimer, State of Colorado:

[INSERT LEGAL DESCRIPTION]

(hereinafter referred to as the “**Property**”). The street address of the Property is 533 N. Lincoln Street, Loveland, Colorado 80537; and

Grantor does hereby grant and convey, in accordance with the following terms and conditions, to the Loveland Urban Renewal Authority, a body corporate and politic (“**LURA**”), an easement on, over, under and across the [INSERT DESCRIPTION OF FACADE SUBJECT TO EASEMENT] (the “**Façade Easement**”)

#### 1. FACADE

The Façade of the Property consists of those improvements shown on the façade plans and designs which are attached hereto as **Exhibit “A”** (the “**Façade**”) and shall specifically include, without limitation, all signage, canopies and architectural elements depicted thereon.

#### 2. EASEMENT

The Façade Easement granted herein shall be for the purpose of entering on, over, under and across the Property to preserve and maintain the Façade in its initial constructed condition and location and for structural support of the Façade unless the building behind the Façade is totally damaged or destroyed. Grantor shall be obligated to maintain and repair the Façade, including replacement of all or any part thereof if necessary, in a manner that will preserve the Façade in substantially the same condition as existing at the time of the completion of the Façade. Grantor shall further be obligated to maintain the Property to the extent required to provide structural support for the Façade, unless the building behind the Façade is totally damaged or destroyed. LURA shall have no maintenance obligation whatsoever for the Façade or the Property and shall not be liable to the Grantor or its successors and assigns in any manner for any costs associated with the Façade, the Façade Easement or the Property.

In the event that Grantor, or its successors and assigns, shall fail to maintain or repair the Façade (or the Building or Property to provide support for the Façade) as required herein, LURA may give written notice to Grantor, or its successors and assigns,

requiring Grantor to commence the requested maintenance and repair within ten (10) days of receipt of such notice and to diligently complete such maintenance and repair within a reasonable amount of time thereafter as specified in such notice. If such work is not commenced or is not completed as required by such notice, LURA may, in its sole discretion, cause such work to be completed and may thereafter assess the entire cost of such work against Grantor or its successors and assigns. LURA shall have a lien on the Property to secure any amount owed to it for repair and maintenance performed by it on account of the failure to maintain and repair the Facade or the Property as required herein, and such lien may be foreclosed as provided by law for the foreclosure of real estate mortgages, however, such lien shall be subordinate to any lien of a lender providing construction or permanent financing with respect to the development of the Property.

### 3. TERM

The term of the easement granted herein shall commence upon the execution of this Grant of Easement for Façade and shall expire on September 30, 2027.

### 4. ALTERATIONS

No alteration of the Facade including, without limitation, alterations of or additions to the signage, canopies or architectural elements approved by LURA and shown on Exhibit "A", shall be made without the express written approval of LURA, which approval shall not be unreasonably withheld. LURA, in considering such requests, shall take into account the reasons for the request and whether the requested alteration is consistent with the historic character of the original design for the Façade or otherwise is compatible with the character of the redeveloped properties within the City of Loveland downtown as well as the specific area in which the Property is located. LURA shall not remove or alter the Facade except in performing any maintenance or repair thereof in accordance with this Grant of Easement for Facade.

### 5. INDEMNIFICATION

Grantor, and its successors and assigns, shall indemnify and hold harmless LURA and the City of Loveland, Colorado, a home rule municipality, (the "City") from and against any damage, liability, loss or expense incurred by LURA or the City (including attorneys' fees and costs) arising out of or in any way connected with the Facade, its use, maintenance, repair or replacement, except with regard to any use, maintenance, repair or replacement made by LURA, its employees, agents or contractors, or caused by the gross negligence or willful misconduct of LURA or its employees, agents or contractors. Further, Grantor, and its successors and assigns, shall indemnify and hold harmless LURA and the City from and against any damage, liability, loss or expense (including attorneys' fees and costs) incurred by LURA arising out of, or in any way connected with



With a copy to: [INSERT]

Lienholder: [INSERT]

or to any change of address given in writing by one party to the other.

9. ATTORNEYS' FEES AND COSTS

Should any party default in any of the covenants or obligations in this Façade Easement, the defaulting party shall pay the non-defaulting party's reasonable expenses in enforcing this Façade Easement, including reasonable attorneys' fees.

10. GOVERNING LAW AND SEVERABILITY

This Façade Easement shall be governed by, and its terms construed under, the laws of the State of Colorado. The Parties to this Façade Easement further acknowledge and agree that there are legal constraints imposed upon LURA and the City by the Constitution, statutes and laws of the State of Colorado and the City's Code and Charter, and that subject to such restraints, the Parties intend to carry out the terms and conditions of this Façade Easement. Whenever possible, each provisions of this Façade Easement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Façade Easement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or other provisions of this Façade Easement.

11. BINDING EFFECT

This Grant of Easement for Façade shall be binding upon and inure to the benefit of the Grantor and LURA and their respective successors and assigns and shall run with the Property.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

*[signatures follow on next page]*

**GRANTOR:**

541 N. LINCOLN, L.L.C.,  
a Utah limited liability company

By: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

STATE OF COLORADO )  
  )ss  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_,  
2012, by Kevin Brinkman as authorized representative of 541 N. Lincoln, L.L.C.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**LIENHOLDER’S CONSENT**

By signing below, the Lienholder consents to the granting of this Façade Easement in accordance with the foregoing terms and conditions and agree that its lien shall be subordinated to the this Façade Easement.

**LIENHOLDER:**

[INSERT]

By: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

STATE OF COLORADO )  
 )ss  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires:\_\_\_\_\_

**EXHIBIT G**  
**FEE ESTIMATE**



**Exhibit H  
Sale Proceeds Estimate**

The estimate is based on the sale proceeds of \$4 million above any debt obligations and associated costs as outlined in Section 18.8.

Minimum IRR Due	20.00%	Loveland Participation	25.00%	676,316
Actual XIRR Earned	20.00%			

Date of Payment	Net Cash Flow to Equity	Beginning Balance	Minimum Return Due	Return Paid	Ending Balance	XIRR Earned	Thereafter Remaining	Loveland Participation
9/1/2012	(1,000,000)	-	-	-	-	(1,000,000)	-	-
10/1/2012	-	1,000,000	15,098	-	1,015,098	-	-	-
11/1/2012	-	1,015,098	15,841	-	1,030,939	-	-	-
12/1/2012	-	1,030,939	15,565	-	1,046,504	-	-	-
1/1/2013	-	1,046,504	16,331	-	1,062,836	-	-	-
2/1/2013	-	1,062,836	16,586	-	1,079,421	-	-	-
3/1/2013	-	1,079,421	15,203	-	1,094,625	-	-	-
4/1/2013	-	1,094,625	17,082	-	1,111,707	-	-	-
5/1/2013	-	1,111,707	16,785	-	1,128,491	-	-	-
6/1/2013	-	1,128,491	17,611	-	1,146,102	-	-	-
7/1/2013	-	1,146,102	17,304	-	1,163,406	-	-	-
8/1/2013	-	1,163,406	18,155	-	1,181,561	-	-	-
9/1/2013	15,000	1,181,561	18,439	(15,000)	1,185,000	15,000	-	-
10/1/2013	15,000	1,185,000	17,891	(15,000)	1,187,891	15,000	-	-
11/1/2013	15,000	1,187,891	18,537	(15,000)	1,191,429	15,000	-	-
12/1/2013	15,000	1,191,429	17,988	(15,000)	1,194,417	15,000	-	-
1/1/2014	15,000	1,194,417	18,639	(15,000)	1,198,057	15,000	-	-
2/1/2014	15,000	1,198,057	18,696	(15,000)	1,201,753	15,000	-	-
3/1/2014	15,000	1,201,753	16,926	(15,000)	1,203,679	15,000	-	-
4/1/2014	15,000	1,203,679	18,784	(15,000)	1,207,463	15,000	-	-
5/1/2014	15,000	1,207,463	18,230	(15,000)	1,210,693	15,000	-	-
6/1/2014	15,000	1,210,693	18,893	(15,000)	1,214,586	15,000	-	-
7/1/2014	15,000	1,214,586	18,338	(15,000)	1,217,924	15,000	-	-
8/1/2014	15,000	1,217,924	19,006	(15,000)	1,221,931	15,000	-	-
9/1/2014	15,450	1,221,931	19,069	(15,450)	1,225,549	15,450	-	-
10/1/2014	15,450	1,225,549	18,504	(15,450)	1,228,603	15,450	-	-
11/1/2014	15,450	1,228,603	19,173	(15,450)	1,232,326	15,450	-	-
12/1/2014	15,450	1,232,326	18,606	(15,450)	1,235,481	15,450	-	-
1/1/2015	15,450	1,235,481	19,280	(15,450)	1,239,312	15,450	-	-
2/1/2015	15,450	1,239,312	19,340	(15,450)	1,243,201	15,450	-	-
3/1/2015	15,450	1,243,201	17,510	(15,450)	1,245,261	15,450	-	-
4/1/2015	15,450	1,245,261	19,433	(15,450)	1,249,244	15,450	-	-
5/1/2015	15,450	1,249,244	18,861	(15,450)	1,252,656	15,450	-	-
6/1/2015	15,450	1,252,656	19,548	(15,450)	1,256,754	15,450	-	-
7/1/2015	15,450	1,256,754	18,975	(15,450)	1,260,278	15,450	-	-
8/1/2015	15,450	1,260,278	19,667	(15,450)	1,264,495	15,450	-	-
9/1/2015	15,914	1,264,495	19,733	(15,914)	1,268,315	15,914	-	-
10/1/2015	15,914	1,268,315	19,149	(15,914)	1,271,551	15,914	-	-
11/1/2015	15,914	1,271,551	19,843	(15,914)	1,275,480	15,914	-	-
12/1/2015	4,000,000	1,275,480	19,257	(1,294,737)	-	1,294,737	2,705,263	676,316

(1) The calculations above are for illustrative purposes only and are not intended to represent actual investment amounts or actual investment performance.  
(2) The minimum Internal Rate of Return to developer will be determined by taking into consideration actual dates and actual amounts of contributions made and distributions received to and by Developer LLC.  
(3) The minimum Internal Rate of Return will be calculated using the XIRR function in Microsoft Excel.

**FIRST READING**      December 18, 2012

**SECOND READING**      January 15, 2013

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR A LOAN TO THE LOVELAND URBAN RENEWAL AUTHORITY IN CONNECTION WITH THE NORTH CATALYST PROJECT LOCATED AT 541 N. LINCOLN IN LOVELAND, COLORADO**

**WHEREAS**, the Loveland City Council (“Council”) created the Loveland Urban Renewal Authority, a body corporate and politic (“LURA”) by adopting Resolution #R-44-2002 only July 2, 2002 and designated Council as the Board of Commissioners of the Authority; and

**WHEREAS**, the Council approved a substantial modification to the Original Finley’s Addition Plan by adopting Resolution #R-93-2012 on December 18, 2012 approving the Modified Finley’s Addition Plan to facilitate financing of an urban renewal project referred to as the “North Catalyst Project”; and

**WHEREAS**, the LURA approved by Resolution #R-9402912 on December 18, 2012 authorizing a Disposition and Development Agreement (the “Agreement”) among the City, LURA, and 541 N. Lincoln, LLC, a Utah limited liability company (“Developer”) pertaining to the North Catalyst Project; and

**WHEREAS**, under the Agreement, the City agrees to make a loan of \$1.5M to LURA to facilitate the North Catalyst Project and LURA commits to pay all tax increment from the Modified Finley’s Addition Plan Area to the City until that loan and other costs incurred by the City in connection with the Agreement have been repaid in full, as more fully specified in the Agreement; and

**WHEREAS**, the City has reserved funds not appropriated at the time of the adoption of the City budget for 2013; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the amount of \$350,000 from fund balance in the Recreation Capital Expansion Fee Fund 261, \$250,000 from fund balance in the Library Capital Expansion

Fee Fund 266, and \$900,000 from fund balance in the General Government Capital Expansion Fee Fund 268 are available for appropriation. Revenues in the total amount of \$1,500,000 are hereby appropriated for a loan to Loveland Urban Renewal Authority 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  
Recreation Capital Expansion Fee Fund**

<b>Revenues</b>		
Fund Balance		350,000
<b>Total Revenue</b>		<b>350,000</b>
<b>Appropriations</b>		
261-51-501-0000-43714	Payment to Outside Agencies	350,000
<b>Total Appropriations</b>		<b>350,000</b>

**Supplemental Budget  
Library Capital Expansion Fee Fund**

<b>Revenues</b>		
Fund Balance		250,000
<b>Total Revenue</b>		<b>250,000</b>
<b>Appropriations</b>		
266-53-750-0000-43714	Payment to Outside Agencies	250,000
<b>Total Appropriations</b>		<b>250,000</b>

**Supplemental Budget  
General Government Capital Expansion Fee Fund**

<b>Revenues</b>		
Fund Balance		900,000
<b>Total Revenue</b>		<b>900,000</b>
<b>Appropriations</b>		
268-91-902-0000-43714	Payment to Outside Agencies	900,000
<b>Total Appropriations</b>		<b>900,000</b>

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

**Section 3.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

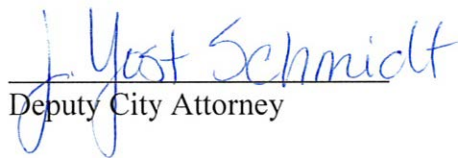
ADOPTED this \_\_\_\_ day of January, 2013.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**FIRST READING**      December 18, 2012

**SECOND READING**      January 15, 2013

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND URBAN RENEWAL AUTHORITY BUDGET TO FUND PAYMENTS TO THE DEVELOPER OF THE NORTH CATALYST PROJECT AT 541 N. LINCOLN, LOVELAND, COLORADO FOR PUBLIC IMPROVEMENTS**

**WHEREAS**, the Loveland City Council (“Council”) created the Loveland Urban Renewal Authority, a body corporate and politic (“Authority”) by adopting Resolution #R-44-2002 only July 2, 2002 and designated Council as the Board of Commissioners of the Authority; and

**WHEREAS**, the Council approved a substantial modification to the Original Finley’s Addition Plan by adopting Resolution #R-93-2012 on December 18, 2012 approving the Modified Finley’s Addition Plan to facilitate financing of an urban renewal project referred to as the “North Catalyst Project”; and

**WHEREAS**, the Authority approved by Resolution #R-9402912 on December 18, 2012 authorizing a Disposition and Development Agreement (the “Agreement”) among the City, Authority, and 541 N. Lincoln, LLC, a Utah limited liability company (“Developer”) pertaining to the North Catalyst Project; and

**WHEREAS**, under the Agreement, the City agrees to make a loan of \$1.5M to the Authority to facilitate the North Catalyst Project and the Authority commits to pay all tax increment from the Modified Finley’s Addition Plan Area to the City until that loan and other costs incurred by the City in connection with the Agreement have been repaid in full, as more fully specified in the Agreement; and

**WHEREAS**, the Authority has received loan funds from the City of Loveland pursuant to the Agreement, which funds were not appropriated at the time of the adoption of the Authority budget for 2013; and

**WHEREAS**, the Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Authority budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, ACTING AS THE BOARD OF**

**COMMISSIONERS OF THE LOVELAND URBAN RENEWAL AUTHORITY:**

**Section 1.** That revenues in the amount of \$1,500,000 from a City of Loveland loan in the Loveland Urban Renewal Fund 603 are available for appropriation. Revenues in the total amount of \$1,500,000 are hereby appropriated for reimbursement to the developer of the North Catalyst Project at 541 N. Lincoln, Loveland, Colorado for public improvements and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget  
Loveland Urban Renewal Authority Fund**

<b>Revenues</b>		
603-871-8710-32300	Other Government Agency	1,500,000
<b>Total Revenue</b>		<b>1,500,000</b>
<b>Appropriations</b>		
603-871-8710-43786	Developer Reimbursement	1,500,000
<b>Total Appropriations</b>		<b>1,500,000</b>

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

**Section 3.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

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

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

ATTEST:

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

APPROVED AS TO FORM:

J. Yost Schmidt  
Deputy City Attorney


Brinkman Project Advances Schedule	Remaining URA years	14	13	12	11	10	9	8	7	6	5	4	3	2	1			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14			
		<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	
<b>Uses of Funds Advances</b>																		
Construction Start	1st Advance		565,000															
Construction Finish	2nd Advance			1,000,000														
CEF Repayments	3rd Advance				900,000													
<b>Payment Schedule for Advances</b>																		
1st Advance	14 Annual Payments	3% over 14 years		50,017	50,017	50,017	50,017	50,017	50,017	50,017	50,017	50,017	50,017	50,017	50,017	50,017	50,017	700,243
2nd Advance	13 Annual Payments	3% over 13 years			94,000	94,000	94,000	94,000	94,000	94,000	94,000	94,000	94,000	94,000	94,000	94,000	94,000	1,222,000
3rd Advance	11 Annual Payments	3% over 11 years					97,350	97,350	97,350	97,350	97,350	97,350	97,350	97,350	97,350	97,350	97,350	1,070,850
Total Advance Repayment				50,017	144,017	144,017	241,367	241,367	241,367	241,367	241,367	241,367	241,367	241,367	241,367	241,367	241,367	2,993,093
<b>Sources for Repayment</b>																		
<u>Brinkman Project</u>																		
Property Tax Increment (plus Supplemental)			52,000	52,000	52,520	53,045	53,576	54,111	54,653	55,199	55,751	56,309	56,872	57,440	58,015	58,595	770,085	
Sales Tax Tax Increment	annual growth rate	2%		3,366	3,433	3,502	3,572	3,643	3,716	3,791	3,866	3,944	4,023	4,103	4,185	4,269	49,414	
<u>Lincoln Place</u>																		
Property Tax Increment			203,000	204,000	206,040	208,100	210,181	212,283	214,406	216,550	218,716	220,903	223,112	225,343	227,596	229,872	3,020,103	
Sales Tax Increment		2%	33,000	33,660	34,333	35,020	35,720	36,435	37,163	37,907	38,665	39,438	40,227	41,031	41,852	42,689	527,140	
Total Available from Projects for Advance Repayment			288,000	293,026	296,327	299,667	303,049	306,473	309,938	313,446	316,998	320,593	324,233	327,918	331,648	335,425	4,366,742	
Net Annual Surplus/(Shortfall)			237,983	386,991	539,300	597,600	659,282	724,388	792,959	865,038	940,668	1,019,894	1,102,760	1,189,310	1,279,591	1,373,649		
Interest on Annual Balance			1,190	1,935	2,697	2,988	3,296	3,622	3,965	4,325	4,703	5,099	5,514	5,947	6,398	6,868		
Reserve Balance Forward			239,173	388,926	541,997	600,588	662,579	728,010	796,923	869,363	945,372	1,024,994	1,108,273	1,195,257	1,285,989	1,380,517	1,380,517	
Current Year Coverage ratio			5.76	2.03	2.06	1.24	1.26	1.27	1.28	1.30	1.31	1.33	1.34	1.36	1.37	1.39		
<b>Coverage (Current year plus reserve balance)</b>			5.76	3.69	4.74	3.48	3.73	4.00	4.29	4.58	4.90	5.23	5.57	5.93	6.30	6.69		

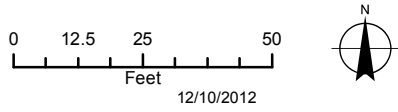
**Not included in the cash flow so far**

City Profit sharing?? In year five			\$400,000	→	2018	\$400,000 not included in cashflow above
Lincoln Place Sales Tax Conservative Estimate	22,000 sq.ft. @	\$150	\$99,000			
Brinkman Live-Work Sales Tax Conservative	4,000	\$60	\$7,200			



# 541 N. Lincoln Ave

 541 N. Lincoln



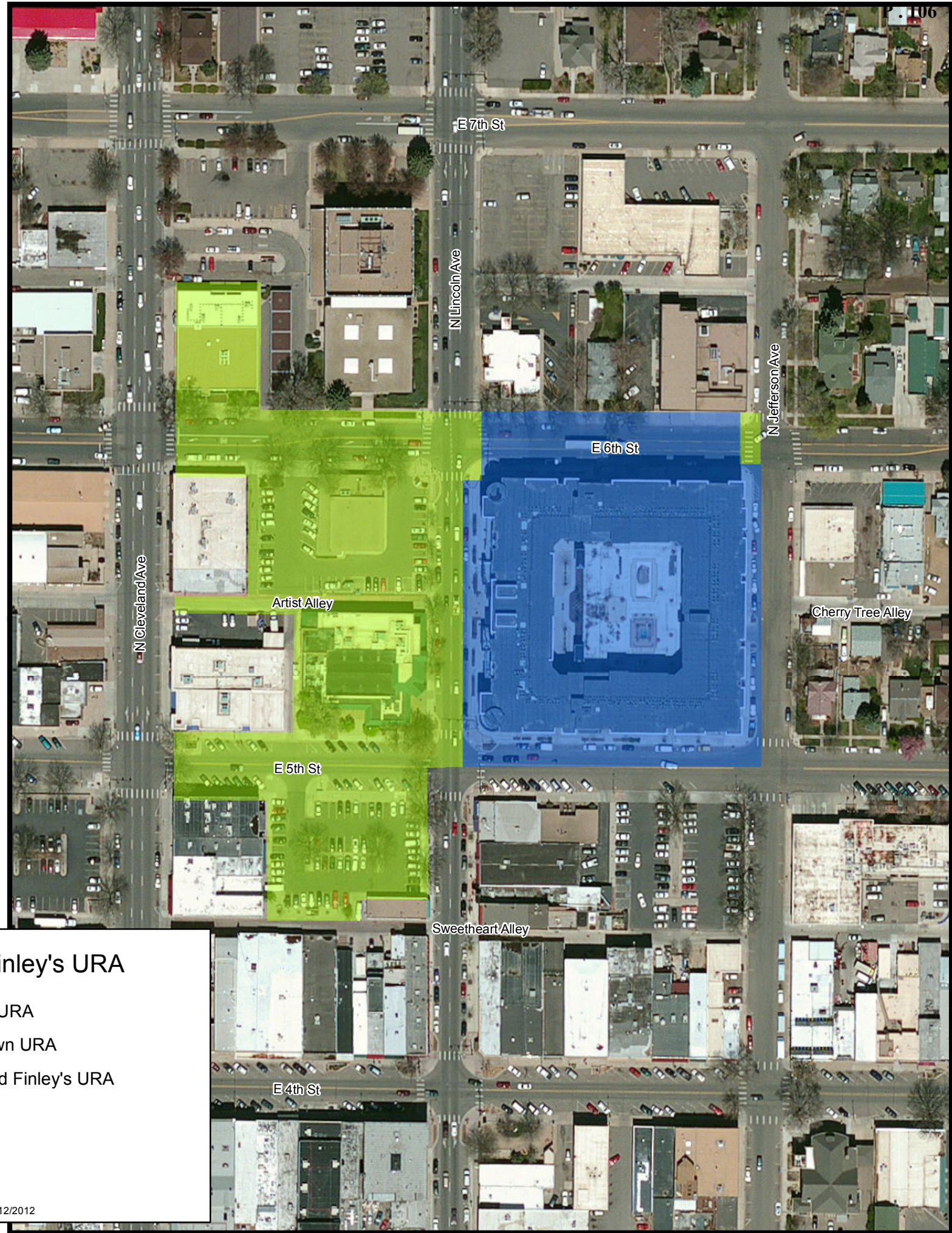
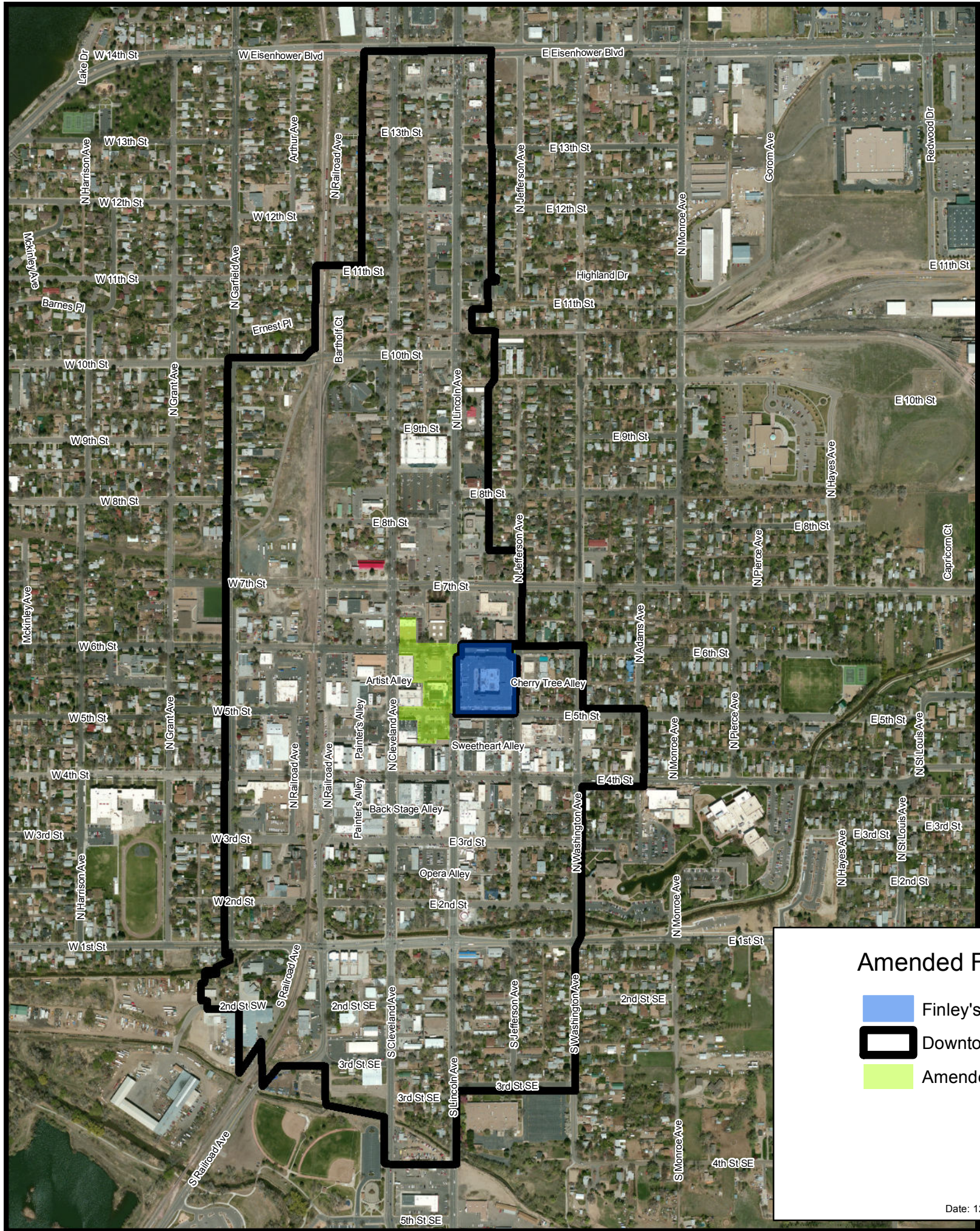
E 6th St



N Lincoln Ave

Artist Alley





**Amended Finley's URA**

- Finley's URA
- Downtown URA
- Amended Finley's URA

Date: 12/12/2012



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

**AGENDA ITEM:** 4  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Greg George, Development Services  
**PRESENTER:** Karl Barton, Development Services

**TITLE:**

A Resolution adopting a Three Mile Plan for the City of Loveland, Colorado

**RECOMMENDED CITY COUNCIL ACTION:**

City staff recommends the following motion:

Move to approve A RESOLUTION ADOPTING A THREE MILE PLAN FOR THE CITY OF LOVELAND, COLORADO

**OPTIONS:**

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

**DESCRIPTION:**

This is a public hearing to consider a legislative action to formally adopt the City of Loveland Three Mile Plan for 2013. The Three Mile Plan consists of the Loveland Comprehensive Plan and other adopted plans covering infrastructure and utility services within the area extending three miles beyond current City limits. The elements included in the Three Mile Plan are listed in the resolution.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

Section 31-12-105(1)(e), Colorado Revised Statutes, requires the City to have a plan in place which generally describes the location, character, and extent of various public facilities in an area extending three miles beyond the municipal boundaries prior to completing any annexations of land located within the three mile area. Historically, the City's Three Mile Plan

has consisted of a compilation of the Comprehensive Plan (including the land use plan), functional plans, and procedures that are adopted and utilized by the City. The proposed resolution would formally designate the compilation of land use plans and related plans as the "Three Mile Plan" for Loveland.

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**REVIEWED BY CITY MANAGER:** *William D. Cahill*

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**LIST OF ATTACHMENTS:**

Resolution

**RESOLUTION #R-2-2013**

**A RESOLUTION ADOPTING A THREE MILE PLAN  
FOR THE CITY OF LOVELAND, COLORADO**

**WHEREAS**, pursuant to C.R.S. §31-12-105(1)(e)(I), as amended, prior to the completion of any annexation within a three mile area outside of the municipal boundaries of a municipality (“Three Mile Area”), a municipality is required to have in place a plan (“Three Mile Plan”) which generally describes the proposed location, character and extent of certain public facilities to be provided within and the proposed land uses for the Three Mile Area; and

**WHEREAS**, pursuant to C.R.S. §31-12-105(1)(e)(I), as amended, the Three Mile Plan must be updated at least once annually; and

**WHEREAS**, the City of Loveland has enacted, adopted and approved the various plans, documents, ordinances and resolutions (collectively “Plans”) listed on Exhibit A, attached hereto and incorporated herein; and

**WHEREAS**, the City Council has determined that the Plans, when considered together as a whole, adequately comply with the requirements of state law and shall constitute the annual updated Three Mile Plan for the City of Loveland; and

**WHEREAS**, to ensure that future annexations by the City of Loveland are completed in compliance with the provisions of state law, the City Council, by this Resolution, desires to formalize its understanding and intention that the Plans serve as the Three Mile Plan for the City of Loveland.

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

**Section 1.** That the Plans, as described in **Exhibit A**, when considered together as a whole, shall constitute the Three Mile Plan for the City of Loveland required pursuant to C.R.S. §31-12-105(1)(e)(I), as amended.

**Section 2.** That the Three Mile Plan shall be reviewed and revised as may be necessary at least annually, and additional Plans may be added from time to time, as they are developed and adopted.

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

Adopted this 15<sup>th</sup> day of January, 2013.

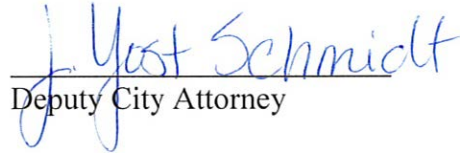
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Cecil A. Gutierrez, Mayor

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City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney

**EXHIBIT A**  
**THREE MILE AREA AND FUNCTIONAL PLAN ELEMENTS**  
**(January 15, 2013)**

Documents as may be amended:

Loveland, Colorado 2005 Comprehensive Plan, adopted 2005

2005 Comprehensive Plan – 2011 Implementation Plan, adopted 2011

Water and Wastewater, Functional Master Plans, Loveland, CO, adopted 1997

2035 Transportation Plan, adopted 2012

Bicycle & Pedestrian Master Plan, adopted 2012

City of Loveland Water and Wastewater Development Standards, adopted August 2007

Contractor Construction Standards, Department of Water and Power, adopted 2006

Larimer County Urban Area Street Standards, adopted April 2007

City of Loveland Master Drainage Plan and associated sub-basin plans, adopted 1986,

Fire Protection Master Plan, adopted December 1995

Update of Capital Expansion Fees, adopted July 2011 NOTE – these were updated 11/20/12, streets will be updated 12/18/12

Parks and Recreation Master Plan, adopted October 2001

City of Loveland Open Lands Plan, adopted March 2003

A Plan for the Region between Fort Collins and Loveland, adopted July 1995

Northern Colorado Regional Planning Study, adopted October 1995

Site Development Standards and Guidelines for I-25 Corridor, adopted 2007

Airport Master Plan Update, Fort-Collins-Loveland Municipal Airport, Loveland, CO, adopted 2008

City of Loveland Natural Areas Sites, adopted July 2008

Requirements for Electric Service, adopted August 2010

Wastewater Utility Plan, adopted 2010

Water Distribution Master Plan Update, adopted 2007

Water and Power Department Summary of Functional Mater Plans, adopted June 1997

Site Development Performance Standards and Guidelines, adopted October 1989

Raw Water Master Plan, adopted 2012

Economic Development Strategic Plan, adopted 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:** 5  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** John Duval, City Attorney  
**PRESENTER:** John Duval

**TITLE:**

A Resolution approving the Third Amendment to Agreement regarding Environmental Fees

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt the Resolution

**OPTIONS:**

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

**DESCRIPTION:**

This is an administrative action to consider a Resolution approving the Third Amendment to the Agreement regarding Environmental Fees in Centerra. The Third Amendment extends the term of the Agreement so that it will expire on January 1, 2041 instead of January 1, 2031, and clarifies the process for allocating, reporting, and accounting for monies for "Open Space Purposes" and for "HPEC Purposes" under the Agreement.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The Amendment will extend the collection of Environmental Fees under the Agreement. 10% of non-residential environmental fees are used for Open Space Purposes (acquisition of open space and natural areas) within the City or the City's community influence area.

**SUMMARY:**

The City, McWhinney Real Estate Services, Inc., and the High Plains Foundation and High Plains Environmental Center, Colorado nonprofit corporations (the “Environmental Entities”) are parties to an Agreement Regarding Environmental Fees (“Agreement”). Under the Agreement, residential and nonresidential environmental fees are charged at the time a building permit is issued for development within the Millenium GDP.

The Developer requested that the term of the Agreement be extended by ten years, from an expiration date of January 1, 2031 to an expiration date of January 1, 2041.

In addition, at the City’s request, the Amendment clarifies the procedures for allocating, reporting, and accounting for the environmental fees collected and paid to the Environmental Entities. Ten percent (10%) of non-residential environmental fees are allocated under the Agreement for “Open Space Purposes” (acquisition of open space and natural areas within the City or its community influence area). The remainder of the non-residential fees and all residential fees are allocated for HPEC Purposes (management of open space areas around Houts and Equalizer Reservoirs and the High Plains Environmental Center). The modification permits the City to examine documentation to verify the amount of fees allocated to Open Space Purposes.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. Resolution and Third Amendment to Agreement regarding Environmental Fees

**RESOLUTION #R-3-2013****A RESOLUTION APPROVING THE THIRD AMENDMENT TO AGREEMENT REGARDING ENVIRONMENTAL FEES**

**WHEREAS**, on June 13, 2006, City Council adopted Resolution #R-37-2006, which Resolution approved an Agreement Regarding Environmental Fees dated June 27, 2006, and recorded with the Larimer County Clerk and Recorder on July 11, 2006 at Reception No. 2006-0051710 (“Agreement”) among the City of Loveland (“City”), McWhinney Real Estate Services, Inc., (“Developer”) and the High Plains Foundation and the High Plains Environmental Center, Colorado non-profit corporations, collectively referred to as the “Environmental Entities”); and

**WHEREAS**, pursuant to Resolution #R-73-2008, the City, the Developer, and the Environmental Entities entered into the First Amendment to Agreement Regarding Environmental Fees dated June 24, 2008, and recorded with the Larimer County Clerk and Recorder on September 23, 2008 at Reception No. 2008-0060422 (“First Amendment”), for the purpose of subjecting property within the Grange Addition to Non-Residential Environmental Fees; and

**WHEREAS**, pursuant to Resolution #R-34-2009, the City, the Developer, and the Environmental Entities entered into the Second Amendment to Agreement Regarding Environmental Fees dated June 3, 2009, and recorded with the Larimer County Clerk and Recorder on June 8, 2009 at Reception No. 2009-0037286 (“Second Amendment”); and

**WHEREAS**, the Term of the Agreement, the First Amendment, and the Second Amendment continues through December 31, 2030, terminating on January 1, 2031; and

**WHEREAS**, the City, the Developer, and the Environmental Entities have agreed to extend the Term of the Agreement, the First Amendment, the Second Amendment through December 31, 2040 as more fully set forth in the Third Amendment to Agreement Regarding Environmental Fees attached hereto as **Exhibit A** and incorporated by reference (the “Third Amendment”) ; and

**WHEREAS**, the City, the Developer, and the Environmental Entities have further agreed to modify the provisions of the Agreement, the First Amendment, the Second Amendment to clarify the process for allocating, reporting, and accounting for monies for “Open Space Purposes” and for “HPEC Purposes” as set forth in the Third Amendment; and

**WHEREAS**, pursuant to Section 11 of the Agreement, the consent of McStain Enterprises, Inc. to this Third Amendment is not required.

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

**Section 1.** That the Third Amendment is hereby approved.

**Section 2.** That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the Third Amendment in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

**Section 3.** That the City Manager and the City Clerk are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Loveland.

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

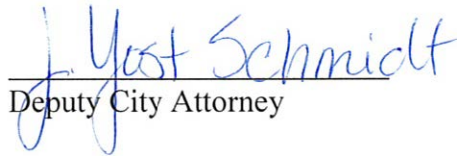
ADOPTED this 15<sup>th</sup> day of January, 2013.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A****THIRD AMENDMENT TO AGREEMENT  
REGARDING ENVIRONMENTAL FEES**

**THIS THIRD AMENDMENT TO AGREEMENT REGARDING ENVIRONMENTAL FEES** (“Third Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and among the CITY OF LOVELAND, COLORADO, a home rule municipality (“City”); MCWHINNEY REAL ESTATE SERVICES, INC., a Colorado corporation (“Developer”); and HIGH PLAINS FOUNDATION, a Colorado nonprofit corporation (“HPF”), and HIGH PLAINS ENVIRONMENTAL CENTER, a Colorado nonprofit corporation (“HPEC”), with the HPF and HPEC sometimes referred to together herein as the “Environmental Entities.”

Capitalized terms not otherwise defined herein shall have the meaning given them in the Agreement, the First Amendment, and the Second Amendment, as applicable.

**RECITALS**

WHEREAS, the City, the Developer and the Environmental Entities are parties to that Agreement Regarding Environmental Fees dated June 27, 2006, and recorded with the Larimer County Clerk and Recorder on July 11, 2006 at Reception No. 2006-0051710 (“Agreement”); and

WHEREAS, the City, the Developer, and the Environmental Entities entered into the First Amendment to Agreement Regarding Environmental Fees dated June 24, 2008, and recorded with the Larimer County Clerk and Recorder on September 23, 2008 at Reception No. 2008-0060422 (“First Amendment”), for the purpose of subjecting property within the Grange Addition to Non-Residential Environmental Fees; and

WHEREAS, the City, the Developer, and the Environmental Entities entered into the Second Amendment to Agreement Regarding Environmental Fees dated June 3, 2009, and recorded with the Larimer County Clerk and Recorder on June 8, 2009 at Reception No. 2009-0037286 (“Second Amendment”); and

WHEREAS, the Term of the Agreement, the First Amendment, and the Second Amendment continues through December 31, 2030, terminating on January 1, 2031; and

WHEREAS, the City, the Developer, and the Environmental Entities have agreed to extend the Term of the Agreement, the First Amendment, the Second Amendment, as set forth in this Third Amendment through December 31, 2040; and

WHEREAS, the City, the Developer, and the Environmental Entities have further agreed to modify the provisions of the Agreement, the First Amendment, the Second Amendment, as set forth in this Third Amendment to clarify the process for allocating, reporting, and accounting for monies for “Open Space Purposes” and for “HPEC Purposes” as set forth in the Agreement; and

WHEREAS, pursuant to Section 11 of the Agreement, the consent of McStain Enterprises, Inc. to this Third Amendment is not required.

NOW THEREFORE, for and in consideration of the foregoing recitals and the parties’ mutual covenants and agreement, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

1. Section 13 of the Agreement shall be stricken in its entirety and replaced with the following:

“13. Effective Date/Term. This Agreement shall be effective upon the date that it has been fully executed by all parties hereto, and the term hereof shall continue through December 31, 2040, terminating on January 1, 2041.”

2. Section 4 of the First Amendment shall be stricken in its entirety and replaced with the following:

“4. Effective Date/Term. This Third Amendment shall be effective upon the date that it has been fully executed by all parties hereto, and the term hereof shall continue through December 31, 2040, terminating on January 1, 2041.”

3. Section 5 of the Second Amendment shall be stricken in its entirety and replaced with the following:

“5. Effective Date/Term. This Third Amendment shall be effective upon the date that it has been fully executed by all parties hereto, and the term hereof shall continue through December 31, 2040, terminating on January 1, 2041.”

4. Section 6 of the Agreement shall be amended by the addition of subsections 6.3 and 6.4 as follows:

“6.3 The parties agree that the correct amount of Non-Residential Environmental Fees allocated from the inception of the Agreement through June 30, 2012 for Open Space Purposes is \$277,752.64, plus any interest earnings accrued since the opening of the account for deposit of such funds (the “Open Space Account”). Notwithstanding the

foregoing, a total of \$32,036.35 in excess of the correct amount has been deposited in the Open Space Account in error due to discrepancies in records for contributions to such account. Promptly after execution of Amendment Number Three to this Agreement, the City acknowledges and agrees that the sum of \$32,036.35 shall be transferred from the Open Space Account to the account maintained for HPEC Purposes.

6.4 Within 30 days after signature of this Amendment and within 30 days after the last day of each calendar quarter (ending December 31, March 31, June 30, and September 30) thereafter during the Term of the Agreement, as amended, the Environmental Entities shall submit to the City copies of all bank statements for the Open Space Account reflecting the deposit of the allocated portion (10%) of each Non-Residential Environmental Fee received during the prior calendar quarter. The City shall have the right to examine the bank statements and all other documentation held by or on behalf of the Environmental Entities as reasonable or necessary to verify the deposit of the allocated portion (10%) of each such Non-Residential Environmental Fee to the Open Space Account.

5. Tri-Party Agreement. Nothing in this Third Amendment shall be construed as amending or in any way affecting the rights and obligations of Centerra Properties West, LLC and the Environmental Entities pursuant to the Tri-Party Agreement.

6. Notices. Any notice or communication required under this Third Amendment must be in writing and may be given either personally, by certified mail, return receipt requested, by Federal Express or other reliable courier service that guarantees next day delivery or by facsimile transmission (followed by an identical hard copy via certified mail, return receipt requested). If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by any other method, a notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (b) as applicable: (i) three (3) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail; (ii) the following business day after being sent via Federal Express or other reliable courier service that guarantees next day delivery; or (iii) the following business day after being sent by facsimile transmission (provided that such facsimile transmission is promptly followed by an identical hard copy sent via certified mail, return receipt requested). Any party hereto may at any time, by giving written notice to the other party hereto as provided in this Section 7, designate additional persons to whom notices or communications shall be given and designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to <b>City:</b>	City of Loveland ATTN: City Manager
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500 East Third Street  
Loveland, CO 80537  
Fax: (970) 962-2900

with a copy to: City of Loveland  
ATTN: City Attorney  
500 East Third Street  
Loveland, CO 80537  
Fax: (970) 962-2900

If to **Developer:** McWhinney Real Estate Services, Inc.  
ATTN: Douglas L. Hill, COO  
2725 Rocky Mountain Avenue, Suite 200  
Loveland, CO 80538  
Fax: (970) 635-3003

With a copy to: Liley, Rogers & Martell, LLC  
ATTN: Lucia A. Liley  
300 South Howes Street  
Fort Collins, CO 80521  
Fax: (970) 221-4242

If to **Environmental Entities:** High Plains Foundation and  
High Plains Environmental Center  
ATTN: Jim Tolstrup, Executive Director  
1854 Piney River Drive  
Loveland, CO 80538  
Fax: (970) 613-1380

7. Applicable Law. This Third Amendment shall be construed and enforced in accordance with the laws of the State of Colorado.

8. Binding Effect. To the maximum extent permitted by applicable law, this Third Amendment shall be binding upon and shall inure to the benefit of the successors in interest, assigns and the legal representatives of the parties hereto.

9. Counterparts. This Third Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

10. Default/Remedies. In the event of a material breach or default by any party hereunder, as determined by a court of competent jurisdiction, the non-breaching party shall be entitled to any and all remedies provided under this Third Amendment or



available at law or equity, including actions for specific performance and injunctive relief.

11. Severability. If any provision of this Third Amendment is held to be illegal, invalid or unenforceable, in whole or in part, under present or future laws effective during the term hereof, such provision shall be fully severable and this Second Amendment shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Third Amendment and the remaining provisions of this Third Amendment shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by the severance of such provision from this Third Amendment.

12. Waiver. No waiver of one or more of the terms of this Third Amendment shall constitute a waiver of other terms. No waiver of any provision of this Third Amendment in any instance shall constitute a waiver of such provision in other instances.

13. Recordation. This Third Amendment shall be recorded with the Larimer County Clerk and Recorder, and the Developer shall pay the cost of the same.

14. Effect of Third Amendment. Except as expressly modified herein, each and every provision of the Agreement, the First Amendment, and the Second Amendment, together with Exhibits thereto, shall remain in full force and effect and enforceable as written.

**CITY:** **CITY OF LOVELAND, COLORADO**, a home rule municipality

By: \_\_\_\_\_  
Cecil Gutierrez, Mayor

Date: \_\_\_\_\_, 2013

ATTEST:

By: \_\_\_\_\_  
Teresa G. Andrews, City Clerk

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Judy Schmidt, Deputy City Attorney

**DEVELOPER:**

**MCWHINNEY REAL ESTATE SERVICES,  
INC.,** a Colorado corporation

By: \_\_\_\_\_  
Douglas L. Hill  
Chief Operating Officer  
Date: \_\_\_\_\_, 2013

**ENVIRONMENTAL ENTITIES:**

**HIGH PLAINS FOUNDATION,**  
a Colorado nonprofit corporation

By: \_\_\_\_\_  
Jim Tolstrup, Executive Director  
Date: \_\_\_\_\_, 2013

**HIGH PLAINS ENVIRONMENTAL  
CENTER,** a Colorado nonprofit  
corporation

By: \_\_\_\_\_  
Jim Tolstrup, Executive Director  
Date: \_\_\_\_\_, 2013



**CITY OF LOVELAND**  
MUNICIPAL AIRPORT

4900 Earhart Road • Loveland, Colorado 80538  
(970) 962-2852 • FAX (970) 962-2855 • TDD (970) 962-2620

**AGENDA ITEM:** 6  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Keith Reester, Public Works Department  
**PRESENTER:** Jason Licon, Airport Director

**TITLE:**

Public Hearing and an ordinance on first reading enacting a supplemental budget and appropriation to the 2013 Ft. Collins-Loveland Municipal Airport budget to realign the budget due to the loss of commercial service

**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 reduces the revenue and expense budget for the Airport due to the loss of commercial service.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The loss of revenues associated with commercial service requires a reduction in the operating for the Airport.

**SUMMARY:**

The unexpected loss of commercial air carrier services at the airport resulted in a budgetary funding shortfall for 2013. The shortfall of revenue has prompted a reduction in expenses and an increase in support from the Cities of Fort Collins and Loveland in order to maintain airport operations and safety.

The total shortfall for the airport's annual revenue for 2013 is estimated at \$475,670. As a result of this ordinance the airport will be reducing its 2013 operating budget by over 15% from \$803,600 to \$693,100. The airport has also requested an increase in support from the two City owners of \$92,500 each. In addition the airport will be deferring planned projects and utilizing reserve funding to apply toward Federal and State grant matches in 2013. Airport staff has made recruiting another commercial air carrier to the airport a top priority, and is a critical component for the adopted airport business plan.

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**REVIEWED BY CITY MANAGER:** 

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**LIST OF ATTACHMENTS:**

1. An ordinance on first reading enacting a supplemental budget and appropriation to the 2013 Ft. Collins-Loveland Municipal Airport budget to realign the budget due to the loss of commercial service.

FIRST READING January 15, 2013

SECOND READING \_\_\_\_\_

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET TO INCREASE THE CITY’S CONTRIBUTION TO THE FT. COLLINS-LOVELAND MUNICIPAL AIRPORT DUE TO THE LOSS OF COMMERCIAL SERVICE**

**WHEREAS**, the City has received or has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the amount of \$92,500 from Unassigned fund balance in the General Fund 100 are available for appropriation. Revenues in the total amount of \$92,500 are hereby appropriated for the City’s increased contribution to the airport to partially offset revenues reductions due to the loss of commercial service 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**

<b>Revenues</b>		
Fund Balance		92,500
<b>Total Revenue</b>		<b>92,500</b>
<b>Appropriations</b>		
100-91-902-0000-43714	Payment to Other Agencies	92,500
<b>Total Appropriations</b>		<b>92,500</b>

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

**Section 3.** This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

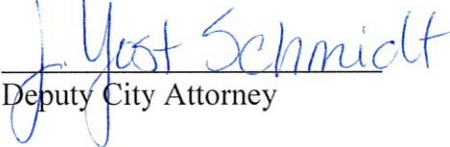
ADOPTED this \_\_\_ day of \_\_\_\_\_, 2013.

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

ATTEST:

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

APPROVED AS TO FORM:

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


**CITY OF LOVELAND**

BUDGET OFFICE

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

**AGENDA ITEM:** 7  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

**TITLE:**

1. Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for the City share of the costs for an additional position in the Loveland Fire Rescue Authority
2. A Resolution approving a supplemental budget and appropriation to the Loveland Fire Rescue Authority 2013 budget

**RECOMMENDED CITY COUNCIL ACTION:**

Conduct a public hearing and approve the ordinance on first reading and 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. The ordinance appropriates funds (\$58,220) from unassigned fund balance in the General Fund for the costs of an additional position in the Loveland Fire and Rescue Authority. The resolution provides for Council approval supplemental changes to the Loveland Fire Rescue Authority 2013 Budget for an additional plans reviewer position. The Council approval of the budget is required for the Authority's budget to be in effect.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The funding is from unassigned fund balance and reduces the flexibility to fund other future projects or programs. The resolution provides approval of the budget changes for additional contributions from the City and the Rural District to fund the position. There is a \$71,000 change to the budget from these contributions.

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**SUMMARY:**

With the successful ballot approval of the new mill levy in the Loveland Rural Fire District, the Authority is adding a new Plans Reviewer position to manage the anticipated growth in development that will occur. The position was not included in the Adopted Budget because of concerns that long term funding was not available. The Authority approved the addition at their December 13, 2012 meeting. The ordinance appropriates the City's share of the costs for the position. The total cost is \$71,000.

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**REVIEWED BY CITY MANAGER:**

*William D. Cabell*

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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for the City share of the costs for an additional position in the Loveland Fire Rescue Authority.
2. A Resolution approving a supplemental budget and appropriation to the Loveland Fire Rescue Authority 2013 budget.
3. Attachment A - Fire Authority Resolution #R-013 enacting a supplemental budget and appropriation to the 2013 Loveland Fire Rescue Authority Budget to appropriate additional funding from both the City of Loveland and the Loveland rural Fire Protection District to fund the Community Services Division Plans Reviewer.
4. Agenda Item 5 from the December 13, 2012 Loveland Fire Rescue Authority meeting.



FIRST READING January 15, 2013

SECOND READING \_\_\_\_\_

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR THE CITY SHARE OF THE COSTS FOR AN ADDITIONAL POSITION IN THE LOVELAND FIRE RESCUE AUTHORITY**

**WHEREAS**, the City has reserved funds not appropriated at the time of the adoption of the City budget for 2013; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the amount of \$58,220 from Unassigned fund balance in the General Fund 100 are available for appropriation. Revenues in the total amount of \$58,220 are hereby appropriated for the City’s share of the cost for an additional position in the Loveland Fire Rescue Authority 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**

<b>Revenues</b>			
Fund Balance			58,220
<b>Total Revenue</b>			<b>58,220</b>
<b>Appropriations</b>			
100-91-902-0000-43714	Payment to Other Agencies		58,220
<b>Total Appropriations</b>			<b>58,220</b>

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

**Section 3.** This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

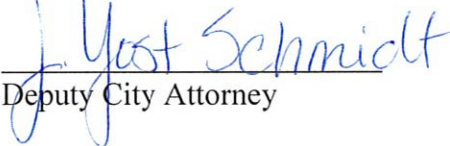
ADOPTED this \_\_\_ day of February, 2013.

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

ATTEST:

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

APPROVED AS TO FORM:

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

**RESOLUTION #R-4-2013****A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE LOVELAND FIRE RESCUE AUTHORITY 2013 BUDGET**

**WHEREAS**, the Loveland Fire Rescue Authority (“Fire Authority”) is established pursuant to that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 18, 2011 (the “Authority IGA”) between the City of Loveland, a Colorado home rule municipality (“City”) and the Loveland Rural Fire Protection District, a Colorado Special District (“District”); and

**WHEREAS**, the Fire Authority is authorized under Section 4.1 of the Authority IGA to adopt an annual budget and to supplement such budget from time to time, provided that the annual budget and any supplemental appropriations shall become effective upon the approval of the governing bodies of the City and the District; and

**WHEREAS**, the Fire Authority, by adoption of Resolution #R-013, approved a supplemental appropriation for its 2013 Budget; and

**WHEREAS**, the Fire Authority Board of Directors has also submitted the Fire Authority’s Resolution enacting a supplemental budget and appropriation to the 2013 Budget, which is attached hereto as **Exhibit A** and incorporated herein by reference, to the City and the District for approval as required by Section 4.1 of the Authority IGA; and

**WHEREAS**, the City Council desires to approve the Fire Authority’s 2013 Supplemental Budget and Appropriation as reflected on **Exhibit A**.

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

**Section 1.** That the 2013 Loveland Fire Rescue Authority Supplemental Budget and Appropriation, attached hereto as **Exhibit A** and which has been filed with the Fire Authority Administrative Office in its entirety, for the fiscal year beginning January 1, 2013 and ending December 31, 2013, with revenues in the amount of \$71,000, and expenditures of \$71,000 for operations, is hereby approved.

**Section 2.** That this Resolution shall take effect as of the date of its adoption.

**ADOPTED** this 15<sup>th</sup> day of January, 2013.

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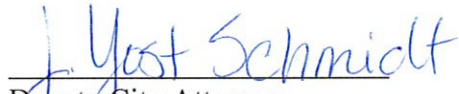
Cecil a. Gutierrez, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM:

  
Deputy City Attorney

# EXHIBIT A

## RESOLUTION NO. R-013

### A RESOLUTION ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND FIRE RESCUE AUTHORITY BUDGET TO APPROPRIATE ADDITIONAL FUNDING FROM BOTH THE CITY OF LOVELAND AND THE LOVELAND RURAL FIRE PROTECTION DISTRICT TO FUND THE COMMUNITY SERVICES DIVISION PLANS REVIEWER

**WHEREAS**, the Loveland Fire Rescue Authority (“Authority”) has seen an increase in the building activity and is operating with three less Community Safety Division positions that were eliminated in the 2009 budget reductions; and

**WHEREAS**, the cost of hiring contract labor to perform services previously assigned to the three positions in the Community Safety Division, including conducting building plans reviews, to meet this need is cost prohibitive at \$165-\$185 an hour; and

**WHEREAS**, the total cost of the Community Safety Division Plans Reviewer position is \$71,000, including salary, benefits, radio, uniforms, training, and mileage reimbursement and

**WHEREAS**, consistent with the terms of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011 and the Authority's bylaws, the City of Loveland will be responsible for 82% of the cost or \$58,220 and the Loveland Rural Fire Protection District (“LRFPD”) will be responsible for 18% of the cost or \$12,780; and

**WHEREAS**, the LRFPD constituents passed a mill levy increase in November 2012, securing funds for the LRFPD’s contribution as established in the Authority Strategic Plan; and

**WHEREAS**, the Authority Board desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the budget for 2013; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:**

**Section 1.** That there are additional funds from the City of Loveland and the Loveland Rural Fire Protection District agreed to after the adoption of the budget for 2013. The funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

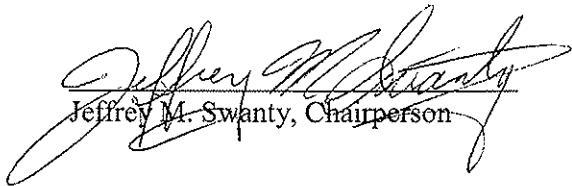
Account Title	Account Number	Amount
Sources of Funds:		
Contribution from the City	604-22-227-1601-38600	58,220
Contribution from the Rural District	604-22-227-1601-32402	12,780
Total Sources of Funds		\$71,000

Uses of Funds:		
Salaries-Benefited Employees	604-22-223-0000-41011	58,630
Salaries-Non-benefited Employees	604-22-223-0000-41012	-20,700
Overtime	604-22-223-0000-41021	2,930
Insurance	604-22-223-0000-41543	11,350
FICA (net of reduction for non-benefited)	604-22-223-0000-41544	3,210
Retirement	604-22-223-0000-41545	2,940
Radio (pack set)	604-22-226-1641-42899	6,500
Radio Maintenance	604-22-226-1641-43718	600
Office supplies, cell phone	604-22-223-0000-42011	1,090
Uniforms	604-22-223-0000-42025	250
Travel and Training	604-22-223-0000-43270	3,000
Mileage Reimbursement	604-22-223-0000-43265	1,200
<b>Total Uses</b>		<b>\$71,000</b>

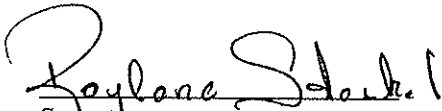
**Section 2.** That as provided in Article IV: Section 4.1 of the Formation Agreement, this Resolution shall be published in full by the Board Secretary.

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

ADOPTED this 13th day of December, 2012.

  
 Jeffrey M. Swanty, Chairperson

ATTEST:

  
 Secretary

Approved as to form.

  
 Teresa Ablao  
 Assistant City Attorney

## Agenda Item Cover

Item No.: 5

Meeting Date: December 13, 2012

Prepared By: Renee Wheeler, Public Safety Administrative Director



### TITLE

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Approve a 2013 Supplemental Appropriation for the CSD Plans Reviewer

### EXECUTIVE SUMMARY

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The LFRA Board will consider the addition of a position in 2013 for a Plans Reviewer to handle the workload associated with increased building activity and meet commitments for turnaround times on plan reviews. The position will replace the part time position currently included in the budget. The net new cost for the position is \$71,000. The resolution is prepared assuming the 82% City of Loveland and 18% Loveland Rural Fire Protection District contributions consistent with the provisions of the intergovernmental agreement.

### BACKGROUND

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This position restores one of three FTE's that were eliminated from Fire Prevention in 2009 due to budget reductions. It replaces the part time position included in the 2013 budget. The current part time and Community Safety Division (CSD) Lieutenant are currently working 30 hours in excess of regularly scheduled hours to deliver on the building activity generating the current work load in September, 2012. The going rate for the consultant to provide this service is \$165-185 an hour. If LFRA were to outsource the 30 hours per week for 52 weeks in a year at \$165 an hour, the cost would be a prohibitive \$257,400.

Hughes and Associates is the contract firm handling Rural District plan reviews. LFRA has contacted them. They do not have the capacity to give us 30-40 hours a week and have declined the opportunity to gear up to meet that demand.

A Plans Reviewer in the City of Loveland pay plan is at level 8. Staff is proposing to hire this position at \$58,630, which is between the minimum of \$49,389 and the mid-point of \$61,736 in hopes of attracting an experienced candidate. There are known projects in the development process that will require a significant commitment from the existing CSD Lieutenant. This position will need to be able to handle the remaining less complex projects starting January 2, 2013.

The \$71,000 supplemental appropriation includes salary, benefits, equipment, supplies and mileage reimbursement less the reduction in the budget for the part time salary and taxes currently in the budget. All items included are listed in the body of the resolution.

## Agenda Item Cover

Item No.: 5

Meeting Date: December 13, 2012

Prepared By: Renee Wheeler, Public Safety Administrative Director



### STAFF RECOMMENDATION

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Staff recommends approval of the resolution as written.

### FINANCIAL/ECONOMIC IMPACTS

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\$71,000; \$58,220 from the City of Loveland and \$12,780 from the Loveland Rural Fire Protection District

### ASSOCIATED STRATEGIC GOALS

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Minimize and mitigate the risks of an emergency occurrence in the community.

### ATTACHMENTS

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Resolution



**RESOLUTION NO. R-013**

**A RESOLUTION ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND FIRE RESCUE AUTHORITY BUDGET TO APPROPRIATE ADDITIONAL FUNDING FROM BOTH THE CITY OF LOVELAND AND THE LOVELAND RURAL FIRE PROTECTION DISTRICT TO FUND THE COMMUNITY SERVICES DIVISION PLANS REVIEWER**

**WHEREAS**, the Loveland Fire Rescue Authority (“Authority”) has seen an increase in the building activity and is operating with three less Community Safety Division positions that were eliminated in the 2009 budget reductions; and

**WHEREAS**, the cost of hiring contract labor to perform services previously assigned to the three positions in the Community Safety Division, including conducting building plans reviews, to meet this need is cost prohibitive at \$165-\$185 an hour; and

**WHEREAS**, the total cost of the Community Safety Division Plans Reviewer position is \$71,000, including salary, benefits, radio, uniforms, training, and mileage reimbursement and

**WHEREAS**, consistent with the terms of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011 and the Authority's bylaws, the City of Loveland will be responsible for 82% of the cost or \$58,220 and the Loveland Rural Fire Protection District (“LRFPD”) will be responsible for 18% of the cost or \$12,780; and

**WHEREAS**, the LRFPD constituents passed a mill levy increase in November 2012, securing funds for the LRFPD’s contribution as established in the Authority Strategic Plan; and

**WHEREAS**, the Authority Board desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the budget for 2013; and

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:**

**Section 1.** That there are additional funds from the City of Loveland and the Loveland Rural Fire Protection District agreed to after the adoption of the budget for 2013. The funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Account Title	Account Number	Amount
Sources of Funds:		
Contribution from the City	604-22-227-1601-38600	58,220
Contribution from the Rural District	604-22-227-1601-32402	12,780
Total Sources of Funds		\$71,000

Uses of Funds:		
Salaries-Benefited Employees	604-22-223-0000-41011	58,630
Salaries-Non-benefited Employees	604-22-223-0000-41012	-20,700
Overtime	604-22-223-0000-41021	2,930
Insurance	604-22-223-0000-41543	11,350
FICA (net of reduction for non-benefited)	604-22-223-0000-41544	3,210
Retirement	604-22-223-0000-41545	2,940
Radio (pack set)	604-22-226-1641-42899	6,500
Radio Maintenance	604-22-226-1641-43718	600
Office supplies, cell phone	604-22-223-0000-42011	1,090
Uniforms	604-22-223-0000-42025	250
Travel and Training	604-22-223-0000-43270	3,000
Mileage Reimbursement	604-22-223-0000-43265	1,200
Total Uses		\$71,000

**Section 2.** That as provided in Article IV: Section 4.1 of the Formation Agreement, this Resolution shall be published in full by the Board Secretary.

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

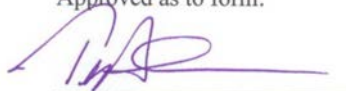
ADOPTED this 13th day of December, 2012.

\_\_\_\_\_  
Jeffrey M. Swanty, Chairperson

ATTEST:

\_\_\_\_\_  
Secretary

Approved as to form:



\_\_\_\_\_  
Teresa Ablao  
Assistant City Attorney



**CITY OF LOVELAND**  
PUBLIC WORKS DEPARTMENT

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

**AGENDA ITEM:** 8  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Ken Cooper, Public Works - Facilities Management  
**PRESENTER:** Ken Cooper

**TITLE:**

Contract award for the design and engineering of the expansion and remodel of the Service Center

**RECOMMENDED CITY COUNCIL ACTION:**

Adopt a motion to approve the contract for RNL Design to design and engineer the expansion and remodel of the Service Center for the total amount of \$975,000 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 matter approving a contract with RNL Design to design and engineer the expansion and remodel of the Service Center, located at 200 N. Wilson Ave., Loveland.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

At the City Council Study Session on November 13, 2012, Council gave its full support to move forward with the project to expand and remodel the Service Center. At an anticipated total project cost of \$11,500,000, the project will primarily provide crew, office, and support space for the Public Works Department. RNL Design provided programming and early design work

needed to establish the project scope and construction cost estimating, and they are moving ahead with the next phases of design and engineering. RNL's total cost to complete design development, construction drawings for bidding purposes, and construction administration is \$975,000. This amount was included in the presentation to Council on November 13 and is included in the total project cost estimate of \$11,500,000. The funding required for this \$975,000 contract is already available using a variety of funding sources, including Public Works enterprise funds and some general government capital expansion fees.

Once approved, the design and engineering work is expected to produce biddable construction drawings in the second quarter of 2013. Pre-qualified general contractors will then bid on the construction drawings, with construction expected to begin in mid-2013 and be completed in 2014.

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**REVIEWED BY CITY MANAGER:** *William D. Cahill*

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**LIST OF ATTACHMENTS:**

None

City Council Study Session  
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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, Fogle, Trenary, Klassen, Shaffer, and McKean. Councilors absent: Farley, Taylor and Clark. City Manager Bill Cahill was also present.

1. PUBLIC WORKS

Stormwater Rates Discussion

David Klockeman, City Engineer; Kevin Gingery, Senior Civil Engineer, Stormwater Engineering and Jason Mumm, StepWise Utility Advisor appeared to present this item to Council. Public Works Director Keith Reester was also present to address Council and answer questions. The presentation reviewed existing rates for Stormwater Utility including System Investment Fees and Stormwater Utility Fees with four scenarios of potential adjustments to rates going forward through the year 2031, after input from City Council's March 13, 2012 Study Session. Discussion ensued. Staff was directed to proceed with Scenario B and return to Council with an overview of the increases to total utility costs will mean to our residents and business customers. Council thanked everyone for their hard work on the presentation.

2. POLICE

Police Staff and Resource Study – Phase II

Police Chief Luke Hecker presented this item to Council as the second phase of a four phase Staff and Resource Study being carried out by the Loveland Police Department. The objective of the study is to generate a ten year financial and operational strategy for the deployment of police resources to protect the safety of employees and the community in a way that promotes employee development. The project is intended to enable a sustainable pursuit of the Police Department's mission: Preserve and enhance the quality of life for inhabitants of Loveland by procuring and sustaining the necessary public safety resources to defend human life, protect property, and safeguard the rights guaranteed to all people by the United States Constitution. Council thanked Chief Hecker for the Phase 2 presentation and the next in early 2013 for the Phase 3 discussion.

Having no further business to come before Council, the December 11, 2012 Study Session was adjourned at 9:21 p.m.

Respectfully Submitted,

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Jeannie M. Weaver, Deputy City Clerk

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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, Trenary, Fogle, McKean, Shaffer, and Clark. Councilor Taylor was absent.

**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.

**AGENDA ITEM REMOVED** Staff removed Item 20 from the agenda – “Purchase & Sale of the House of Neighborly Service property located at 565 N. Cleveland Avenue, Loveland, Colorado.”

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

**1. CITY CLERK**  
**Approval of Council Minutes**  
**Motion**

Administrative Action: The minutes from the November 27, 2012 study session were approved.

**2. CITY MANAGER**  
**Appointments to the Community Marketing Commission and Planning Commission**  
**Motion**

Administrative Action: The following appointments were approved: Brad Shannon as a regular member and Ben Price as an alternate member to the Community Marketing Commission both for terms effective until June 30, 2013 and the reappointment of John Crescibene and Carol Dowding and the appointment of Adam Prior to the Planning Commission, each for a full term effective until December 31, 2015.

**3. PUBLIC WORKS**  
**Municipal Code Amendment – Signature Authority for real property leases**  
**Ordinance #5733**

Legislative Action: “AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 2.24 CONCERNING THE CITY MANAGER, AND CHAPTER 12.48

CONCERNING THE AIRPORT" was approved and ordered published on second reading.

**4. DEVELOPMENT SERVICES**

**"Analysis of Impediments to Fair Housing Choice" Report**

**Resolution #R-85-2012**

Administrative Action: Resolution #R-85-2012 of the City Council of the City of Loveland, Colorado approving an Analysis of Impediments to Fair Housing Choice was approved.

RESOLUTION # R-85-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, APPROVING AN ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

WHEREAS, the City of Loveland receives federal Community Development Block Grant ("CDBG") funds from the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, HUD requires the City to submit an Analysis of Impediments to Fair Housing Choice every five years as a condition of receiving federal CDBG funds; and

WHEREAS, the City of Loveland contracted with Albertson Clark Associates to complete an Analysis of Impediments to Fair Housing Choice, a copy of which is on file with the City Clerk ("Analysis of Impediments"); and

WHEREAS, the City Council desires to approve the Analysis of Impediments to Fair Housing Choice, a copy of which is on file with the City Clerk, for submittal to HUD.

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

Section 1. That the Analysis of Impediments to Fair Housing Choice, a copy of which is on file with the City Clerk, is hereby approved for submittal to HUD.

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

Signed this 18th day of December, 2012

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

**5. DEVELOPMENT SERVICES**

**Transfer of Fee Waiver – Habitat for Humanity**

**Resolution #R-86-2012**

Administrative Action: Resolution #R-86-2012 amending Resolution #R-8-2012 pertaining to fee waivers for construction of eight residences by Loveland Habitat for Humanity was approved.

RESOLUTION #R-86-2012

A RESOLUTION AMENDING RESOLUTION #R-8-2012 PERTAINING TO FEE WAIVERS FOR CONSTRUCTION OF EIGHT RESIDENCES BY LOVELAND HABITAT FOR HUMANITY

WHEREAS, by adopting Resolution #R-8-2012, City Council approved the waiver of certain development fees for construction of eight residences by Loveland Habitat for Humanity ("Habitat"), subject to execution of one or more development agreements pursuant to which Habitat agreed to construct residences for the benefit of low and moderate income Loveland households; and

WHEREAS, Resolution #R-8-2012 identifies eight specific properties upon which the residences are to be built, including one located in Willow Park 2nd Subdivision at 598 East 27th Street (the "27th Street Property") and one located in Wards 3rd Subdivision at 1232 Raven Place (the "Raven Place Property"); and

WHEREAS, pursuant to Resolution #R-8-2012 the City and Habitat entered into a Development Agreement dated March 6, 2012 and recorded on March 9, 2012 at Reception No. 20120015812 in the records of the Larimer County, Colorado Clerk and Recorder pertaining to the 27th Street Property (the "27th Street Property Agreement") and a Development Agreement dated March 6, 2012 and recorded on March 9, 2012 at Reception No. 20120015814 in the records of the Larimer County, Colorado Clerk and Recorder pertaining to the Raven Place Property (the "Raven Place Property Agreement") (the 27th Street Property Agreement and the Raven Place Property Agreement are referred to collectively as the "Development Agreements") and

WHEREAS, Habitat desires to construct two single-family attached residences on the 27th Street Property, subject to such approvals as may be required under the Loveland Municipal Code ("Code"), instead of one single-family residence on the 27th Street Property and one single-family residence on the Raven Place Property; and

WHEREAS, Habitat has requested that the City amend Resolution #R-8-2012 to remove the Raven Place Property from the list of residences for which fee waivers are approved and modify that list to recognize the construction of two single-family attached residences on the 27th Street Property (subject to requirements of the Code), and amend the Development Agreements to conform to such amendments.

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

Section 1. Resolution #R-8-2012 shall be, and is hereby, amended to provide that the "Residences" listed therein for which certain development fees are waived shall exclude the Raven Place Property and include two single-family attached residences on the 27th Street Property (subject to requirements of the Loveland Municipal Code). Accordingly, the definition of the "Residences" set forth therein shall hereafter read as follows:

"WHEREAS, Loveland Habitat for Humanity ("Habitat") has requested that the City waive certain City-imposed development fees, including capital expansion fees, for eight residences that it will construct in 2012 in Loveland, Colorado including 7 single-family residences located in Willow Park 2nd Subdivision at 574, 596-598 (2 attached single-family residences, subject to requirements of the Loveland Municipal Code), 599, 623, 647, and 671 East 27th Street, and 1 residence located in Wards 3rd Subdivision at 1229 2nd Street Southeast (collectively, the "Residences"); and"

Section 2. That the City Manager is hereby authorized to amend the Development Agreements as deemed necessary or appropriate to conform to the foregoing modification of Resolution #8-2012; and

Section 3. That Resolution #R-8-2012, including the total capital expansion, development, and enterprise fees waived therein, shall remain in full force and effect as modified by this Resolution.

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

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

**6. CITY MANAGER**

**2013 SCHEDULED MEETING DATES**

**Resolution #R-87-2012** Administrative Action: Resolution #R-87-2012 adopting the schedule of the 2013 meeting dates for the Loveland City Council and the City's Boards and Commissions was approved.

**RESOLUTION #R-87-2012**

**A RESOLUTION ADOPTING THE SCHEDULE OF THE 2013 MEETING DATES FOR THE LOVELAND CITY COUNCIL AND THE CITY'S BOARDS AND COMMISSIONS**

WHEREAS, City Code Section 2.14.020B. provides that each year at the City Council's last regularly scheduled meeting, the City Council shall establish for the upcoming calendar year, 2013, the regular meeting dates of all boards, committees, commissions, and other policymaking and rulemaking bodies of the City; and

WHEREAS, Code Section 2.14.020B. requires that seven days after such meeting dates are so established that the meeting dates shall be published once in a newspaper of general circulation in the City and be posted in a conspicuous place in the City Municipal Building; and

WHEREAS, Section 2.14.020B. also requires that the secretary or clerk of each of the City's boards, committees, commissions, and other policymaking and rulemaking bodies shall provide notification of the regularly scheduled date of such meetings in advance of or on occasion of any special meetings duly called to those qualified electors who have made written request to the City for such notification; and

WHEREAS, the purpose of this Resolution is to so establish said meeting dates for 2013, and to require the publication, posting and notifications required in City Code Section 2.14.020B.

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



Section 1. That the schedule of regular meeting dates, times and places in 2013 for the Loveland City Council and the City's boards and commissions, a copy of which is attached as Exhibit "A" and incorporated by reference, is hereby adopted as provided in City Code Section 2.14.020B.

Section 2. That the City Council may, from time to time, change by motion the date, time and place of any of its regular meetings in 2013 as established in this Resolution and those of the City's boards and commissions. In addition, the City Manager, in consultation with the Mayor, is authorized to schedule fourth Tuesday study sessions as needed and to cancel the other Tuesday study sessions if there are no study session items to present or ready to present to Council.

Section 3. That the City Clerk is directed pursuant to City Code Section 2.14.020B. to publish the meeting dates established in Exhibit "A" 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 meetings in a conspicuous place in the City Municipal Building.

Section 4. That in addition, the City Clerk shall notify the secretary of each of the City's boards, committees, commissions, and other policymaking and rulemaking bodies to provide notification of this notice of meetings to all qualified electors who have requested such notice in accordance with Section 2.14.020B.

Section 5. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

**7. CITY MANAGER**

**2013 Legislative Policy**

**Motion**

Administrative Action: A motion approving the 2013 City Council Legislative Policy Agenda was approved.

**8. HUMAN RESOURCES**

**Contract Award – Workers' Compensation Insurance**

**Motion**

Administrative Action: A motion to award the workers' compensation contract to Pinnacol Assurance in an amount not to exceed \$1,078,000 and to authorize the City Manager to execute the contract on behalf of the City was approved.

**9. WATER & POWER**

**IGA with Platte River Power Authority – Energy Efficiency Programs**

**Resolution #R-88-2012**

Administrative Action: A motion to approve Resolution #R-88-2012 approving an Intergovernmental Agreement between the City of Loveland, Colorado and Platte River Power Authority for Demand Side Management Program funding was approved.

**RESOLUTION #R-88-2012**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND PLATTE RIVER POWER AUTHORITY FOR DEMAND SIDE MANAGEMENT PROGRAM FUNDING**

WHEREAS, Platte River Power Authority's Integrated Resource Plan details Platte River's plans and programs in the areas of generation and transmission, renewable energy, and energy efficiency, including demand side management ("DSM"); and

WHEREAS, Platte River's DSM programs include programs offered to customers in all of the member municipalities ("Common Programs"), which are contracted for and funded by Platte River; and

WHEREAS, existing Common Programs include LightenUp, the Electric Efficiency Program, the Building Tune Up Program, the Efficiency Express Program, Energy Efficient Lighting Program, Northern Colorado ENERGY STAR New Homes, and the SELECT HVAC Contractor Program; and

WHEREAS, the Common Programs offered by Platte River have changed over time and may change in the future to accommodate focus on new services and technologies; and

WHEREAS, on occasion Loveland Water and Power customers' demand for services under the Common Programs may exceed the amount of funding allocated to the City of Loveland under the Platte River annual budget; and

WHEREAS, when its customers' demand for service under the Common Programs exceeds the amount of funding allocated to the City, the City may desire to continue offering Common Programs to its customers at the City's cost; and

WHEREAS, Platte River is willing to continue providing Common Programs to Loveland Water and Power customers so long as the City provides the supplemental funding for said programs; and

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

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

Section 1. That the "Intergovernmental Agreement for Demand Side Management Program Funding," attached hereto as Exhibit A and incorporated herein by reference ("Intergovernmental Agreement"), is hereby approved.

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

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

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

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

**10. PARKS & RECREATION**

**Contract Award - Construction Management/General Contractor**

**Motion**

Administrative Action: A motion to award a Construction Management/General Contractor services contract to ECI Site Construction Management for a fixed fee of 2.8% based on the cost of work for a guaranteed maximum price (to be determined) and pre-construction fee of \$13,515 and assign the City Manager authority to sign the contract and guaranteed maximum price addendum was approved.

**11. FINANCE**

**Supplemental Appropriation - Grant Revenue for Fire Prevention**

**Resolution #R-89-2012**

Administrative Action: A motion to approve Resolution #R-89-2012 approving a supplemental budget and appropriation to the 2012 Loveland Fire Rescue Authority budget to appropriate additional grant funding from the Federal Emergency Management Agency for fire prevention was approved.

**RESOLUTION #R-89-2012**

**A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 LOVELAND FIRE RESCUE AUTHORITY BUDGET TO APPROPRIATE ADDITIONAL GRANT FUNDING FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR FIRE PREVENTION**

WHEREAS, on August 10, 2012, the Authority had been awarded \$32,240 grant from the Federal Emergency Management Agency ("FEMA") Assistance to Firefighters Grant Program-Fire Prevention and Safety Grant for the purchase of three (3) smoke alarms and one (1) carbon monoxide alarm for 650 low income and disabled households in our service area; and

WHEREAS, the Authority has the 20% matching funds required by the grant of \$8,060 within the existing 2012 Community Services Division budget; and

WHEREAS, the Loveland Fire Rescue Authority ("Authority") will receive these funds on a reimbursement basis that was not anticipated or appropriated at the time of the adoption of the budget for 2012; and

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WHEREAS, on September 13, 2012, the Authority's Board passed Resolution R-007 approving the Authority's supplemental budget and appropriation of the funds from the City of Loveland for approved and new projects and the FEMA grant match; and

WHEREAS, Section 4.1 of the Intergovernmental Agreement establishing the Authority requires approval from the City Council and the Board of the Loveland Rural Fire Protection District for the Authority's budget and appropriation to become effective; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by approving the Authority's supplemental budget and appropriation to the budget for 2012.

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

Section 1. That additional funds from FEMA were not appropriated at the time of adoption of the budget for 2012 as the grant was awarded on August 10, 2012. Said grant monies were not anticipated or appropriated at the time of adoption of the 2012 budget. The funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Account Title	Account Number	Amount	Description
<b>Sources of Funds:</b>			
Federal Grants	604-22-223-0000-32000	\$32,240	FEMA Assistance to Firefighters Prevention Grant
<b>Uses of Funds:</b>			
Safety Supplies	604-22-223-0000-42899	\$32,240	3 smoke alarms and 1 carbon monoxide alarm for each of 650 low income, disable households

Section 2. That the Authority's 2012 Supplemental Budget and Appropriation of additional funds from the City of Loveland is hereby approved.

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

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

**12, LOVELAND FIRE RESCUE AUTHORITY**

**Intergovernmental Automatic Response Agreement**

**Resolution #R-90-2012**

Administrative Action: A motion to approve Resolution #R-90-2012 approving an Intergovernmental Automatic Response Agreement between Poudre Fire Authority, Loveland Fire Rescue Authority regarding Poudre Emergency Communications Center and Loveland Emergency Communications Center was approved.

**RESOLUTION # R-90-2012**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AUTOMATIC RESPONSE AGREEMENT BETWEEN POUFRE FIRE AUTHORITY, LOVELAND FIRE RESCUE AUTHORITY REGARDING POUFRE EMERGENCY COMMUNICATIONS CENTER AND LOVELAND EMERGENCY COMMUNICATIONS CENTER**

WHEREAS, in accordance with §29-1-203 of the Colorado Revised Statutes, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

WHEREAS, in accordance with §29-1-201 of the Colorado Revised Statutes, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, Poudre Fire Authority ("PFA"), Loveland Fire Rescue Authority ("LFRA") are independent governmental entities duly organized and existing in accordance with Colorado law are called upon to respond to emergency areas contained within their respective jurisdictions; and

WHEREAS, the City of Loveland and the City of Fort Collins provide emergency communications services through the Loveland Emergency Communications Center (“LECC”) and the Poudre Emergency Communications Center (“PECC”), respectively; and

WHEREAS, PFA and LRFA, have designated an area generally adjacent to the common border between them where both will initially provide concurrent automatic emergency response aid, said area is delineated on Exhibit A; and

WHEREAS, notice to PFA and LFRA of fire emergencies in the designated area is made by and through the PECC and LECC; and

WHEREAS, it is the intent and desire of PFA and LFRA to provide an emergency fire response system that meets the health, safety and welfare needs of the affected residents; and

WHEREAS, by the terms Section 1.9 of Article I of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011, such agreements must be presented to and approved by the Loveland City Council and the Loveland Rural Fire Protection district; and

WHEREAS, the City Council finds that it is in the best interests of the Fire Authority to adopt the “Intergovernmental Automatic Response Agreement” attached hereto as Exhibit A and incorporated by reference (the “Agreement”).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE LOVELAND FIRE RESCUE AUTHORITY, STATE OF COLORADO, AS FOLLOWS:

Section 1. That the Agreement is hereby approved.

Section 2. That the Loveland Fire Authority is hereby authorized and directed to execute the Agreement, subject to such modifications in form or substance as the Fire Chief in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution.

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

ADOPTED this 18<sup>th</sup> day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk’s Office

**13. PUBLIC WORKS**

**IGA for Bus Service between Fort Collins and Longmont in 2013**

**Resolution #R-91-2012**

Administrative Action: A motion to approve Resolution #R-91-2012 approving an Intergovernmental Agreement (IGA) between the City of Loveland, Colorado, the City of Fort Collins, Colorado for bus service between Fort Collins and Longmont for the calendar year 2013 was approved.

**RESOLUTION #R-91-2012**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE CITY OF FORT COLLINS, COLORADO FOR BUS SERVICE BETWEEN FORT COLLINS AND LONGMONT FOR THE CALENDAR YEAR 2013**

WHEREAS, the City of Loveland desires to partner with the City of Fort Collins to provide regional connector bus service between the City of Fort Collins and the City of Longmont along the U.S. Highway 287 corridor, which service is referred to as the “Fort Collins-Longmont Express,” or “FLEX”; and

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

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

Section 1. That the “Intergovernmental Agreement for Bus Service Between Fort Collins and Longmont,” attached hereto as Exhibit A and incorporated herein by reference (“Intergovernmental Agreement”), is hereby approved.

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

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

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

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

**14. PUBLIC WORKS**

**2013 Fuel Contract**

**Motion**

Administrative Action: A motion to approve a contract with Gray Oil Company for fuel and fuel delivery services in 2013 in the amount of \$1,700,000 and authorize the City Manager to sign the contract was approved.

**CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.**

**CITY COUNCIL**

a) Citizens' Reports

Robert Rumfeld, 2479 Selenium Ct, spoke to a need he sees for a back-up plan if the City were to lose State and/or Federal funding sources. Staff will prepare materials to assess any issues.

b) Business from Council

Trenary

Councilor Trenary mentioned there are vacancies on various Boards and Commissions. He participated in a literacy class discussion at Mountain View High School regarding a WWI novel.

Shaffer

Councilor Shaffer mentioned the reception at Artworks last week. She also attended the CML legislative policy meeting last Friday and she'll be meeting with Assistant City Manager Rod Wensing to debrief from the meeting and will provide the rest of Council with an update.

Klassen

Councilor Klassen attended the annual Loveland Choral Society holiday program last week. He also attended a luncheon celebrating the 75<sup>th</sup> anniversary of Larimer County Extension Services. Councilor Klassen announced Colin Klein took third place in the voting for the Heisman Trophy.

Farley

Councilor Farley announced the Loveland High Plains Arts Council received exciting news that Loveland's Benson Sculpture Garden was recognized as one of the "Must see Contemporary Art Sites across the US".

Gutierrez

Mayor Gutierrez attended the Community Foundation open house and the Menorah lighting last week. He thanked all those involved in the Pearl Harbor service at Dwayne Webster Veterans Park. The Mayor mentioned the tragedy at Newtown Connecticut. Councilor Shaffer read a tribute written by a minister near Newtown that addressed the tragedy.

c) City Manager Report

City Manager Cahill wished Council, staff and the community a Merry Christmas. He spoke about local school security mentioning the Loveland Police Department is engaging with the Thompson School District regarding school security arrangements.

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

#### 15. CITY CLERK

##### Approval of Council Minutes

##### Motion

Administrative Action: City Clerk Terry Andrews introduced this item, which approves minutes from the December 4, 2012 regular meeting. Councilor Shaffer moved to approve Council minutes from the December 4, 2012 regular meeting. Councilor Trenary seconded the motion and a roll call vote was taken with all Councilors present voting in favor with the exception of Councilor Farley who recused himself as he missed part of the December 4<sup>th</sup> meeting.

#### 16. ECONOMIC DEVELOPMENT

##### Supplemental Appropriation – Chamber of Commerce Contract

##### Ordinance #5734

Councilor Clark recused himself from hearing this item as he served as President of the Chamber of Commerce. Councilor Farley recused himself as he served on the Board of the Loveland Center for Business Development.

Administrative Action: City Planner Mike Scholl introduced this item. The ordinance appropriates funding (\$130,000) for the contract for small business counseling services with the Loveland Chamber of Commerce. City Council approved the contract and the first reading of the supplemental appropriation ordinance on December 4, 2012. Councilor Shaffer made a motion to approve and ordered published on second reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR A CONTRACT WITH THE LOVELAND CHAMBER OF COMMERCE FOR SMALL BUSINESS COUNSELING SERVICES". Councilor Klassen seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof with Councilor Clark and Farley recusing themselves from the vote.

#### 17. DEVELOPMENT SERVICES

##### Tax-Exempt Financing by the Housing Authority of the City of Loveland (Silver Leaf I)

##### Resolution #R-92-2012 & P.H.

Councilor Fogle recused himself from this item as his wife works at the Housing Authority.

Administrative Action. City manager Bill Cahill introduced this item. This action is to approve a tax-exempt financing by the Housing Authority of the City of Loveland for Silver Leaf I, located at 2100 Maple Drive, Loveland, Colorado, and a single family home located at 1244 Garfield Avenue, Loveland, Colorado. The Mayor opened the public hearing at 7:03 p.m. and hearing no comment closed the hearing at 7:03 p.m. Councilor Shaffer moved to approve Resolution #R-92-2012 approving the issuance of a promissory note by the Housing Authority of the City of Loveland to FirstBank of Northern Colorado for the sole purpose of qualifying the interest payable on the note for

exclusion from the gross income of the owner or owners of the note for federal income tax purposes under the applicable provisions of the Internal Revenue Code of 1986; and related matters. Councilor Trenary seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof with Councilor Fogle recusing himself from the vote.

RESOLUTION NO. R-92-2012

A RESOLUTION APPROVING THE ISSUANCE OF A PROMISSORY NOTE BY THE HOUSING AUTHORITY OF THE CITY OF LOVELAND TO FIRSTBANK OF NORTHERN COLORADO FOR THE SOLE PURPOSE OF QUALIFYING THE INTEREST PAYABLE ON THE NOTE FOR EXCLUSION FROM THE GROSS INCOME OF OWNER OR OWNERS OF THE NOTE FOR FEDERAL INCOME TAX PURPOSES UNDER THE APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986; AND RELATED MATTERS

WHEREAS, the City Council for the City of Loveland, Colorado (the "City Council") has been advised by the Housing Authority of the City of Loveland (the "Authority") that the Authority proposes to issue its Promissory Note in the principal amount of not to exceed \$2,100,000 (the "Note") to FirstBank of Northern Colorado, and to loan the proceeds therefrom to the Loveland Housing Development Corporation (the "Corporation") to provide refinancing for a 50-unit apartment complex known as Silver Leaf I located at 2100 Maple Drive, Loveland, Colorado 80538 and a single family home located at 1244 Garfield Avenue, Loveland, Colorado 80537 (the "Project"), all in accordance with the Authority's powers as set forth in Part 2, Article 4, Title 29 of Colorado Revised Statutes, and contingent upon the adoption of this Resolution; and

WHEREAS, it is the intent of the Authority that interest on the Note qualify for exclusion from the gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Tax Code"); and

WHEREAS, under the provisions of Section 147(f) of the Tax Code, interest on the Note would not be so excludable unless the issue is approved by the City Council after a public hearing to consider the issuance of the Note following reasonable public notice; and

WHEREAS, the City Council has been advised that a public hearing was held by the Authority on December 14, 2012 after reasonable public notice; and

WHEREAS, the Authority's Report of the Public Hearing is attached to this resolution as Exhibit A and attached as Exhibit B is the affidavit of publication for the December 14, 2012 hearing.

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

Section 1. The City Council, for the sole purpose of qualifying the interest payable on the Note for exclusion from the gross income of the owners thereof for federal income tax purposes pursuant to the applicable provisions of the Tax Code, does hereby approve the issuance by the Authority of the Note, provided that: (i) the aggregate principal amount of the Note shall not exceed \$2,100,000, and (ii) in no event shall the City or any other political subdivision of the State of Colorado (other than the Authority) be liable for the Note nor shall the Note constitute a debt of the State of Colorado, the City of Loveland or any other such political subdivision (other than the Authority).

Section 2. All resolutions, orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby superseded.

Section 3. This Resolution shall be in full force and effect from and after its passage and approval, in accordance with law.

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

**18. DEVELOPMENT SERVICES**

**Oil and Gas Moratorium Extension**

**Ordinance #5735**

Legislative Action: Development Services Director Greg George introduced this item to City Council. This is a legislative action to consider extending the City's moratorium on the acceptance and processing of land use applications, permits and other approvals

concerning the conduct of oil and gas operations within the City. The ordinance was adopted by City Council on first reading December 4, 2012 by a vote of seven to one. Councilor Shaffer moved to approve and ordered published on second reading "AN ORDINANCE AMENDING ORDINANCE NO. 5685 TO EXTEND THE CITY'S MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF LAND USE APPLICATIONS, PERMITS AND OTHER APPROVALS CONCERNING THE CONDUCT OF OIL AND GAS OPERATIONS WITHIN THE CITY". Councilor Trenary seconded the motion and a roll call vote was taken with seven Councilors present voting in favor and Councilor McKean voting no. The motion passed.

**19. ECONOMIC DEVELOPMENT**

**Downtown Loveland –Brinkman / North Catalyst Project**

Administrative and Legislative Actions: City Planner Mike Scholl introduced this item to City Council. Kevin Brinkman, with Brinkman Partners and Lance Boland, with Woodbury Strategic Partners Fund, LLC were also present. The combined actions would result in the expansion of the Block 41-Finley's Addition Urban Renewal Plan, based on findings of "blight", to facilitate the construction of a \$9.3 million, 69 unit market rate housing development in Downtown Loveland by the Brinkman Partners of Fort Collins acting through its investment entity 541 N. Lincoln L.L.C. The Brinkman/North Catalyst project is the result of both extensive planning by the City and two years of negotiations with the Brinkman Partners. The Mayor opened the public hearing at 7:40 p.m. Nancy Rumpfelt spoke in opposition of this project. Roland Demers, 736 W. 6<sup>th</sup> St spoke in support. Leo Wotan, Affordable Housing Commission past chair spoke in support. The Mayor closed the public hearing at 7:51 p.m. Discussion ensued.

**1) Resolution #R-93-2012**

Legislative Action: Councilor Shaffer moved to approve Resolution #R-93-2012 of the Loveland City Council approving a substantial modification of the Block 41-Finley's Addition Urban Renewal Plan. Councilor Trenary seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

**RESOLUTION #R-93-2012**

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING A SUBSTANTIAL MODIFICATION OF THE BLOCK 41-FINLEY'S ADDITION URBAN RENEWAL PLAN**

WHEREAS, the Loveland City Council (the "Council") created the Loveland Urban Renewal Authority, a body corporate and politic ("LURA") by adopting Resolution No. R-44-2002 on July 2, 2002 and designated Council as the Board of Commissioners of the Authority; and

WHEREAS, creation of LURA vested it with the legal authority to exercise all the rights and power granted to urban renewal authorities by the Colorado Urban Renewal Law, C.R.S. §31-25-101, et seq. (the "Act"); and

WHEREAS, by adopting Resolution #R-74-2002 on October 1, 2002, Council approved the City of Loveland Urban Renewal Plan (the "Plan") and authorized LURA to retain revenues generated by the levy of property taxes based on the incremental increase in property values (the "Tax Increment") within the area designated as the Downtown Urban Renewal Area described therein (the "Downtown Plan Area") until September 30, 2027; and

WHEREAS, by adopting Resolution #R-33-2005 on April 26, 2005, Council approved the Block 41-Finley's Addition Urban Renewal Plan (the "Original Finley's Addition Plan"), created the Block 41-Finley's Addition Urban Renewal Area (the "Original Area") as a plan area separate from the Downtown Plan Area, and authorized LURA to retain the Tax Increment within the Original Area until September 30, 2027; and

WHEREAS, the Tax Increment within the Original Finley's Addition Plan Area received prior to May 22, 2015, up to a maximum of \$917,456.00 (the "Lincoln Place Tax Increment"), has been pledged by LURA under that certain Amended and Restated Master Financing Agreement dated May 22, 2007 (the "Lincoln Place MFA") to facilitate completion of an urban renewal project in the Original Area known as "Lincoln Place"; and



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WHEREAS, C.R.S. §31-25-107(7) of the Act allows the Council to make substantial modifications to the Original Finley's Addition Plan, provided the Council complies with all applicable requirements of §31-25-107 of the Act, including, without limitation, that the Council makes the required blight findings; and

WHEREAS, it is now being proposed that substantial modifications be made to the Original Finley's Addition Plan to add certain real property described on Exhibit A attached hereto and incorporated herein (the "Added Area") to the Original Finley's Addition Plan Area and to adopt changes to allow the retention by LURA of incremental tax revenues from the City's sales taxes, in addition to property taxes, as more fully set forth in the Modified and Restated Urban Renewal Plan: Block 41-Finley's Addition attached hereto as Exhibit B and incorporated by reference (the "Modified Finley's Addition Plan") in order to facilitate development the North Catalyst Project, as described in the Modified Finley's Addition Plan, to be located on the Lots 1-8, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado and identified in Appendix B to the Modified Finley's Addition Plan as the "Former Home State Bank" parcel; and

WHEREAS, the Original Area, as modified by the inclusion of the Added Area pursuant to the Modified Finley's Addition Plan, is hereinafter referred to as the "Modified Finley's Addition Plan Area"; and

WHEREAS, the Original Area is made up of approximately 2.15 acres which are legally described and depicted on Appendix A to the Modified Finley's Addition Plan; and

WHEREAS, the Modified Finley's Addition Plan Area proposes to add the Added Area containing approximately 2.8 acres, to the Original Area, which would result in a total of approximately 4.95 acres referred to as the Modified Finley's Addition Plan Area and described and depicted on Appendix C to the Modified Finley's Addition Plan; and

WHEREAS, by adoption of Resolution #R-85-2011 on December 6, 2011, Council approved a minor modification to the Downtown Plan removing the Added Area from the Downtown Plan Area simultaneously with and conditioned upon Council's approval of the Modified Finley's Addition Plan; and

WHEREAS, by adoption of Resolution #R-86-2011 on December 6, 2011, LURA commissioned a conditions survey prepared by MTA Planning & Architecture entitled "Expanded Block 41-Finley's Addition Urban Renewal Area Conditions Survey dated April, 2012", which is attached as Exhibit C and incorporated by reference (the "Blight Study"); and

WHEREAS, the Modified Finley's Addition Plan was submitted to the City of Loveland Planning Commission ("Commission") on February 27, 2012 for its review and recommendation regarding compliance with the City's 2005 Comprehensive Plan, as amended (the "Comprehensive Plan") as required by C.R.S. §31-25-107(2); and

WHEREAS, Council has received a written recommendation from the Commission, in the form of Commission Resolution 2, 2012 attached as Exhibit D and incorporated by reference, finding that the Modified Finley's Addition Plan is in compliance with the Comprehensive Plan; and

WHEREAS, the Modified Finley's Addition Plan was submitted to the Board of the Larimer County Commissioners, together with the impact report required by C.R.S. §31-25-107(3.5), by email on November 16, 2012, at least 30 days prior to Council's public hearing to consider the Modified Finley's Addition Plan, which public hearing was conducted on December 18, 2012 (the "Public Hearing"); and

WHEREAS, since it is anticipated that the Modified Finley's Addition Plan Area will include multifamily residences, the City has given written notice of the Modified Finley's Addition Plan to the Thompson R2-J School District to permit it to participate in advisory capacity pursuant to C.R.S. §31-25-107(9)(d) with respect to Council's consideration of the Modified Finley's Addition Plan; and

WHEREAS, since the Modified Finley's Addition Plan constitutes a substantial modification of the Original Finley's Addition Plan as contemplated by C.R.S. §31-25-107(7), all of the notices required under the Act were given by the City for the Public Hearing; and

WHEREAS, Council conducted the Public Hearing on December 18, 2012 to consider approval of the Modified Finley's Addition Plan and to consider making the findings required under the Act to approve the Modified Finley's Addition Plan as a substantial modification of the Original Finley's Addition Plan.

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

Section 1. That in accordance with C.R.S. §31-25-107(3), notice of the Public Hearing was published at least thirty (30) days prior to the date of the Public Hearing, as evidenced by the "Affidavit of Publication" attached as Exhibit E and incorporated by reference.

Section 2. That in accordance with C.R.S. §31-25-107(4)(c), written notice of the Public Hearing was given to all property owners, residents, and owners of business concerns in the Modified Finley's Addition Plan Area at their last

known address of record at least thirty (30) prior to the date of the Public Hearing, as evidenced by the "Certificate of Mailing" attached as Exhibit F and incorporated by reference.

Section 3. That the boundaries of the Modified Finley's Addition Plan Area have been drawn as narrowly as the Council determines feasible to accomplish the planning and development objectives of the Original Finley's Addition Plan and the Modified Finley's Addition Plan.

Section 4. That no more than one hundred and twenty (120) days have passed since the commencement of the Public Hearing.

Section 5. That no portion of the Modified Finley's Addition Plan Area contains property that was included in an urban renewal plan that was previously submitted to Council and not approved.

Section 6. That the Modified Finley's Addition Plan conforms to the City's Comprehensive Plan as a whole.

Section 7. That the Modified Finley's Addition Plan will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the rehabilitation and redevelopment of the Modified Finley's Addition Plan Area by a private enterprise.

Section 8. That the Modified Finley's Addition Plan is not expected to displace any person, family or business.

Section 9. That under the Modified Finley's Addition Plan, LURA would have the option of using the power of eminent domain to acquire real property within the Modified Finley's Addition Plan Area, provided that Council first approves such use of eminent domain. It is not expected, however, that LURA will use the power of eminent domain to acquire real property that is a part of the Modified Finley's Addition Plan Area.

Section 10. That in accordance with C.R.S. §31-25-107(1)(b), written notice was given to all owners of the Added Area at their last known address of record at within thirty (30) after the Blight Study was commissioned on December 6, 2011 as evidenced by the "Certificate of Mailing" attached as Exhibit G and incorporated by reference.

Section 11. That the Blight Study was presented to Council for review and consideration at the Public Hearing.

Section 12. That the Blight Study, together with other evidence presented at the Public Hearing, establishes and Council hereby finds, that six of the conditions set forth in C.R.S. §31-25-103(2) exist within the Added Area included in the Modified Finley's Addition Plan Area as set forth in the Blight Study and that these conditions substantially impair or arrest the sound growth of the City, constitute an economic and social liability, and are further a menace to the public health, safety and welfare, and these conditions are: (a) faulty lot layout in relation to size, adequacy, accessibility or usefulness; (b) unsanitary or unsafe conditions; (c) buildings that are unsafe because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities; (d) environmental contamination of buildings or property; (e) substantial underutilization or vacancy of sites, buildings or other improvements; and (f) deteriorated or deteriorating structures.

Section 13. That neither prior to nor at the Public Hearing, did the City receive from any owner or tenant of the Added Area, any objection to the inclusion of the Added Area in the Modified Finley's Addition Plan Area.

Section 14. That no portion of the Modified Finley's Addition Plan Area is made up of an area of open land or of agricultural land.

Section 15. That LURA is currently negotiating an agreement with Larimer County ("County") to adequately finance additional County infrastructure and services required to serve the North Catalyst Project during the period of LURA's collection of the Tax Increment from the Modified Finley's Addition Plan Area.

Section 16. That the Modified Finley's Addition Plan is hereby approved and adopted pursuant to all applicable provisions of the Act.

Section 17. That except as expressly amended by the Modified Finley's Addition Plan, the Original Finley's Addition Plan shall remain unchanged in in full force and effect.

Section 18. That the adoption of the Modified Finley's Addition Plan shall be subject to and have no impact on the Lincoln Place MFA.

Section 19. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibits A through G are available in the City Clerk's Office

2) 1<sup>st</sup> Rdg Ordinance & P.H. Administrative Action: Councilor Shaffer moved to approve and ordered published on first reading "AN ORDINANCE OF THE LOVELAND CITY COUNCIL AUTHORIZING A DISPOSITION AND DEVELOPMENT AGREEMENT AMONG THE CITY, THE LOVELAND URBAN RENEWAL AUTHORITY, AND 541 N. LINCOLN L.L.C. AND CONVEYANCE OF LOTS 1 THROUGH 8, BLOCK 12, ORIGINAL PLAT OF THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO FOR THE DEVELOPMENT OF THE NORTH CATALYST PROJECT AT 541 N. LINCOLN IN LOVELAND, COLORADO" with amendments to Sections 19.1.2 and 18.1 of Exhibit A "Disposition and Development Agreement" regarding the timing of the payment. Councilor Clark seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

3) 1<sup>st</sup> Rdg Ordinance & P.H. Administrative Action: Councilor Shaffer moved to approve and ordered published on first reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR A LOAN TO THE LOVELAND URBAN RENEWAL AUTHORITY IN CONNECTION WITH THE NORTH CATALYST PROJECT LOCATED AT 541 N. LINCOLN IN LOVELAND, COLORADO". Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

At 9:37 p.m. City Council adjourned and convened as the Board of Commissioners for the Loveland Urban Renewal Authority (LURA)

PUBLIC HEARING The Mayor opened the public hearing at 9:38 p.m. Scott Hoslaw spoke in support of this project. The Mayor closed the hearing at 9:42 p.m.

4) Resolution #R-94-2012 Administrative Action: Councilor Shaffer moved to approve Resolution #R-94-2012 of the Loveland Urban Renewal Authority approving a Disposition and Development Agreement among the City of Loveland, the Loveland Urban Renewal Authority, and 541 N. Lincoln L.L.C. for conveyance of Lots 1 through 8, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado and authorizing the borrowing from and payment of funds to the City in connection with the development of the North Catalyst Project at 541 N. Lincoln in Loveland, Colorado with amendments to Sections 19.1.2 and 18.1 of Exhibit A "Disposition and Development Agreement" regarding the timing of the payment. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

RESOLUTION #R-94-2012

A RESOLUTION OF THE LOVELAND URBAN RENEWAL AUTHORITY APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT AMONG THE CITY OF LOVELAND, THE LOVELAND URBAN RENEWAL AUTHORITY, AND 541 N. LINCOLN L.L.C. FOR CONVEYANCE OF LOTS 1 THROUGH 8, BLOCK 12, ORIGINAL PLAT OF THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO AND AUTHORIZING THE BORROWING FROM AND PAYMENT OF FUNDS TO THE CITY IN CONNECTION WITH THE DEVELOPMENT OF THE NORTH CATALYST PROJECT AT 541 N. LINCOLN IN LOVELAND, COLORADO

WHEREAS, the City of Loveland is the owner Lots 1 through 8, Block 12, Original Plat of the City of Loveland, County of Larimer, State of Colorado, which real property is also known as 541 N. Lincoln Street (the "Property"); and

WHEREAS, the Loveland City Council (the "Council") created the Loveland Urban Renewal Authority, a body corporate and politic ("LURA") by adopting Resolution No. R-44-2002 on July 2, 2002 and vested it with the legal authority to

exercise all the rights and power granted to urban renewal authorities by the Colorado Urban Renewal Law, C.R.S. §31-25-101, et seq. (the "Act"); and

WHEREAS, by adopting Resolution #R-74-2002 on October 1, 2002, Council approved the City of Loveland Urban Renewal Plan (the "Plan") and authorized LURA to retain revenues generated by the levy of property taxes based on the incremental increase in property values (the "Tax Increment") within the area designated as the Downtown Urban Renewal Area described therein (the "Downtown Plan Area") until September 30, 2027; and

WHEREAS, by adopting Resolution #R-33-2005 on April 26, 2005, Council approved the Block 41-Finley's Addition Urban Renewal Plan (the "Finley's Addition Plan"), created the Block 41-Finley's Addition Urban Renewal Area (the "Finley's Addition Plan Area") as a plan area separate from the Downtown Plan Area, and authorized LURA to retain the Tax Increment within the Finley's Addition Plan Area until September 30, 2027; and

WHEREAS, the Tax Increment within the Finley's Addition Plan Area received prior to May 22, 2015, up to a maximum of \$917,456.00 (the "Lincoln Place Tax Increment"), has been pledged by LURA under that certain Amended and Restated Master Financing Agreement dated May 22, 2007 to facilitate completion of an urban renewal project in the Finley's Addition Plan Area known as "Lincoln Place"; and

WHEREAS, the City and LURA desire to facilitate the redevelopment of the Property to include a mixed use commercial, live/work, and multifamily development referred to as the North Catalyst Project, and

WHEREAS, to facilitate the North Catalyst Project, the Council has previously approved a minor modification to remove the Property, and other specified properties, from the Downtown Plan Area and is in the process to approve a substantial modification to the Finley's Addition Urban Renewal Plan to add the Property and the other specified properties, to the Finley's Addition Plan Area (the "Modified Finley's Addition Plan Area") and to authorize LURA's retention of revenues generated by the City's sales taxes, in addition to revenue generated by the levy of property taxes, as a part of the Tax Increment from the Modified Finley's Addition Plan Area; and

WHEREAS, the City desires to convey the Property to 541 N. Lincoln, L.L.C., a Utah limited liability company ("Developer") in return for Developer's commitment to redevelop the Property and complete the North Catalyst Project in accordance with the Disposition and Development Agreement attached as Exhibit A and incorporated by reference (the "Agreement"); and

WHEREAS, the North Catalyst Project is to be financed, in part, by the Tax Increment attributable to the Modified Finley's Addition Plan Area, which will include the Lincoln Place Tax Increment, all of which shall be used by LURA to repay a loan from the City for the cost of the public investment in the North Catalyst Project and other costs incurred in connection with the sale of the Property as set forth in Agreement; and

WHEREAS, after reviewing the Agreement, receiving information from the City staff, and receiving input from citizens at a public hearing, the LURA Board of Commissioners ("the Board") has determined that the Agreement is in the best interests of LURA and meets the objectives of the Modified Finley's Addition Plan; and

WHEREAS, LURA and the City are authorized under C.R.S. §31-25-107(1) to cooperate and contract with one another to pursue and accomplish urban renewal plans and projects under the Act.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE LOVELAND URBAN RENEWAL AUTHORITY:

Section 1. That Board hereby finds and determines that the Agreement, including the loan to LURA by the City for the cost of the public investment in the North Catalyst Project and LURA's repayment of that loan and other costs incurred by the City in connection with the North Catalyst Project, will serve the public purposes of: (a) providing significant economic benefits to LURA, the City and Loveland's citizens; (b) furthering LURA's planning and development goals as established in the Modified Finley's Addition Plan; (c) generally benefitting the public's health, safety and welfare; and (d) eliminating blight within Loveland's downtown area as authorized in the Act.

Section 2. That the Agreement is hereby approved, subject to Council's Ordinance No. approving the Agreement becoming law.

Section 3. That the Board further approves, subject to Council's Ordinance No. 5736 approving the Agreement becoming law, the borrowing of \$1,500,000 from the City (the "Loan") for payment of the cost of Public Improvements (as defined in the Agreement) in an amount not to exceed \$1,500,000 to the developer of the North Catalyst Project as set forth in the Agreement in consideration of LURA's promise in the Agreement to pay to the City all of LURA's Tax Increment from the Modified Finley's Addition Plan Area until the City has been paid in full for: (a) the Loan; and (b)

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\$965,000 for other costs of the transaction incurred by the City consisting of the City's grant of a \$50,000 construction material use tax waiver as provided in the Agreement, repayment of \$900,000 to the Cultural Services capital expansion fee fund originally used by the City to purchase the North Catalyst Project Site, reimbursement of the City for \$15,000 in predevelopment costs incurred for the North Catalyst Project; and (c) the financing costs as provided in the Agreement.

Section 4. That after Council's Ordinance No. 5736 approving the Agreement becomes law, the Mayor, as Board Chairperson, and the City Clerk, as the Board Secretary, are hereby authorized and directed to execute on behalf of LURA, the Agreement and all other documents, the form of which has been approved by the City Attorney, as are necessary and appropriate under the Agreement to consummate the transfer of the City's interest in the Property, perform LURA's obligations, and implement and close the transactions called for in the Agreement.

Section 5. That the Mayor, as Board Chairperson, in consultation with the Loveland City Attorney, is authorized to approve changes to the Agreement that are minor in nature such as typographical errors and mistakes of fact that do not change the material terms or conditions of the Agreement.

Section 6. That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

5)1<sup>st</sup> Rdg Ordinance & P.H. Administrative Action: Councilor Shaffer moved to approve and ordered published on first reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND URBAN RENEWAL AUTHORITY BUDGET TO FUND PAYMENTS TO THE DEVELOPER OF THE NORTH CATALYST PROJECT AT 541 N. LINCOLN, LOVELAND, COLORADO FOR PUBLIC IMPROVEMENTS". Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

Mayor Gutierrez called for a ten minute break. At 9:58 p.m. the Board of Commissioners for the Loveland Urban Renewal Authority adjourned and reconvened as City Council.

**20. ECONOMIC DEVELOPMENT**

**House of Neighborly Service**

**Resolution #R-95-2012**

This item was pulled from the agenda by staff and not considered by City Council. The Resolution number was not used.

**21. Public Works**

**2035 Transportation Plan**

**Resolution #R-96-2012**

Legislative Action: City Engineer David Klockeman introduced this item. This is a legislative action to adopt the 2035 Transportation Plan and amend the 2005 Comprehensive Master Plan. The 2035 Transportation Plan was discussed at the September 25, 2012 Study Session. The 2035 Transportation Plan includes the Capital Projects and associated costs through 2035. This includes anticipated collections and expenditures of Capital Expansion Fees, Other Funding (CDOT, FHWA and other outside sources) and the General Fund. Councilor Shaffer moved to approve Resolution #R-96-2012 adopting the 2035 Transportation Plan and amending the 2005 Comprehensive Master Plan by addition of the 2035 Transportation Plan. Councilor Trenary seconded the motion and a roll call vote was held with all Councilors present voting in favor thereof.

**RESOLUTION #R-96-2012**

**A RESOLUTION ADOPTING THE 2035 TRANSPORTATION PLAN AND AMENDING THE 2005 COMPREHENSIVE MASTER PLAN BY ADDITION OF THE 2035 TRANSPORTATION PLAN**

WHEREAS, on March 6, 2007, by Resolution #R-21-2007, the City Council adopted the "2005 Comprehensive Master Plan" ("2005 Comprehensive Plan"); and

WHEREAS, pursuant to Section 6 of the 2005 Comprehensive Plan, the City Council may amend the 2005 Comprehensive Plan by amendment of a functional (component) element previously adopted as part of the 2005 Comprehensive Plan after a duly-noticed public hearing is held, and recommendations are made to the City Council, by the Planning Commission; and

WHEREAS, on April 3, 2007, by Resolution #R-37-2007, the City Council adopted the "2030 Transportation Plan," which is a functional (component) element of the 2005 Comprehensive Plan; and

WHEREAS, Public Works Department staff has prepared an update to the 2030 Transportation Plan known as the "2035 Transportation Plan"; and

WHEREAS, on November 26, 2012, the Planning Commission adopted Resolution #6-2012 recommending that the City Council amend the 2005 Comprehensive Plan by adoption of the 2035 Transportation Plan, and making certain findings in support of that recommendation as required by Section 6.0 of the 2005 Comprehensive Plan; and

WHEREAS, on December 3, 2012, the Transportation Advisory Board adopted a motion recommending that the City Council adopt the 2035 Transportation Plan; and

WHEREAS, the City Council desires to adopt the 2035 Transportation Plan and amend the 2005 Comprehensive Plan by addition of the 2035 Transportation Plan.

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

Section 1. That the 2035 Transportation Plan, a copy of which is on file with the Loveland City Clerk, is hereby adopted.

Section 2. That the City Council hereby adopts and incorporates by reference the findings set forth in Resolution #6-2012 adopted by the Planning Commission on November 26, 2012.

Section 3. That the 2005 Comprehensive Plan is hereby amended by the addition of the 2035 Transportation Plan, which shall supersede and replace the 2030 Transportation Plan.

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

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

**22. Public Works**

**Capital Expansion Fees for Streets**

**Resolution #R-97-2012**

Administrative Action: City Engineer David Klockeman introduced this item. This is an administrative action to consider a resolution adopting a new schedule of Capital Expansion Fees (CEF) for Streets. The basis for these CEFs is the 2035 Transportation Plan. Proceeds from the CEFs provide funding for capital improvements. For purposes of preparing the 2013 Budget, the Budget Office staff has assumed that the CEFs will be continued into the future. The update process indicates that CEFs should be increased to meet the policy of growth paying for its share of capital costs. Councilor Shaffer moved to approve Resolution #R-97-2012 adopting a new schedule of Capital Expansion Fees for Streets pursuant to Section 16.38.020.E of the Loveland Municipal Code effective January 1, 2013. Councilor Klassen seconded the motion and a roll call vote was held with seven Councilors present voting in favor and Councilor Clark voting against. The motion passed.

**RESOLUTION #R-97-2012**

A RESOLUTION ADOPTING A NEW SCHEDULE OF STREETS CAPITAL EXPANSION FEES PURSUANT TO SECTION 16.38.020.E OF THE LOVELAND MUNICIPAL CODE EFFECTIVE JANUARY 1, 2013

WHEREAS, Loveland Municipal Code Section 16.38.020.E provides that capital expansion fees be reviewed and approved by resolution every five (5) years commencing in 2000; and

City Council  
December 18, 2012  
Page 18 of 18

WHEREAS, the last five (5) year review of capital expansion fees was completed with the adoption of Resolution #R-38-2007, on April 3, 2007 establishing the City's current capital expansion fees; and

WHEREAS, City staff has completed a comprehensive five (5) year review of capital expansion fees established in Resolution #R-38-2007 and by adoption of Resolution #R-81-2012, City Council approved a new Capital Expansion Fee Schedule for all capital Expansion Fees other than Streets; and

WHEREAS, City staff is recommending changes to the Streets CEF as set out in the Streets Capital Expansion Fee Schedule attached hereto as Exhibit A and incorporated by reference (the "Streets CEF Schedule") to more accurately reflect actual growth related capital costs; and

WHEREAS, City Council desires to adopt the Streets CEF Schedule to more accurately reflect current growth related capital costs pursuant.

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 Streets CEF Schedule more accurately reflects the City's actual growth-related capital costs.

Section 2. That the Streets CEF Schedule is hereby adopted and approved as the capital expansion fees for streets for the City of Loveland as authorized in Section 16.38.020.E of the Loveland Municipal Code to become effective as provided in Section 3. below.

Section 3. That the streets capital expansion fees set forth in the Streets CEF Schedule shall be effective as of January 1, 2013 and shall apply to all building permit applications completed on or after January 1, 2013, subject to annual adjustment thereafter in accordance with Code Section 16.38.110.A.

Section 4. That Resolution #R-38-2007 shall be superseded as to CEFs charged for streets as of January 1, 2013 by this Resolution except with respect to building permits completed prior to January 1, 2013, which permits shall continue to be subject to the capital expansion fees for streets as set forth in Resolution #R-38-2007 as adjusted annually in accordance with Code Section 16.38.110.A.

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

ADOPTED this 18th day of December, 2012.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

**23. CITY MANAGER**

**Setting January 8, 2013 as a Special Meeting**

Administrative Action: Councilor Shaffer move to set January 8, 2013 as a special meeting of the City Council for the purpose of holding an Executive Session to conduct the Municipal Judge's annual evaluation. Councilor Farley seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

**ADJOURNMENT**

Having no further business to come before Council, the December 18, 2012 Regular Meeting was adjourned at 11:38 p.m.

Respectfully Submitted,

\_\_\_\_\_  
Teresa G. Andrews, City Clerk

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



**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:** 1/15/2013  
**TO:** City Council  
**FROM:** Betsey Hale, Economic Development Department  
**PRESENTER:** Cindy Mackin, Economic Development

**TITLE:**

Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for costs associated with hosting the US Pro Cycling Challenge event

**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 of \$100,000 associated with hosting the US Pro Cycling Challenge event.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

The funding is from reserves in the Lodging Tax Fund, and reduces the flexibility for funding other future events or programs.

**SUMMARY:**

Loveland, Fort Collins, Estes Park and Windsor came together in 2012 to submit a bid to host a beginning and ending stage of the 2013 Pro Cycling Challenge. On Tuesday, December 18, 2012, Northern Colorado was awarded the 6th stage of the Pro Cycling Challenge tour, on Saturday, August 24th, 2013. Historically the Saturday stage has yielded the highest



attendance. The communities partnered with a number of local businesses including McWhinney Corporation, the Group Real Estate, and the Ranch among others to bring this event to our part of the State.

The event is consistent with the Destination Loveland Strategic Plan, which calls for promoting Loveland as a destination and partnering with regional and state tourism organizations on marketing and promotion efforts. The ordinance was supported and recommended by the Community Marketing Commission.

This event will create a positive economic impact and a local spending benefit, but more importantly, this event provides media exposure on a statewide, national and international scale. The US Pro Cycling Challenge will bring an estimated \$2 - \$4 million in publicity. The exact route is yet to be determined; however, it will start and pass through Loveland and end in Fort Collins.

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**REVIEWED BY CITY MANAGER:**



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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget for costs associated with hosting the US Pro Cycling Challenge event
2. PowerPoint Presentation
3. Lodging Tax Summary Report

FIRST READING            January 15, 2013

SECOND READING        \_\_\_\_\_

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR COSTS ASSOCIATED WITH HOSTING THE US PRO CYCLING CHALLENGE EVENT**

**WHEREAS**, the City, along with Fort Collins, Estes Park and Windsor, submitted a bid to host the beginning and ending stages of the 2013 U.S. Pro Cycling Challenge and was awarded the sixth stage of the event; and

**WHEREAS**, the City desires to appropriate funds to pay a portion of the costs associated with hosting this event; and

**WHEREAS**, the Community Marketing Commission has voted to recommend the appropriation of City lodging tax funds in the amount of \$100,000 for the purposes of hosting the U.S. Pro Cycling Challenge event to promote tourism, conventions and related activities within the City by marketing the City and sponsoring community events in support of such purposes, as required under Loveland Municipal Code Section 3.24.105; and

**WHEREAS**, the City has reserved funds not appropriated at the time of the adoption of the City budget for 2013; and

**WHEREAS**, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That reserves in the amount of \$100,000 from fund balance in the Lodging Tax Fund 206 are available for appropriation. Revenues in the total amount of \$100,000 are hereby appropriated for costs associated with hosting the U.S. Pro Cycling Challenge event 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  
Lodging Tax Fund 206**

<b>Revenues</b>		
Fund Balance		100,000
<b>Total Revenue</b>		<b>100,000</b>
<b>Appropriations</b>		
206-18-182-1507-43450	Professional Services	100,000
<b>Total Appropriations</b>		<b>100,000</b>

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

**Section 3.** That this Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

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

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

ATTEST:

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

APPROVED AS TO FORM:

J. Yost Schmidt  
Deputy City Attorney



# U.S. Pro Cycling Challenge 2013

## Northern Colorado Bid



# OVERVIEW

- ◆ For one week each year, cyclists and the many fans of the sport turn their attention to Colorado for the USA Pro Cycling Challenge.
- ◆ Started in 2011, this event has brought National and World wide attention to our State and the communities that serve as hosts to this International Competition.
- ◆ [Video](#)

# NORTHERN COLORADO BID

- ◆ A group of Northern Colorado businesses, communities and cycling leaders have come together to bring this event to our part of the State.
- ◆ Economic impact and local spending a benefit
- ◆ More importantly, this event provides positive media exposure on a statewide, national and international scale.
- ◆ Estimated this event will bring \$2 - \$4 Million in publicity. Publicity our communities will need to recover from the High Park Fires



# BY THE NUMBERS

- ◆ The Pro Cycling Challenge is the largest annual spectator sporting event in Colorado and one of the largest cycling events in North America with more than 1 million spectators attending in 2011!
- ◆ 17 World Class Teams with 136 riders representing 24 countries.





# TV COVERAGE & WEBSITE

- ◆ More than 25 hours of coverage on Versus and NBC
- ◆ Over 3 **Billion** Media impressions world wide
- ◆ More than 1.1 million unique Visitors to the USA Pro Cycling Challenge Website.
- ◆ <http://www.usaprocyclingchallenge.com/>
- ◆ 50,000 Facebook and Twitter Followers
- ◆ More than 150,000 visitors to the on-line Tour Tracker

# THE PEOPLE

- ◆ More than 1,000 person event entourage (including riders, event staff and media)
- ◆ More than 5,000 Volunteers
- ◆ Average attendance on a weekday 10,000 people. Friday – Sunday attendance upwards of 150,000 people last year recorded in Vail.

# THE PEOPLE...



# ABOUT THE TOUR

- ◆ The US Pro Cycling Challenge will take place the week of August 19<sup>th</sup> – 25<sup>th</sup>, 2013
- ◆ Once the cities are chosen the first week of December 2012, cities will be awarded stages
- ◆ Northern Colorado is applying for August 18<sup>th</sup> – 24<sup>th</sup>, 2013
- ◆ Racers -17 teams with 136 racers
- ◆ Riders Represent 24 Countries



# COST

- ◆ The cost associated with a production this size is large.
- ◆ It will take a true community effort to pull it off. Average cost of a typical bid put together by a city/cities for a start/finish is around \$500,000-\$600,000.
- ◆ We have an opportunity to work together as a Northern Colorado Community to share the cost of this production and make this event successful for Loveland, Fort Collins and Estes Park.

# WHAT WILL THE SPONSOR FUNDS BE USED FOR:

- ◆ Race Operations Requirements including:
- ◆ Infrastructure and public safety – Public Works, Fire, Police, EMT
- ◆ Hotels (to house riders and staff)
- ◆ Meals (riders and staff)
- ◆ Resident/Business notifications and general outreach.

# NOCO BID

## How do we get people excited?

- 💧 We have created a website explaining how we are trying to bring the US Pro Cycling Challenge to Northern Colorado

💧 [Website](#)

# NOCO BID

## How do we get people excited?

- ◆ Fort Collins, Loveland and Estes Park will be hosting Launch parties August 15, 16 and 17<sup>th</sup> hosted by the Voice of American Racing David Towle.



# THE INVITATION




**NORTHERN COLORADO**  
2013

**VIP PASS**

**You Are Invited to the  
USA Pro Cycling Challenge  
Launch Party**

Loveland – Fort Collins – Estes Park  
August 15th, 16th, & 17th, 2012

For details on this invitation only event and  
to RSVP please visit: [www.nococycling.com/vip](http://www.nococycling.com/vip)

The communities of Fort Collins,  
Loveland and Estes Park are  
linking together to bring the USA  
Pro Cycling Challenge to Northern  
Colorado for the 2013 race.

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Over 3 Billion Media Impressions Worldwide  
Largest Annual Spectator Sporting Event  
in Colorado

---

Over \$83 Million Dollars in Revenue  
for Colorado

---

More than 1,000 riders, event staff and  
media each race day

---

25 hours of race coverage on Versus and NBC

---

17 Teams with over 130 Riders from more  
than 20 Countries

---

Thank You to our sponsors, this would not be possible without you!



# SUMMARY

- ◆ The U.S. Pro Cycling Challenge is the equivalent of bringing the Olympics to our City.
- ◆ Overall – over 1 Million roadside spectators
- ◆ Broadcast in over 161 Countries World Wide
- ◆ Almost a year of online promotion for our city including professional videos produced by NBC
- ◆ 1.1 Million unique visitors to the website and 4.9 Million page views
- ◆ 3 Billion Media impressions World Wide
- ◆ Bringing thousands of visitors to Northern Colorado and sending a strong message to the rest of the State, Nation and World that we are a great Visitor destination as well as a quality place to do business.

# RECOMMENDATION

- ◆ I make a motion that the CMC make a recommendation to the Loveland City Council that \$100,000 of the lodging tax reserves be used for the purpose of supporting the US Pro Cycling Challenge should our bid be accepted and should the race either Start or end through Loveland in August of 2013.
- ◆ \$50,000 of the funds are to be used to sponsor the event and \$50,000 of the funds are to be used to compensate other City of Loveland departments which provide services during the event process.

## Lodging Tax Collections

Month	2010	2011	2012
January	\$ -	\$ 29,157.37	\$ 34,126.42
February	\$ 29,454.60	\$ 36,756.31	\$ 32,118.23
March	\$ 26,754.72	\$ 35,518.99	\$ 50,575.89
April	\$ 31,964.72	\$ 39,773.43	\$ 47,687.32
May	\$ 32,589.38	\$ 33,264.33	\$ 44,906.11
June	\$ 45,645.14	\$ 52,195.58	\$ 52,645.28
July	\$ 62,162.45	\$ 68,505.05	\$ 89,201.42
August	\$ 65,506.58	\$ 73,493.31	\$ 75,806.56
September	\$ 64,056.04	\$ 69,447.42	\$ 79,379.57
October	\$ 53,858.17	\$ 59,373.91	\$ 64,499.62
November	\$ 42,693.40	\$ 45,502.02	\$ 54,699.79
December	\$ 31,686.45	\$ 34,684.54	
13th Month	\$ 29,157.35	\$ 4,969.05	
<b>Total</b>	<b>\$ 515,529.00</b>	<b>\$ 582,641.31</b>	<b>\$ 625,646.21</b>

<b>Total Collections to date</b>	<b>\$ 1,098,170.31</b>	<b>\$ 1,723,816.52</b>
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Lodging Tax Summary	2010 Actuals	2011 Actuals	2012 YTD
<b>Revenue</b>			
Beginning Balance	\$ -	\$ 399,260.00	\$ 718,466.29
Collections	\$ 515,529.00	\$ 582,641.31	\$ 625,646.21
Interest	\$ 860.00	\$ 13,838.88	\$ -
<b>Total Revenue</b>	<b>\$ 516,389.00</b>	<b>\$ 596,480.19</b>	<b>\$ 625,646.21</b>
<b>Total Resources</b>	<b>\$ 516,389.00</b>	<b>\$ 995,740.19</b>	<b>\$ 1,344,112.50</b>

Expenses	2010 Actuals	2011 Actuals	
Personnel Services	\$ -	\$ 11,724.31	
Supplies	\$ 9,384.00	\$ 14,204.17	
Purchased Services	\$ 107,745.00	\$ 256,585.12	
Transfers	\$ -	\$ 3,000.00	
<b>Total</b>	<b>\$ 117,129.00</b>	<b>\$ 277,273.90</b>	
<b>Ending Balance</b>	<b>\$ 399,260.00</b>	<b>\$ 718,466.29</b>	

Programs	2012 Budgeted	2012 YTD	2012 Available
Visitor Services	\$ 101,000.00	\$ 99,671.65	\$ 1,328.35
Community Marketing	\$ 280,500.00	\$ 89,597.30	\$ 190,902.70
Visitor Center	\$ 125,000.00	\$ 103,607.22	\$ 21,392.78
Website	\$ 25,000.00	\$ 10,504.80	\$ 14,495.20
Events	\$ 103,000.00	\$ 102,538.62	\$ 461.38
Product Improvement	\$ 52,000.00	\$ 50,230.43	\$ 1,769.57
<b>Total</b>	<b>\$ 686,500.00</b>	<b>\$ 456,150.02</b>	<b>\$ 230,349.98</b>


**CITY OF LOVELAND**

BUDGET OFFICE

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

**AGENDA ITEM:** 11  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance Department  
**PRESENTER:** John Hartman, Budget Officer

**TITLE:**

Public Hearing and consideration of an ordinance on first reading enacting a supplemental budget and appropriation to the 2013 City of Loveland budget to increase the City's contribution to the Ft. Collins-Loveland Municipal Airport due to the loss of commercial service

**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 funding (\$92,500) to increase the City's contribution to the Airport to partially offset revenue reductions due to the loss of commercial service.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

Unassigned fund balance is used for the appropriation, reducing the flexibility to fund other projects during the year.

**SUMMARY:**

The loss of commercial service has resulted in a significant decrease in projected revenue from what was included in the Adopted Budget. The Airport is taking an action to reduce operating expenses to align with the reduced revenue.

One of the revenues which are eliminated is the Passenger Facility Charges. This revenue is allowed by the federal government and can be used only for capital expenses. The Steering Committee agreed each City would increase their contribution to cover half of the projected amount of the charges, or \$92,500 each, to allow the planned capital projects to continue with the local match amount available. The ordinance appropriates the City of Loveland's share.

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REVIEWED BY CITY MANAGER: *William D. Cabell*

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**LIST OF ATTACHMENTS:**

1. An ordinance enacting a supplemental budget and appropriation to the 2013 City of Loveland budget to increase the City's contribution to the Ft. Collins-Loveland Municipal Airport due to the loss of commercial service

FIRST READING January 15, 2013

SECOND READING \_\_\_\_\_

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

**AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 FT. COLLINS-LOVELAND MUNICIPAL AIRPORT BUDGET TO REALIGN THE BUDGET DUE TO THE LOSS OF COMMERCIAL SERVICE**

**WHEREAS**, due to discontinuance of commercial airline service, the Fort Collins-Loveland Municipal Airport has experienced a reduction in revenues not anticipated at the time of the adoption of the City budget for 2013; and

**WHEREAS**, the City Council desires to recognize this reduction in revenues and to make reductions and realignment of expenditures by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

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

**Section 1.** That 2013 operating revenues related to commercial service in the Airport Fund 600 are hereby reduced in the amount of \$290,670 and that total 2013 operating expenditures are reduced by the total amount of \$110,500 and are reallocated as set forth below. The reductions in revenue and adjustment of expenditures are hereby appropriated and transferred among 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  
Airport Fund 600**

**Revenues**

600-00-000-0000-38600	Contribution - City of Loveland	92,500
600-00-000-0000-35403	ARFF Standby Fee	(14,000)
600-00-000-0000-38601	Contribution - City of Ft. Collins	92,500
600-00-000-0000-38605	Gas and Oil Commissions	(28,670)
600-00-000-0000-38606	T-Hnager Rental	5,000
600-00-000-0000-38608	Parking	(200,000)
600-00-000-0000-38610	Landing Fees	(28,000)
600-00-000-0000-38611	Terminal Lease	(25,000)
600-00-000-0000-38615	Passenger Facility Charge	(185,000)

**Total Revenue** **(290,670)**

**Appropriations**

600-23-290-0000-41001	Merit Increase	(1,330)
600-23-290-0000-41011	Regular Salary	(39,160)
600-23-290-0000-41012	Non-Benefited Salary	(14,980)
600-23-290-0000-41021	Overtime	(4,050)
600-23-290-0000-41543	Insurance	(11,350)
600-23-290-0000-41544	FICA	(3,100)
600-23-290-0000-41545	Retirement	(1,820)
600-23-290-0000-42011	Office Supplies	(800)
600-23-290-0000-42012	Office Equipment	(1,500)
600-23-290-0000-42014	Books and Periodicals	(50)
600-23-290-0000-42015	Computer Supplies	(2,000)
600-23-290-0000-42025	Clothing	(500)
600-23-290-0000-42031	Motor Oils and Lubricants	550
600-23-290-0000-42032	Parts and Supplies	(2,000)
600-23-290-0000-42033	Tools and Equipment	(1,000)
600-23-290-0000-42039	Tires	(50)
600-23-290-0000-42097	Safety Supplies	(250)
600-23-290-0000-42334	Building and Paint	(1,000)
600-23-290-0000-42337	Landscape Supplies	(1,250)
600-23-290-0000-42422	Food	500
600-23-290-0000-43021	Printing	(700)
600-23-290-0000-43265	Mileage	(950)
600-23-290-0000-43270	Travel/Meetings/Training	(10,000)
600-23-290-0000-43311	Insurance Deductible	(680)
600-23-290-0000-43435	Membership Fees	(1,200)
600-23-290-0000-43450	Professional Services	(500)
600-23-290-0000-43534	Vehicle Maintenance	3,100
600-23-290-0000-43562	Vehicle Maintenance - Outsource	(2,500)
600-23-290-0000-43569	Repai and maintenance	(11,550)
600-23-290-0000-43639	Storm Drainage Fees	(42,000)
600-23-290-0000-43645	Telephone	(2,500)
600-23-290-0000-43648	Building Rental	(500)
600-23-290-0000-43657	Waste Disposal	(700)
600-23-290-0000-43661	Utility Water	290
600-23-290-0000-43662	Utility Wastewater	680
600-23-290-0000-43663	Utility Storm Water	15,590
600-23-290-0000-43664	Utility Electric	12,880
600-23-290-0000-43665	Utility Gas	1,760
600-23-290-0000-43666	Utility Street Maintenance	14,350
600-23-290-0000-43833	Subscriptions	(230)

**Total Appropriations** **(110,500)**



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

**Section 3.** This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

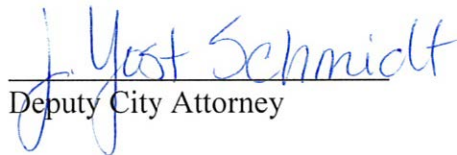
ADOPTED this \_\_\_\_ day of February, 2013.

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

ATTEST:

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

APPROVED AS TO FORM:

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



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

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

**AGENDA ITEM:** 12  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Bill Cahill, City Manager and John Duval, City Attorney  
**PRESENTERS:** Bill Cahill and John Duval

**TITLE:** A Resolution establishing the Rules of Procedure for City Council Meetings

**RECOMMENDED CITY COUNCIL ACTION:** Adopt the proposed Resolution and City Council Rules of Procedure.

**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 as authorized in City Charter Section 4-1(a) to adopt by resolution rules of procedure for City Council meetings.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

At its 2012 advance, City Council adopted as an action item the review of the City Council's meeting procedures. Thereafter, the City Manager and the City Attorney reported back to Council on their review of those procedures. In that report, they recommended that City Council's existing procedures, as now found in Council Resolutions #R-13-98 and No. 17-2000 ("Procedure Resolutions"), be replaced with new procedures more consistent with the Council's current customs and practices, but yet allowing for flexibility in those new procedures when circumstances warrant. Based on this recommendation, the Council directed the City Manager and City Attorney to prepare a draft of the new rules of procedure and to present them to Council for its consideration at a future meeting.

Attached as Exhibit "A" to the proposed Resolution are those new rules of procedure titled "Loveland City Council Rules of Procedure" dated January 8, 2013 ("Rules of Procedure"). Included as an attachment to this agenda item is a PowerPoint presentation summarizing the proposed Rules of Procedure. Also included as attachments are the existing Procedure Resolutions and Resolution #R-26-2002, which establishes the Council's procedure for appointing Council liaisons and liaison alternates to the City's boards and commissions ("Liaison Resolution"). At this time, the Liaison Resolution would not be replaced by the proposed Rules of Procedure, but would just be supplemented by the Rules of Procedure. Some members of Council have previously expressed the desire that the Liaison Resolution be amended to allow the Mayor to make temporary liaison appointments in the absence of the appointed liaison. This can certainly be done if the Council so directs.

When reviewing the Rules of Procedure, please note that some procedures have been added that were not previously discussed with or reported to Council. These additions come primarily from the City Attorney's review of the council procedures found in other municipalities, as well as his own observations as to how this Council has been operating procedurally. These added procedures include:

- Section VI. describing the process now followed for setting Council meeting agendas;
- Section VII. establishing a time limit on the length of Council meetings, a provision often found in the procedures of other city councils;
- Section IX. giving the Mayor specific authority to take action when Council meetings become disorderly, again something found in the procedures of other city councils; and
- In Section X. a provision stating that no councilmember is to ask a question, participate in the discussion or make a comment more than once until all other councilmembers have had an opportunity to do so. Again, this is found in the procedures of other city councils.

While the recommended action above is that the Council adopt this Resolution and the Rules of Procedure as proposed, changes to these Rules can, of course, be made as directed by Council and brought back to Council for its future consideration.

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**REVIEWED BY CITY MANAGER:**

*William D. Cabell*

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**LIST OF ATTACHMENTS:**

- Proposed Resolution #R-\_\_\_\_-2013
- Proposed Loveland City Council Rules of Procedure dated January 8, 2013, attached as Exhibit "A" to Resolution #R-\_\_\_\_-2013
- Rules of Procedure PowerPoint
- Resolution #R-13-98
- Resolution No. 17-2000
- Resolution #R-26-2002

**RESOLUTION #R-5-2013****A RESOLUTION ESTABLISHING THE RULES OF PROCEDURE FOR  
CITY COUNCIL MEETINGS**

**WHEREAS**, Loveland Charter Section 4-1(a) authorizes the City Council to establish rules of procedure governing the Council's meetings; and

**WHEREAS**, in 1998 the Council adopted Resolution #R-13-98 adopting such rules of procedure; and

**WHEREAS**, in 2000 the Council adopted Resolution No. 17-2000 amending the rules of procedure adopted in Resolution #R-13-98; and

**WHEREAS**, both Resolution #R-13-98 and Resolution No. 17-2000 (jointly "Procedure Resolutions") state that the Council has adopted Robert's Rules of Order for its meeting procedures as specifically amended and modified in the Procedure Resolutions; and

**WHEREAS**, Council has also previously adopted Resolution #R-26-2002 establishing Council's procedures for appointing Council liaisons and liaison alternates to the City's boards and commissions ("Liaison Resolution"), but it is not the Council's intent in this Resolution to repeal or supersede any of the provisions of the Liaison Resolution, but to supplement them as applicable; and

**WHEREAS**, while the use of the procedures set out in Robert's Rules of Order are generally accepted as the most efficient for running the proceedings of large governing bodies, such as state legislatures, they are not as well suited for running the meetings of small governing bodies like the Loveland City Council; and

**WHEREAS**, Loveland Charter Section 4-5 also provides that notwithstanding the Council's adoption of the Robert's Rules of Order and other procedures set out in the Procedure Resolutions, a majority of the Council quorum present can, by motion, deviate from these rules of procedure when considering any matter before it; and

**WHEREAS**, since the adoption of the Procedure Resolutions, Council's meeting procedures have evolved in custom and practice with the result that many of the procedures set out in the Procedure Resolutions are no longer being followed by the Council; and

**WHEREAS**, the purpose of the new rules of procedure to be adopted in this Resolution is to provide for the fair, orderly and efficient conduct of the Council's meetings more in line with Council's current customs and practices, but yet allowing for flexibility in those procedures when circumstances warrant.

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

**Section 1.** That the Procedure Resolutions are hereby repealed and superseded in all respects by this Resolution. The Liaison Resolution shall remain unchanged and in full force and effect, except as supplemented by this Resolution.

**Section 2.** That the Loveland City Council Rules of Procedure dated January 15, 2013, attached as **Exhibit A** and incorporated by reference ("the Rules of Procedure") are hereby approved pursuant to City Charter Section 4-1(a) as the procedures the City Council will follow in all of its meetings. However, as provided in City Charter Section 4-5, the Council reserves to itself the authority to decide by motion, adopted by a majority of the Council quorum present, to deviate from or suspend any or all of the provisions of these Rules of Procedure during any Council meeting, except for those provisions required by City Charter, City Code, City ordinance or any applicable state or federal law.

**Section 3.** That this Resolution shall take effect immediately as of the date and time of its adoption.


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

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

ATTEST:

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

APPROVED AS TO FORM:

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

**EXHIBIT A**

**LOVELAND CITY COUNCIL  
RULES OF PROCEDURE**

JANUARY 15, 2013

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## LOVELAND CITY COUNCIL RULES OF PROCEDURE

### I. Authority and Interpretation

- A. The Loveland City Council (“Council”) is authorized under City Charter Section 4-1(a) to adopt these Rules of Procedure (“Rules”). However, City Charter Section 4-5 and Council Resolution #R-\_\_\_\_-2013 adopting these Rules also provide that at any City Council meeting, Council can by motion vote to deviate from or suspend any or all of these Rules when considering a matter.
- B. These Rules are based in part on the Robert’s Rules of Order, but differ from them in many respects. Therefore, it is Council’s intent by the adoption of these Rules that they should control in all Council meetings and not the Robert’s Rules of Order. Nevertheless, if a procedural circumstance arises not addressed by these Rules, the 11<sup>th</sup> edition of the Robert’s Rules of Order may be used as a guideline to address and resolve that circumstance.
- C. When any provision of these Rules conflicts with any provision of the City Charter, City Code, a City ordinance or any applicable state or federal law, the provision in the City Charter, City Code, the City ordinance or the applicable state or federal law shall control.

### II. Order of Business for Council Meetings

- A. Order of Business for Regular Meetings:
  - 1. Call to Order
  - 2. Pledge of Allegiance
  - 3. Roll Call
  - 4. Proclamations and Presentations
  - 5. Consent Agenda
  - 6. Clerk Reads Titles of Ordinances on Consent Agenda
  - 7. Citizen Reports
  - 8. Councilmember Reports
  - 9. City Manager Report
  - 10. City Attorney Report
  - 11. Mayor’s Report
  - 12. Consideration of Pulled Consent Items
  - 13. Regular Agenda
  - 14. Adjournment
- B. Order of Business for Special Meetings:
  - 1. Call to Order
  - 2. Pledge of Allegiance
  - 3. Roll Call
  - 4. Special Meeting Agenda
  - 5. Adjournment

C. Order of Business for Study Sessions:

1. Call to Order
2. Study Session Agenda
3. Adjournment

**III. Order of Presentation for Regular and Special Meeting Agenda Items**

A. Legislative and Administrative Matters

1. Staff Presentation
2. Presentation by Applicant or Other Directly Affected Party
3. Public Comment, if:
  - a. public hearing required,
  - b. allowed by Mayor, or
  - c. allowed by Council motion
4. Council Questions
5. Motion
6. Council Discussion and Comments
7. Vote on Motion

B. Quasi-Judicial Matters (During Public Hearing Meeting)

1. Staff Presentation
2. Applicant or Appellant Presentation, limited to thirty (30) minutes unless more time allowed by:
  - a. Mayor, or
  - b. Council motion
3. Applicant Response if Applicant not Appellant, limited to thirty (30) minutes unless more time allowed by:
  - a. Mayor, or
  - b. Council motion
4. Public Comment
5. Applicant or Appellant Rebuttal, limited to ten (10) minutes unless more time allowed by:
  - a. Mayor, or
  - b. Council motion
6. Council Questions
7. Motion
8. Council Discussion and Comment
9. Vote on Motion

C. Quasi-Judicial Matters (After Public Hearing Meeting)

1. Staff Presentation
2. Council Questions
3. Motion
4. Council Discussion and Comments
5. Vote on Motion

#### **IV. Order of Presentation for Study Session Agenda Items**

- A. Staff Presentation
- B. Council Questions
- C. Public Comment, if allowed by:
  - 1. Mayor, or
  - 2. Council motion
- D. Council Discussion and Comment

#### **V. Deviation from and Changes to Order of Business and Order of Presentation**

The Mayor may deviate from and change the order of business set out in Section II above and the order of presentation set out in Section III above when necessary for the fair, orderly or efficient conduct of a Council meeting. However, any such deviation or change in order may be overridden or modified by Council motion.

#### **VI. Meeting Agendas**

The agendas for all Council meetings shall be set by the City Manager in consultation with the Mayor, except as otherwise directed by Council motion. In addition, any four members of Council can direct the City Manager to place an item of business on the agenda of an upcoming Council meeting.

#### **VII. Length of Meetings**

- A. Every Council meeting shall adjourn no later than \_\_\_\_\_ p.m., except that any item of business commenced before \_\_\_\_\_ p.m. may be concluded before the meeting is adjourned or unless by motion Council has extended the meeting adjournment to a later time.
- B. Any agenda item commenced but not concluded by the applicable time limit and all agenda items not yet considered shall be deemed continued to the Council's next regular meeting unless by motion the Council sets another date for consideration of any or all of the continued items.

#### **VIII. Public Comment**

When public comment is allowed under these Rules, each person speaking shall be limited to a maximum of three (3) minutes unless more or less time is set by the Mayor or by Council motion. The Mayor may also limit cumulative and redundant public comment.

#### **IX. Orderly Conduct of Council Meetings**

Persons attending Council meetings shall refrain from disruptive, vulgar or abusive language, threats of violence, and from applause, heckling and other actions that interfere with the orderly function of the Council. The Mayor may take all reasonable and lawful steps to maintain the order and dignity of Council meetings including, without limitation, ordering removal from Council chambers of any person being disruptive or threatening the safety of others.

## **X. Council Questions, Discussion and Comments**

Except when making a point of order, a councilmember seeking to ask a question, to participate in the discussion, to make a comment or to make a motion shall only do so after being first recognized by the Mayor. No councilmember shall ask a question, participate in the discussion or make a comment on an item more than once until all other councilmembers have had an opportunity to ask a question, participate in the discussion or to make a comment concerning that item. The Mayor may limit or curtail questions, participation and comments as he or she deems necessary for the fair, orderly or efficient conduct of the Council's business, except as overridden by Council motion.

## **XI. Council Voting**

All Council actions under these Rules requiring a vote shall be decided by a majority vote of the Council quorum present, except that a two-thirds (2/3) vote of the Council quorum present shall be required for Council to go into executive session and a two-thirds (2/3) vote of the entire Council (six [6] votes) shall be required to pass an ordinance on second reading, to adopt an emergency ordinance and to terminate the City Manager, City Attorney or Municipal Judge.

## **XII. Council Motions**

In this Section are listed and described below the various types of motions that may be made and considered during Council meetings.

### **A. Main Motion**

1. A main motion may be used to bring an item of business before the Council for consideration and action.
2. A main motion requires a second, is debatable and may be amended, delayed or otherwise disposed of by a secondary motion as provided in Section XII.B. below.

### **B. Secondary Motions**

1. Motion to Amend
  - a. A motion to amend may be used to amend a main motion but only in a manner that is germane to the substance of the matter being considered by the main motion.
  - b. A motion to amend may itself be amended only once by a second motion to amend, but the second motion to amend may not be amended.
  - c. A first motion to amend must be considered before the main motion and a second motion to amend must be considered before the first motion to amend.
  - d. Motions to amend are debatable.
2. Motion to Continue to a Date Certain
  - a. This motion may be used to delay action on a main motion to a meeting date certain or conditioned on the happening of an event.

- b. This motion is debatable only to the extent necessary for Council to determine whether action on the main motion should be postponed and, if so, to what meeting date or until the happening of what event.
- c. This motion may only be amended as to the date certain or the event.

### 3. Motion to Call the Question

- a. This motion may be used to end discussion on any pending motion and to require a vote on that motion.
- b. This motion is not debatable or amendable.

## C. Motion for a Point of Order

1. If a councilmember thinks that any provision of these Rules is being violated, he or she may make a point of order by calling upon the Mayor for a ruling and enforcement of the provision thought to be violated.
2. This motion does not require a second and is not amendable.
3. A point of order can be made at any time, except that it must be raised promptly at the time the perceived violation occurs.
4. In response to a point of order, the Mayor may:
  - a. immediately rule on the point of order,
  - b. before ruling, request an interpretation of the disputed rule from the City Attorney and then rule, or
  - c. refer the point of order to the Council for its determination.
5. The point of order is not debatable unless it has been referred by the Mayor to the Council for determination or the Mayor's ruling has been appealed as provided in Section XII.C.6. below.
6. The Mayor's ruling on the point of order may be appealed by any two councilmembers, with one councilmember stating the appeal and the other seconding it. Such appeal must be made promptly after the Mayor's challenged ruling is made. When an appeal is so stated, the matter shall be decided by Council motion. If there is a tie vote, the Mayor's ruling is deemed sustained. The Mayor may vote on the appeal.

## D. Motion to Reconsider

1. This motion may be used to return to Council for its further consideration a matter that was previously voted on by the Council either during the current meeting or at the immediately preceding Council meeting. However, if the matter to be considered was voted on at the preceding meeting, its reconsideration shall occur at Council's next regular meeting following the meeting where the motion to reconsider is adopted or at a future special meeting set by Council motion.

2. This motion may only be made by a councilmember who was on the prevailing side in the previous vote or who was absent from the meeting when the previous vote occurred. However, this motion may be seconded by any councilmember.
3. This motion is debatable, but may not be amended.
4. This motion may only be made when there are no other pending motions before Council.

E. Withdrawal and “Friendly Amendment” of Motions

1. A councilmember making a motion may withdraw or amend his or her motion at any time before a second is made.
2. Once a second has been made, and provided the vote has not been taken, the councilmember making the motion may only withdraw or amend his or her motion with the consent of the councilmember seconding the motion. If the second does not give his or her consent, the motion, as originally stated and seconded, belongs to the Council.

F. Motion to Suspend Rules

1. This motion may be used to suspend all or any provision(s) of these Rules for all or part of the Council meeting during which the motion is made, except for those provisions that are required of the City Charter, City Code, a City ordinance or applicable state or federal law.
2. This motion can only be made when no other motion is pending.
3. This motion is debatable and can be amended.

**XIII. Council Absences**

- A. If a member of Council knows he or she will be absent from or late to an upcoming Council meeting, that member should, if practicable, notify the City Clerk or City Manager by email or telephone at least twenty-four (24) hours before the meeting of the member’s upcoming absence or lateness.
- B. In the event a member of Council is absent during the public hearing of a quasi-judicial matter, he or she shall not vote on that matter at a subsequent Council meeting unless he or she has watched the video of the missed public hearing and has reviewed the agenda packet for that matter. Absence from the public hearing of a legislative or administrative matter shall not prevent the absent member from voting on the matter at a subsequent Council meeting regardless of whether or not that member has watched the video of the missed public hearing and reviewed the agenda packet for that matter.

**XIV. Mayor and Mayor Pro Tem**

- A. The Mayor shall have the same rights under these Rules as the other members of Council

have to make and second motions, to vote and to participate in Council questions, discussion and comments.

- B. In the event the Mayor is absent from any Council meeting, the Mayor Pro Tem shall perform the Mayor's responsibilities under these Rules and shall have the same rights of participation as the Mayor has under these Rules.
- C. In the event that both the Mayor and Mayor Pro Tem are absent from any Council meeting, including study sessions, a majority of the Council quorum present shall appoint one of the councilmembers present as the chairperson of that meeting until either the Mayor or the Mayor Pro Tem is in attendance at that meeting. The chairperson shall perform all of the Mayor's responsibilities under these Rules and shall have the same rights of participation as the Mayor has under these Rules.

#### **XV. Recess**

- A. The Mayor may, at any time and without debate, call a recess to the Council's pending proceedings for a reasonable and temporary period of time, which time shall be announced by the Mayor when calling the recess.
- B. Any two councilmembers may object to a recess called by the Mayor, with one councilmember stating the objection and the other seconding it. When such an objection occurs, debate shall be allowed. The Council shall then decide by motion whether the recess shall be taken and, if so, for how long. Such motion may be amended only as to the length of the recess. If there is a tie vote, the Mayor's decision to call a recess and his or her announced length of the recess shall control.
- C. At any time, a councilmember, the City Manager or the City Attorney may ask the Mayor to call a recess. If the Mayor denies the request, any two councilmembers can appeal the Mayor's denial to the Council using the same appeal process as provided in Section XII.C.6. above.

#### **XVI. Adjournment**

- A. The Mayor may, at any time and without debate, adjourn a Council meeting unless an objection is made as provided in Section XIV.B. below.
- B. Any two councilmembers may object to an adjournment by the Mayor, with one councilmember stating the objection and the other seconding it. When such an objection occurs, debate shall be allowed. The Council shall then decide by motion whether or not to adjourn. After that motion is made, no further debate shall be allowed and no amendments shall be allowed. If a tie vote occurs, the meeting shall be considered officially adjourned.
- C. At any time, a councilmember, the City Manager or the City Attorney may ask the Mayor to adjourn the meeting. If the Mayor denies the request, any two councilmembers can appeal the Mayor's denial to the Council using the same process as provided in Section XII.C.6. above.

# **LOVELAND CITY COUNCIL RULES OF PROCEDURE**

**JANUARY 8, 2013**

**PRESENTED TO COUNCIL BY JOHN DUVAL, CITY ATTORNEY**



# Authority and Interpretation

- ▶ Charter Section 4-1(a) authorizes Council to adopt these Rules of Procedure
- ▶ Charter Section 4-5 authorizes Council to deviate from or suspend these rules by motion
- ▶ Robert's Rules of Order not controlling but are used as the basis for some of these Rules and will serve as a guideline for interpretation of these Rules
- ▶ Rules will control except when in conflict with City Charter, City Code, City Ordinance or applicable state or federal law

# Order of Business – Regular Meetings

Call to Order

Pledge of Allegiance

Roll Call

Proclamations and Presentations

Consent Agenda

Clerk Reads Titles of Ordinances on Consent Agenda

Citizen Reports

Councilmember Reports

City Manager Report

City Attorney Report

Mayor's Report

Consideration of Pulled Consent Items

Regular Agenda

Adjournment

# Order of Business – Special Meetings

Call to Order

Pledge of Allegiance

Roll Call

Special Meeting Agenda

Adjournment

# Order of Business – Study Sessions

Call to Order

Study Session Agenda

Adjournment

# Order of Presentation for Regular and Special Meeting Agenda Items

## ► Legislative and Administrative Matters

1. Staff Presentation
2. Presentation by Applicant or Other Directly Affected Party
3. Public Comment, if:
  - a. public hearing required,
  - b. allowed by Mayor, or
  - c. allowed by Council motion
4. Council Questions
5. Motion
6. Council Discussion and Comments
7. Vote on Motion

# Order of Presentation for Regular and Special Meeting Agenda Items

## ► Quasi-Judicial Matters (During Public Hearing Meeting)

1. Staff Presentation
2. Applicant or Appellant Presentation, limited to thirty (30) minutes unless more time allowed by:
  - a. Mayor, or
  - b. Council motion
3. Applicant Response if Applicant not Appellant, limited to thirty (30) minutes unless more time allowed by:
  - a. Mayor, or
  - b. Council motion
4. Public Comment
5. Applicant or Appellant Rebuttal, limited to ten (10) minutes unless more time allowed by:
  - a. Mayor, or
  - b. Council motion
6. Council Questions
7. Motion
8. Council Discussion and Comment
9. Vote on Motion

# Order of Presentation for Regular and Special Meeting Agenda Items

- ▶ Quasi-Judicial Matters (After Public Hearing Meeting)
  1. Staff Presentation
  2. Council Questions
  3. Motion
  4. Council Discussion and Comments
  5. Vote on Motion

# Order of Presentation for Study Session Agenda P . 208

## Items

1. Staff Presentation
2. Council Questions
3. Public Comment, if allowed by:
  - a. Mayor, or
  - b. Council motion
4. Council Discussion and Comment



# Deviation from and Changes to Order of Business and Order of Presentation

- ▶ Mayor may deviate from and change order of business and order of presentation when necessary for the fair, orderly or efficient conduct of a Council meeting
- ▶ Mayor's deviation or change in order can be overridden or modified by Council motion

# Meeting Agendas

- ▶ Council agendas shall be set by City Manager in consultation with the Mayor, except as otherwise directed by Council motion
- ▶ Any four members of Council can direct City Manager to place an item of business on the agenda of an upcoming Council meeting

# Length of Meetings

Council meetings shall adjourn no later than \_\_\_\_\_ p.m., except that any item of business commenced before \_\_\_\_ p.m. may be concluded before the meeting is adjourned or unless by motion Council has extended the meeting to a later adjournment time

# Public Comment

Speakers under public comment shall be limited to a maximum of three (3) minutes unless more or less time is set by the Mayor or by Council motion

# Orderly Conduct of Council Meetings

Mayor may take all reasonable and lawful steps to maintain the order and dignity of Council meetings

# Council Questions, Discussion and Comments

- ▶ Except when making a point of order, councilmembers shall only speak after being first recognized by the Mayor
- ▶ No councilmember shall ask a question, participate in the discussion or make a comment on an item more than once until all other councilmembers have had an opportunity to do so
- ▶ Mayor may limit or curtail questions, participation and comments as he or she deems necessary for the fair, orderly or efficient conduct of the Council's business, except as overridden by Council motion

# Council Voting

- ▶ Council actions requiring a vote shall be decided by a majority vote of the Council quorum present, with four exceptions
- ▶ Two-thirds (2/3) vote of Council quorum present for Council to go into executive session
- ▶ Two-thirds (2/3) vote of entire Council (six [6] votes) required to pass an ordinance on second reading, to adopt an emergency ordinance and to terminate the City Manager, City Attorney or Municipal Judge

# Council Motions

## ▶ Main Motion

1. Used to bring an item of business before Council for consideration and action
2. Requires a second, is debatable and may be amended, delayed or otherwise disposed of by a secondary motion



# Council Motions

## ▶ Secondary Motions

### 1. Motion to Amend

- a. Used to amend main motion but only in a manner germane to the substance of the main motion
- b. Motion to amend may be amended itself but only once and second motion to amend may not be amended
- c. First motion to amend must be considered before main motion and a second motion to amend must be considered before first motion to amend
- d. Motions to amend are debatable

### 2. Motion to Continue to a Date Certain

- a. Used to delay action on main motion to a meeting date certain or conditioned on the happening of an event
- b. Motion is debatable only to determine whether action on main motion should be postponed and, if so, to what meeting date or until the happening of what event
- c. Motion may only be amended as to date certain or event

### 3. Motion to Call the Question

- a. May be used to end discussion on any pending motion and to require a vote on that motion
- b. Not debatable or amendable

# Council Motions

## ► Motion for a Point of Order

1. When a councilmember thinks a provision of the Rules of Procedure is being violated he or she may make a point of order to call on the Mayor for a ruling on and enforcement of the provision thought to be violated
2. No second required and it is not amendable
3. Can be made at any time, except must be raised promptly at the time the perceived violation occurs
4. In response, Mayor may:
  - a. immediately rule on the point of order,
  - b. before ruling, request interpretation from City Attorney and then rule, or
  - c. refer point of order to Council for determination.
5. Point of order not debatable unless referred by Mayor to Council or Mayor's ruling appealed
6. Mayor's ruling on point of order may be appealed by any two councilmembers to be decided by Council motion

# Council Motions

## ▶ Motion to Reconsider

1. Used to return to Council for its further consideration a matter previously voted on by Council either during the current meeting or at the immediately preceding Council meeting
2. May only be made by councilmember who was on prevailing side in the previous vote or who was absent from the meeting when the previous vote occurred, but any councilmember may second the motion
3. It is debatable, but not amendable
4. May only be made when there are no other pending motions

# Council Motions

## ▶ Withdrawal and “Friendly Amendment” of Motions

1. Councilmember making motion may withdraw or amend motion at any time before a second is made
2. Once seconded, councilmember making motion may only withdraw or amend motion with consent of second

# Council Motions

## ▶ Motion to Suspend Rules

1. Used to suspend all or any provision(s) of these Rules for all or part of a Council meeting during which motion is made, except for provisions required by City Charter, City Code, City ordinance or applicable state or federal law
2. May only be made when no other motion pending
3. Is debatable and can be amended

# Council Absences

- ▶ If practicable, members of Council who know they will be absent from or late to an upcoming Council meeting should notify City Clerk or City Manager at least twenty-four (24) hours before meeting of member's upcoming absence or lateness
- ▶ Member of Council absent during public hearing of a quasi-judicial matter shall not vote on the matter at a subsequent meeting unless he or she has watched video of missed public hearing and reviewed agenda materials
- ▶ Absence from the public hearing of a legislative or administrative matter shall not prevent absent member from voting on matter at subsequent meeting regardless of whether he or she has watched video of missed public hearing and reviewed agenda materials

# Mayor and Mayor Pro Tem

- ▶ Mayor has same rights under the Rules as any other member of Council to make and second motions, vote and participate in Council questions, discussion and comments
- ▶ In Mayor's absence, Mayor Pro Tem shall perform Mayor's responsibilities and have same rights of participation as Mayor
- ▶ In the event of absence of both Mayor and Mayor Pro Tem, a majority of Council quorum present shall appoint one of the councilmembers present as chairperson until either Mayor or Mayor Pro Tem is in attendance and shall perform all the Mayor's responsibilities and have same rights of participation as Mayor

# Recess

- ▶ Mayor may, at any time and without debate, call a recess for a reasonable and temporary period of time and shall announce that period of time when calling the recess
- ▶ Any two councilmembers may object to a recess called by Mayor: debate on objection allowed, amendment only as to length of recess, and Council shall decide by motion whether recess shall be taken and, if so, for how long
- ▶ At any time, a councilmember, the City Manager or City Attorney may ask the Mayor to call a recess, and if denied, any two councilmembers can appeal to Council



# Adjournment

- ▶ Mayor may, at any time and without debate, adjourn a Council meeting unless two councilmembers object
- ▶ When two councilmembers object, debate shall be allowed and Council shall decide by motion whether or not to adjourn
- ▶ At any time, a councilmember, City Manager or City Attorney may ask Mayor to adjourn, and, if denied, any two councilmembers can appeal to Council

**QUESTIONS?**

**DIRECTION?**

RESOLUTION #R-13-98

**A RESOLUTION ESTABLISHING CERTAIN RULES OF PROCEDURE FOR THE CITY COUNCIL OF THE CITY OF LOVELAND AND REPEALING RESOLUTION R-54-97.**

WHEREAS, Section 4-1 of the Home Rule Charter of the City of Loveland provides that the City Council shall prescribe by rules the procedures governing its meetings; and

WHEREAS, the City Council, pursuant to Resolution R-54-97 has established certain rules to improve the conduct of meetings and facilitate the orderly consideration of matters on the agenda, and;

WHEREAS, the City Council wishes to supplement the rules of procedure previously adopted by repealing Resolution R-54-97 and reenacting a comprehensive document setting forth its rules of procedure,

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

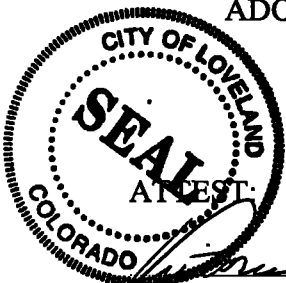
Section 1. Robert's Rules of Order are adopted as the rules governing the conduct of business at meetings of the City Council with the following exception:

The motion to reconsider a matter shall be allowed if the motion is made at the next regular meeting of the Council by a person who initially voted with the prevailing side. If a Council member wishes to bring a subject back at a later time, the member must secure the concurrence of three other members to place it on the agenda. Council members will respect one another and the process by not repeatedly raising issues disposed of at earlier meetings.

Section 2. The Rules of Procedure of the City Council of the City of Loveland, attached hereto as Exhibit A, are hereby adopted as the rules governing the meetings of the City Council.

Section 3. The rules contained herein shall supercede all prior rules on the same subject. This resolution shall take effect on the date and at the time of its adoption.

ADOPTED this 3 day of February, 1998.



*[Signature]*  
City Clerk

*[Signature]*  
Mayor  
APPROVED AS TO FORM

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

**RULES OF PROCEDURE  
OF THE CITY COUNCIL OF THE CITY OF LOVELAND**

- {1. City Council regular meetings and study sessions shall begin at 6:30 p.m. Immediately prior to the official Call to Order, the City Council shall conduct an pre-meeting discussion which shall begin at 6:00 p.m. The pre-meeting discussion shall be held in the City Council Chambers, shall be open to the public and shall be televised.}**
2. Effective October 1, 1997, it shall be the policy of the City Council to permit public comment on legislative matters on the first reading of an ordinance. In addition, public hearings on quasi-judicial matters will be scheduled to coincide with first reading of any ordinance associated with the matter for which the public hearing is to be conducted. A copy of a model schedule for the timing of public hearings and first and second readings of ordinances involving annexation of land and approval of zoning matters is attached hereto and incorporated herein by reference.
- 3. {Citizens who wish to speak at a City Council meeting shall not be required to fill out a form requesting to speak. Persons wishing to speak should raise their hands at the appropriate time in the agenda and shall be recognized by the Mayor. Each citizen who comes to the podium to address the City Council shall print his or her name and address on a list of speakers which shall be placed at the podium. The purpose of the form is to assist the City Clerk in preparing the minutes with accurate information concerning each speaker.}**
- 4. {Citizens who wish to provide testimony at a public hearing will be asked to sign a public hearing sheet, indicating if they are in favor or opposed to the project; whether they wish to speak and whether they represent a group of persons. The sign-in sheet will become part of the public record and will be used by the Mayor to call on persons during the public testimony portion of the hearing. Persons who have not signed the sheet, but who wish to address the City Council will have an opportunity to do so at the end of the public testimony portion of the hearing.}**
5. Citizens will be treated with respect at all times. Persons addressing Council will be permitted to sit down once Council members have had any questions answered. Citizens need not remain at the podium while Council members make comments. The Council encourages all persons making public comments to maintain a sense of decorum, and conduct themselves in a manner respectful of the rights and feelings of others.
6. Citizen comments shall be limited to **{three}** minutes per person, unless otherwise agreed by motion of the City Council. During public hearings, persons representing more than four others shall be allowed a maximum of **{ten}** minutes

to speak. In the interest of time, Council shall have the discretion of further limiting the time for public comment. In order to fairly allocate the time individuals are allowed to speak, those wishing to address Council will be asked to sign up in advance, **{as discussed in item 4 above,}** and will be called to speak in that order.

7. Any person or Council member wishing to speak shall do so only after being recognized by the Mayor.
8. The Mayor shall limit the comments of any person or Council member to the topic currently under Council consideration.
9. Individuals may address the Council on the topic of their choice during the citizen comment portion of the meeting.
10. When citizens raise specific concerns during the open portion of the meeting, Council will ask questions for clarification purposes and refer the matter to the city manager for follow up. Council will not try to "solve" the problem at the meeting.
11. Matters pulled from the consent agenda will be taken up in the order in which they originally appeared on the consent agenda immediately after the consent agenda has been passed.
12. It is the policy of the City Council to consider all matters on the agenda prior to the conclusion of the meeting. Some matters may be postponed to later meetings in the interests of time, but all will be addressed in some fashion. There is no rule or policy that the meeting should end at 10:30 PM or any other predetermined time and no motion to extend the meeting is necessary or in order.
13. During public hearings, applicants shall be granted a total of forty minutes in which to present their application. The applicant may use the forty minutes for their initial presentation, for rebuttal or for some combination of the two. The applicant must indicate at the beginning of his or her presentation how he or she wishes to use the allotted time. **{At the beginning of the applicant's presentation, the Mayor will ask the applicant or its representative how they wish to allocate their time.}**
14. In the event a public hearing becomes overly lengthy, council may continue it to the next meeting; special council meetings will not be held specifically for public hearings.
15. The Mayor is free to limit the physical conduct or activity of any person or Council member if such conduct or activity impairs the efficient function of Council. The Mayor shall ask those participating in disruptive private conversations to discontinue their conversations or to leave the room

## MODEL TIME LINE FOR PUBLIC HEARINGS

### I. Annexation/PUD Application

- Week 1: Planning Commission **public hearing** to consider Annexation and PUD General Development Plan (*full staff report and presentation - recommendation to Council*).
- Week 3: Council consideration of Resolution of Substantial Compliance (setting public hearing date concerning the property's eligibility for annexation)
- Week 3 or 4: Planning Commission approval of prior meeting minutes
- Week 9: Council regular meeting; **public hearing** concerning eligibility for annexation; consideration of Resolution finding Eligibility for annexation; **first reading** of Annexation Ordinance; **first reading** of PUD Zoning Ordinance, and General Development Plan (*full staff report and presentation*)
- Week 11: Council regular meeting to consider **second reading** of Annexation Ordinance and PUD Ordinance
- Week 15: Effective Date of Annexation and Zoning Ordinances

### II. PUD Application

- Week 1: Planning Commission **public hearing** to consider PUD General Development Plan (*full staff report and presentation - recommendation to Council*).
- Week 3: Planning Commission approval of prior meeting minutes
- Week 4: Council regular meeting; **public hearing** to consider zoning ordinance; **first reading** of PUD Zoning Ordinance, and General Development Plan (*full staff report and presentation*)
- Week 6: Council regular meeting to consider **second reading** of PUD Ordinance
- Week 10: Effective Date of PUD Zoning Ordinance

**NOTE:** Times may differ based on regular meeting schedule of the City Council and number of Tuesdays in a given month.

RESOLUTION NO. 17-2000

**A RESOLUTION AMENDING RESOLUTION NO. R-13-98  
CONCERNING THE RULES OF PROCEDURE FOR THE CITY  
COUNCIL OF THE CITY OF LOVELAND.**

WHEREAS, Section 4-1 of the Home Rule Charter of the City of Loveland provides that the City Council shall prescribe by rules the procedures governing its meetings; and

WHEREAS, pursuant to Resolution No. R-13-98, the City Council adopted comprehensive rules of procedure governing its meetings; and

WHEREAS, the rules of procedure include several provisions which are cumbersome and unnecessary; and

WHEREAS, the City Council wishes to extend the ability of the citizens to speak at public hearings concerning quasi-judicial matters such as zoning approvals,

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

Section 1. Resolution No. R-13-98 is amended by amending the Rules of Procedure of the City Council of the City of Loveland as set forth on the attached Exhibit A. Said Rules are hereby adopted as the rules governing the meetings of the City Council in addition to Robert's Rules of Order, as set forth in Resolution R-13-98.

Section 2. This resolution shall take effect on the date and at the time of its adoption.

ADOPTED THIS 7<sup>th</sup> day of March, 2000.



Kathleen P. Gilliland  
Mayor

APPROVED AS TO FORM:

Donna Ascanti  
City Clerk

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

**RULES OF PROCEDURE  
OF THE CITY COUNCIL OF THE CITY OF LOVELAND**

1. City Council regular meetings and study sessions shall begin at 6:30 p.m.
  
2. Effective October 1, 1997, it shall be the policy of the City Council to permit public comment on legislative matters on the first reading of an ordinance. ~~In addition, The initial public hearings on any quasi-judicial matters will be scheduled to coincide with first reading of any ordinance associated with the matter for which the public hearing is to be conducted. In addition, a public hearing shall be held at the same time as the second reading of any ordinance involving a quasi-judicial matter. The public hearing on second reading need not be separately noticed if the public hearing has been continued from the date of first reading. Members of the public will be permitted to provide additional, non-repetitive testimony at the public hearing on second reading and the applicant shall be given an opportunity to respond. In situations where an annexation ordinance and a zoning ordinance for the same property are being considered together, a single public hearing shall be held on both first and second readings at which members of the public may address the issues concerning the annexation and provide testimony concerning the zoning ordinance.~~ A copy of a model schedule for the timing of public hearings and first and second readings of ordinances involving annexation of land and approval of zoning matters is attached hereto and incorporated herein by reference.
  
3. Citizens who wish to speak at a City Council meeting shall not be required to fill out a form requesting to speak. Persons wishing to speak should raise their hands at the appropriate time in the agenda and shall be recognized by the Mayor. ~~Each citizen who comes to the podium to address the City Council shall print his or her name and address on a list of speakers which shall be placed at the podium. The purpose of the form is to assist the City Clerk in preparing the minutes with accurate information concerning each speaker.~~
  
4. ~~Citizens who wish to provide testimony at a public hearing will be asked to sign a public hearing sheet, indicating if they are in favor or opposed to the project; whether they wish to speak and whether they represent a group of persons. The sign-in sheet will become part of the public record and will be used by the Mayor to call on persons during the public testimony portion of the hearing. Persons who have not signed the sheet, but who wish to address the City Council will have an opportunity to do so at the end of the public testimony portion of the hearing.~~
  
5. Citizens will be treated with respect at all times. Persons addressing Council will be permitted to sit down once Council members have had any questions answered. Citizens need not remain at the podium while Council members make comments. The Council encourages all persons making public comments to maintain a sense of decorum, and conduct themselves in a manner respectful of the rights and feelings of others.



6. Citizen comments shall be limited to three minutes per person, unless otherwise agreed by motion of the City Council. During public hearings, persons representing more than four others shall be allowed a maximum of ten minutes to speak. In the interest of time, Council shall have the discretion of further limiting the time for public comment. ~~*In order to fairly allocate the time individuals are allowed to speak, those wishing to address Council will be asked to sign up in advance, as discussed in item 4 above, and will be called to speak in that order.*~~
7. Any person or Council member wishing to speak shall do so only after being recognized by the Mayor.
8. The Mayor shall limit the comments of any person or Council member to the topic currently under Council consideration.
9. Individuals may address the Council on the topic of their choice during the citizen comment portion of the meeting.
10. When citizens raise specific concerns during the open portion of the meeting, Council will ask questions for clarification purposes and refer the matter to the city manager for follow up. Council will not try to “solve” the problem at the meeting.
11. Matters pulled from the consent agenda will be taken up in the order in which they originally appeared on the consent agenda immediately after the consent agenda has been passed.
12. It is the policy of the City Council to consider all matters on the agenda prior to the conclusion of the meeting. Some matters may be postponed to later meetings in the interests of time, but all will be addressed in some fashion. There is no rule or policy that the meeting should end at 10:30 PM or any other predetermined time and no motion to extend the meeting is necessary or in order.
13. During public hearings on first reading, applicants shall be granted a total of forty minutes in which to present the application. The applicant may use the forty minutes for their initial presentation, for rebuttal or for some combination of the two. The applicant must indicate at the beginning of his or her presentation how he or she wishes to use the allotted time. At the beginning of the applicant’s presentation, the Mayor will ask the applicant or its representative how they wish to allocate the time.
14. In the event a public hearing becomes overly lengthy, council may continue it to the next meeting; special council meetings will not be held specifically for public hearings.
15. The Mayor is free to limit the physical conduct or activity of any person or Council member if such conduct or activity impairs the efficient function of Council. The Mayor shall ask those participating in disruptive private conversations to discontinue their conversations or to leave the room.

## MODEL TIME LINE FOR PUBLIC HEARINGS

### I. Annexation/PUD Application

- Week 1: Planning Commission **public hearing** to consider Annexation and PUD General Development Plan (*full staff report and presentation - recommendation to Council*).
- Week 3: Council consideration of Resolution of Substantial Compliance (setting public hearing date concerning the property's eligibility for annexation)
- Week 3 or 4: Planning Commission approval of prior meeting minutes
- Week 9: Council regular meeting; **public hearing** concerning eligibility for annexation; consideration of Resolution finding Eligibility for annexation; **first reading** of Annexation Ordinance; **public hearing concerning zoning**; **first reading** of PUD Zoning Ordinance, and General Development Plan (*full staff report and presentation*). It is the practice of the City Council to combine the testimony for the public hearing concerning the annexation issues and the zoning issues.
- Week 11: Council regular meeting; ~~to consider~~ **public hearing** concerning Annexation Ordinance and PUD Ordinance; **second reading** of Annexation Ordinance; ~~and~~ **second reading** of PUD Zoning Ordinance. (Although the annexation ordinance is legislative and does not require a public hearing on second reading, members of the public will be permitted to address the Council on the ordinance at the same time as the zoning ordinance.)
- Week 13: Effective Date of Annexation and Zoning Ordinances

### II. PUD Application

- Week 1: Planning Commission **public hearing** to consider PUD General Development Plan (*full staff report and presentation - recommendation to Council*).
- Week 3: Planning Commission approval of prior meeting minutes
- Week 4: Council regular meeting; **public hearing** to consider zoning ordinance; **first reading** of PUD Zoning Ordinance, and General Development Plan (*full staff report and presentation*)
- Week 6: Council regular meeting; ~~to consider~~ **public hearing concerning** PUD Ordinance; **second reading** of PUD Zoning Ordinance
- Week 8: Effective Date of PUD Zoning Ordinance

**NOTE:** Times may differ based on regular meeting schedule of the City Council and number of Tuesdays in a given month.

**RESOLUTION #R-26-2002**

**A RESOLUTION ESTABLISHING CITY COUNCIL'S PROCEDURES FOR APPOINTING COUNCIL LIAISONS AND COUNCIL LIAISON ALTERNATES TO CITY BOARDS AND COMMISSIONS**

**WHEREAS**, pursuant to Loveland Charter Section 4-1(a), the City Council is authorized to establish the rules of procedure governing the Council's meetings; and

**WHEREAS**, Loveland Charter Section 10-2(a) authorizes the Council to establish, by resolution, its policies relating to the City's boards and commissions; and

**WHEREAS**, in Section 2.60.018 of the Loveland Municipal Code, the Council has given itself the authority to appoint one or more Council members as non-voting liaisons to each of the City's boards and commissions, with the terms of such liaisons to coincide with the City's biennial elections; and

**WHEREAS**, City Council has appointed a Council Boards and Commissions Subcommittee ("the Subcommittee") to review the Council's current policies as they relate to boards and commissions, including to review the Council's process for appointing Council liaisons and Council liaison alternates; and

**WHEREAS**, the procedures recommended by the Subcommittee for this appointment process are hereinafter set forth in the Resolution and have been recommended by the Subcommittee to better ensure that liaison appointments are more fairly and evenly divided among the members of Council.

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

**Section 1.** At the first regular meeting of the City Council after each biennial election, the Council shall appoint one Council liaison and one Council liaison alternate for each board and commission. The process for appointing these Council liaisons and alternates shall be as follows:

1. The Mayor shall ask each Councilmember which board or commission is his or her first choice to be a Council liaison. The Mayor shall then announce his or her first choice. If there is any conflict in the first choices of the Council-members or the Mayor, such conflict shall be resolved by a majority vote of the Council. After a first choice is determined for the Mayor and each Council-member, the same process shall be followed for determining the Mayor's and each Councilmember's second and subsequent choices.

2. Once the Council liaison for each board and commission has been chosen through the process described in paragraph 1 above, the same process shall be followed for determining the Council liaison alternates for each board and commission.
3. Once all Council liaisons and Council liaison alternates have been appointed, and if the Mayor or any Councilmember will volunteer to do so, the Council may appoint an "all duty" Council liaison for every board and commission to attend board and commission meetings should the Council liaison or the Council liaison alternate to that board or commission be unable, for any reason, to attend a particular meeting of that board or commission.
4. The Council shall then confirm, by a majority vote, all the appointments as Council liaison, Council liaison alternate and "all duty" Council liaison as determined through the process described above.

**Section 2.** In serving as a Council liaison to a City board or commission, all Council liaisons should attempt to attend all regular and special meetings of that board or commission. However, if the Council liaison is unable to attend a meeting, the Council liaison should, if practicable, notify the Council liaison alternate to that board or commission at least twenty-four (24) hours in advance of the meeting so that the Council liaison can try to attend. If the Council liaison alternate is unable to attend, the alternate should, if practicable, notify as soon as possible the "all duty" Council liaison of the need for him or her to attend the meeting of the board or commission.

**Section 3.** That this Resolution shall go into effect as of the date and time of its approval by the Council.

Signed this 2nd day of April, 2002.



Kathleen R. Gilliland  
Mayor

Dawn Descente  
City Clerk

APPROVED AS TO FORM:

[Signature]  
City Attorney



**CITY OF LOVELAND**  
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537  
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

**AGENDA ITEM:** 13  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Brent Worthington, Finance  
**PRESENTER:** Brent Worthington

**TITLE:**

November 2012 Financial Report

**RECOMMENDED CITY COUNCIL ACTION:**

This is an information only item. No action is required.

**DESCRIPTION:**

The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue and health claims year to date, ending November 30, 2012.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

The Snapshot Report is submitted for Council review and includes the reporting of the City's revenue and expenditures including detailed reports on tax revenue and health claims as of November 30, 2012. Citywide Revenue (excluding internal transfers) of \$193,983,613 is 103.7% of year to date (YTD) budget or \$6,869,212 over the budget. Sales Tax collections are 103.8% of the YTD budget or \$1,150,558 over budget. Building Material Use Tax is 154.4% of YTD budget, or \$489,839 over budget. Sales and Use Tax collections combined were 106.3% of YTD budget or \$2,060,910 over budget. When the combined sales and use tax for the current year are compared to 2011 for the same period last year, they are higher by 8.5% or \$2,741,751.

Citywide total expenditures of \$172,999,228 (excluding internal transfers) are 82.2% of the YTD budget or \$37,565,098 under the budget.

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REVIEWED BY CITY MANAGER: *William D. Cahill*

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**LIST OF ATTACHMENTS:**

Snapshot report for November 2012



# SnapShot

Monthly Financial Report  
November 2012

## A Snapshot In Time

### Financial Sustainability Strategies Can Be Found At:

[CityofLoveland.org](http://CityofLoveland.org)

- ⇒ Departments
- ⇒ Finance
- ⇒ Administration
- ⇒ Financial Reports
- ⇒ Financial Sustainability Strategies

- Citywide Revenue, excluding transfers between funds, \$194 million (3.7% above budget projections)
- Sales & Use Tax Collection, \$35 million (6.3% above budget projections)
- Citywide Expenditures, excluding transfers between funds, \$173 million (17.8% below budget projections)
- Citywide Year-To-Date Revenues exceed Year-To-Date Expenditures by \$21 million
- General Fund Revenue, excluding transfers between funds, \$63.6 million (8.1% above budget projections)
- General Fund Expenditures, excluding transfers between funds, \$53.9 million, (6.9 % below budget projections)
- General Fund Revenues exceed Expenditures by \$7.8 million

### Inside This Edition

Citywide Revenues & Expenditures	2
General Fund Revenues & Expenditures	4
Tax Totals & Comparison	6-9
Sales Tax SIC & Geo Codes	10-12
Health Care Claims	13
Activity Measures	14
Capital Projects	15

### The Sales Tax Basics

November 2012	Sales Tax	Motor Vehicle Use Tax	Building Materials Use Tax	Combined
Budget 2012	\$ 30,195,360	\$ 1,857,890	\$ 899,810	\$ 32,953,060
Actual 2012	\$ 31,345,918	\$ 2,278,402	\$ 1,389,649	\$ 35,013,970
% of Budget	103.8%	122.6%	154.4%	106.3%
Actual 2011	\$ 29,481,978	\$ 1,922,093	\$ 868,148	\$ 32,272,219
Change from prior year	6.3%	18.5%	60.1%	8.5%

### Financial Sustainability

The City remains in a strong financial position because of a tradition of conservative fiscal management. To uphold this tradition, the City ensures that operations are paid for by current-year revenues, fund balances are positive and reserves are sufficient to overcome financial challenges, and debt is considered extraordinary and avoided in favor of a pay-as-we-go system. This sound fiscal policy allows the City to achieve Council goals and priorities and to meet challenges as they arise.

In 2011, the City embarked upon a community-wide financial sustainability effort to ensure that shortfalls projected in its General Fund 10-year financial plan were addressed using a balanced plan consisting of 81% expenditure cuts and 19% revenue increases. The Financial Sustainability Strategy, adopted by the City Council on June 7, 2011, includes both immediate actions reflected in the 2012 budget and ongoing processes designed to ensure that the City retains a healthy financial outlook.

Although sales and use tax revenue is greater in 2012 than in 2007, inflation adjustment of the revenue shows that collections in 2012 are still below 2007 collections when inflation is taken into account. For five months in 2012, collections in real dollar terms trended above 2007 amounts, but only slightly, emphasizing the importance of continuing the strategy implementation.

# Citywide Revenues & Expenditures

November 2012

Combined Statement of Revenues and Expenditures				
November 2012				
REVENUE	Current Month	YTD Actual	YTD Revised Budget	% of Budget
<b>General Governmental</b>				
1	General Fund	\$ 4,519,571	\$ 63,590,136	\$ 58,805,506 108.1%
2	Special Revenue	86,569	980,711	1,104,456 88.8%
3	Other Entities	1,389,248	22,547,999	24,533,600 91.9%
4	Internal Service	1,490,484	15,138,510	14,845,962 102.0%
5	<i>Subtotal General Govt Operations</i>	\$ 7,485,873	\$ 102,257,357	\$ 99,289,524 103.0%
6	Capital Projects	734,753	9,389,856	10,124,728 92.7%
<b>Enterprise Fund</b>				
7	Water & Power	5,218,836	68,899,710	64,373,900 107.0%
8	Stormwater	353,854	3,899,084	4,058,593 96.1%
9	Golf	109,142	3,754,121	3,534,520 106.2%
10	Solid Waste	531,972	5,783,484	5,733,136 100.9%
11	<i>Subtotal Enterprise</i>	\$ 6,213,804	\$ 82,336,400	\$ 77,700,149 106.0%
12	<b>Total Revenue</b>	<b>\$ 14,434,429</b>	<b>\$ 193,983,613</b>	<b>\$ 187,114,401 103.7%</b>
	<i>Prior Year External Revenue</i>		182,767,763	
	<i>Increase From Prior Year</i>		6.1%	
13	Internal Transfers	2,026,809	8,696,174	19,902,000 43.7%
14	<b>Grand Total Revenues</b>	<b>\$ 16,461,238</b>	<b>\$ 202,679,787</b>	<b>\$ 207,016,401 97.9%</b>
<b>EXPENDITURES</b>				
<b>General Governmental</b>				
15	General Fund	\$ 4,817,202	\$ 53,038,074	\$ 57,309,893 92.5%
16	Special Revenue	29,799	681,061	911,342 74.7%
17	Other Entities	869,835	20,844,960	22,347,398 93.3%
18	Internal Services	1,211,860	12,228,923	15,466,711 79.1%
19	<i>Subtotal General Gov't Operations</i>	\$ 6,928,696	\$ 86,793,018	\$ 96,035,345 90.4%
20	Capital	3,143,044	27,001,627	51,229,482 52.7%
<b>Enterprise Fund</b>				
21	Water & Power	3,990,583	51,134,465	53,985,320 94.7%
22	Stormwater	160,284	1,756,309	2,490,885 70.5%
23	Golf	187,193	2,460,798	2,546,376 96.6%
24	Solid Waste	299,810	3,853,011	4,276,918 90.1%
25	<i>Subtotal Enterprise</i>	\$ 4,637,871	\$ 59,204,583	\$ 63,299,499 93.5%
26	<b>Total Expenditures</b>	<b>\$ 14,709,611</b>	<b>\$ 172,999,228</b>	<b>\$ 210,564,326 82.2%</b>
	<i>Prior Year External Expenditures</i>		179,215,553	
	<i>Increase (-Decrease) From Prior Year</i>		-3.5%	
27	Internal Transfers	2,026,809	8,696,174	19,902,000 43.7%
28	<b>Grand Total Expenditures</b>	<b>\$ 16,736,419</b>	<b>\$ 181,695,401</b>	<b>\$ 230,466,326 78.8%</b>

\*\* Based on seasonality of receipts and expenditures since 1995.

**Special Revenue Funds:** Community Development Block Grant, Cemetery, Local Improvement District, Lodging Tax, Affordable Housing, Seizure & Forfeitures.

**General Government Capital Projects Fund:** Capital Expansion Fee Funds, Park Improvement, Conservation Trust, Open Space, Art In Public Places.

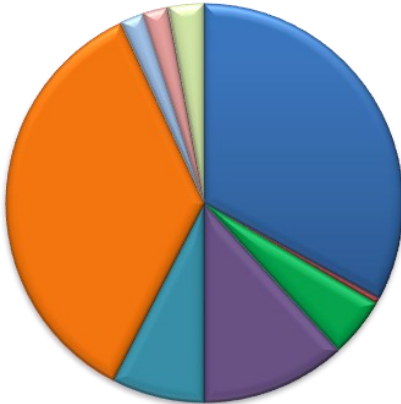
**Other Entities Fund:** Special Improvement District #1, Airport, General Improvement District #1, Loveland Urban Renewal Authority, Loveland/Larimer Building Authority, Loveland Fire and Rescue Authority.

**Internal Service Funds:** Risk/Insurance, Fleet, Employee Benefits.



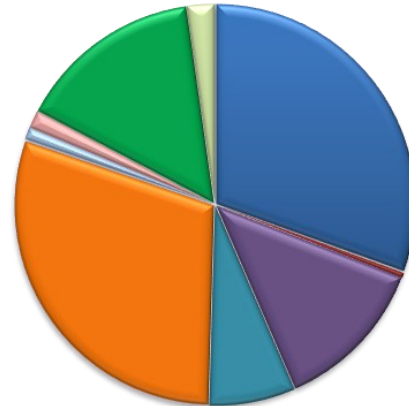
## YTD Operating Revenues of \$194 Million

- General Fund
- Special Revenue
- Capital Projects
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Solid Waste



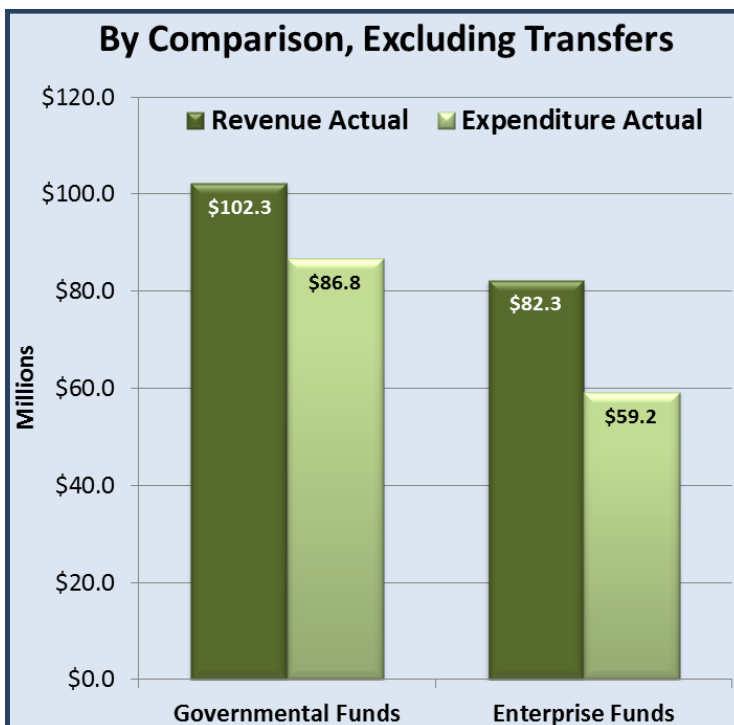
## YTD Operating Expenditures of \$173 Million

- General Fund
- Special Revenue
- Other Entities
- Internal Service
- Utilities
- Stormwater
- Golf
- Capital Projects
- Solid Waste



- ⇒ Revenues exceed expenditures YTD by \$20,984,386 (line 14 less line 28)
- ⇒ General Fund revenue is above budget due to higher than projected sales, auto use, and building permit revenue (line 1)
- ⇒ Other Entities (line 3) revenue is below budget due to the timing of Federal grant expenditures at the Airport and Loveland Fire Rescue Authority
- ⇒ Water & Power revenues are above budget (line 7) due to higher than expected revenue from plant investment fees and water and power sales
- ⇒ Internal transfers (line 13 & 27) are under budget due to the timing of related expenditures
- ⇒ The General Fund (line 15) is under budget due to lower than planned spending for economic incentives and the timing of a well replacement at the Civic Center and human services grant payments
- ⇒ Special Revenue funds (line 16) are below budget due to the timing of grant payments from the CDBG Fund
- ⇒ Other entities (line 17) is below budget due to the timing of planned capital expenditures at the Fort Collins-Loveland Municipal Airport
- ⇒ Internal services (line 18) is under budget due to lower than anticipated health claims and payments for workers compensation and unemployment events
- ⇒ Capital expenditures (line 20) are under budget due to the timing of capital projects throughout the City
- ⇒ Stormwater (line 22) is under budget due to lower than expected repair and maintenance costs
- ⇒ Solid Waste (line 24) is under budget due to lower than planned costs for waste disposal and vehicle maintenance

### By Comparison, Excluding Transfers

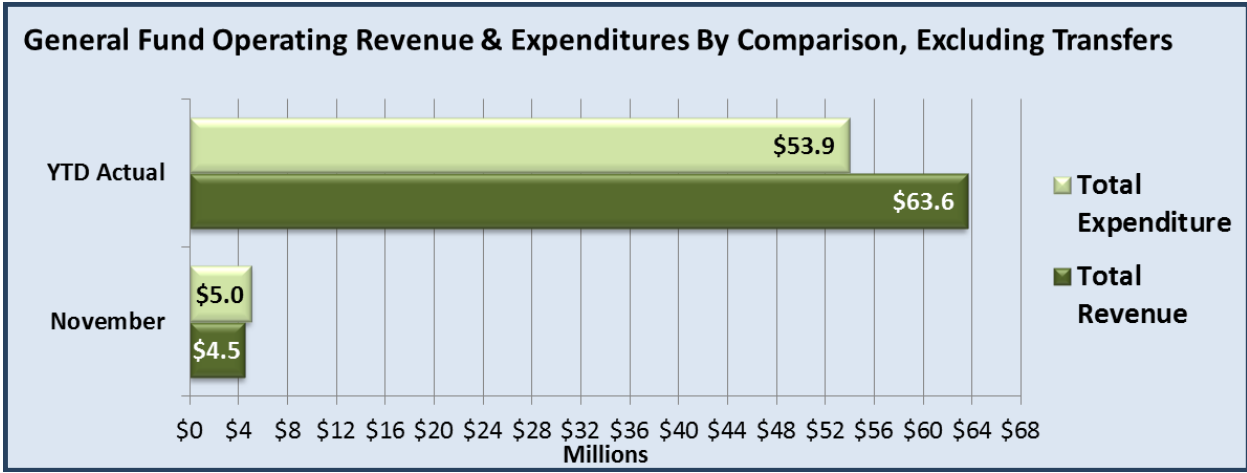


# General Fund Revenues & Expenditures

November 2012

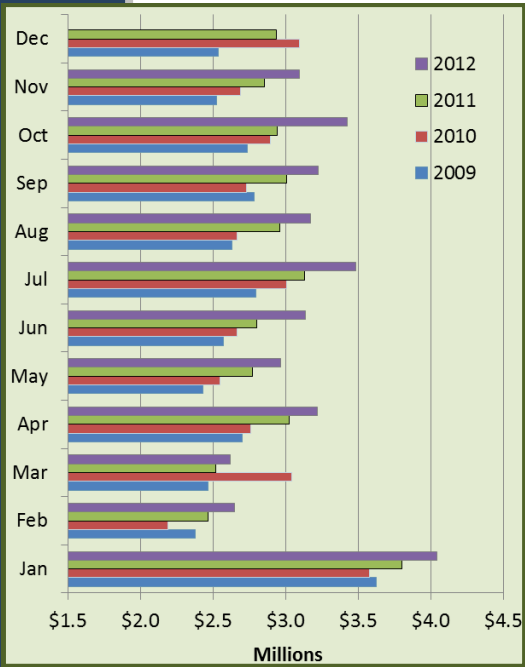
General Fund Revenue & Expenditures November 2012				
REVENUES	November 2012	YTD Actual	YTD Revised Budget	% of Budget
1 Taxes				
2 Property tax	\$ 22,571	\$ 7,392,685	\$ 7,275,850	101.6%
3 Sales tax	2,757,932	31,345,918	30,195,360	103.8%
4 Building use tax	97,778	1,389,649	899,810	154.4%
5 Auto use tax	236,385	2,278,401	1,857,890	122.6%
6 Other taxes	260,926	2,969,032	2,210,080	134.3%
7 Intergovernmental	268,338	5,684,804	5,410,394	105.1%
8 License & permits				
9 Building permits	86,279	1,460,260	727,210	200.8%
10 Other permits	37,558	344,988	255,895	134.8%
11 Charges for services	233,762	3,587,665	3,330,852	107.7%
12 Fines & forfeitures	57,505	876,860	921,503	95.2%
13 Interest income	29,459	373,010	371,300	100.5%
14 Miscellaneous	431,078	5,886,863	5,349,362	110.0%
<b>15 Subtotal</b>	<b>\$ 4,519,571</b>	<b>\$ 63,590,136</b>	<b>\$ 58,805,506</b>	<b>108.1%</b>
16 Interfund transfers	161,384	1,858,599	3,744,080	49.6%
<b>17 Total Revenue</b>	<b>\$ 4,680,955</b>	<b>\$ 65,448,735</b>	<b>\$ 62,549,586</b>	<b>104.6%</b>
EXPENDITURES				
Operating Expenditures				
18 Legislative	\$ 6,650	\$ 83,577	\$ 116,994	71.4%
19 Executive & Legal	156,845	1,944,222	2,234,063	87.0%
20 Economic Development	64,643	1,175,020	1,949,355	60.3%
21 Cultural Services	76,327	1,159,352	1,254,728	92.4%
22 Development Services	213,084	2,119,407	2,595,724	81.6%
23 Finance	321,839	3,328,012	3,625,993	91.8%
24 Fire & Rescue	31,493	642,621	644,430	99.7%
25 Human Resources	65,706	786,590	851,256	92.4%
26 Information Technology	218,173	2,791,018	3,133,996	89.1%
27 Library	177,050	2,077,995	2,188,780	94.9%
28 Parks & Recreation	667,064	6,813,294	7,079,323	96.2%
29 Police	1,256,477	14,076,267	14,900,527	94.5%
30 Public Works	899,119	10,133,775	10,655,790	95.1%
31 Non-Departmental	860,602	6,741,848	6,649,665	101.4%
<b>32 Subtotal Operating</b>	<b>\$ 5,015,072</b>	<b>\$ 53,872,997</b>	<b>\$ 57,880,623</b>	<b>93.1%</b>
33 Internal Transfers	1,312,425	3,725,746	5,444,760	68.4%
<b>34 Total Expenditures</b>	<b>\$ 6,327,497</b>	<b>\$ 57,598,743</b>	<b>\$ 63,325,383</b>	<b>91.0%</b>

- ⇒ Sales Tax revenue is above budgeted levels by 3.8%
- ⇒ Building use tax and permit revenue (lines 5, 9) exceed budget due to higher than expected building activity
- ⇒ Intergovernmental revenue (line 7) is above budget due to higher than expected federal grant receipts and higher than expected severance tax
- ⇒ Other permit revenue (line 10) is above budget due to higher than planned street cut revenue
- ⇒ Charges for services (line 11) is above budget due to greater than planned recreation revenue
- ⇒ Miscellaneous revenue is higher than expected due to higher than planned rental, sales tax application revenue, and donations
- ⇒ Internal transfers (lines 16 & 33) are under budget due to the timing of related expenditures
- ⇒ Council expenditures (line 18) are under budget due to lower than planned travel and meeting and food costs
- ⇒ Economic Development (line 20) is under budget due to lower than expected incentive payments
- ⇒ Development Services expenditures (line 22) are under budget due to the timing of human services grants
- ⇒ Finance is under budget due to lower than planned bank charges, audit expenses, and withdrawals of supplies from the warehouse (line 23)
- ⇒ Human Resources (line 25) is below budget due to lower than expected costs for advertising and travel
- ⇒ Information Technology (line 26) is under budget due to the timing of computer, service, maintenance expenses
- ⇒ Revenues exceed expenditures by \$7,849,992 (line 17 less line 34)



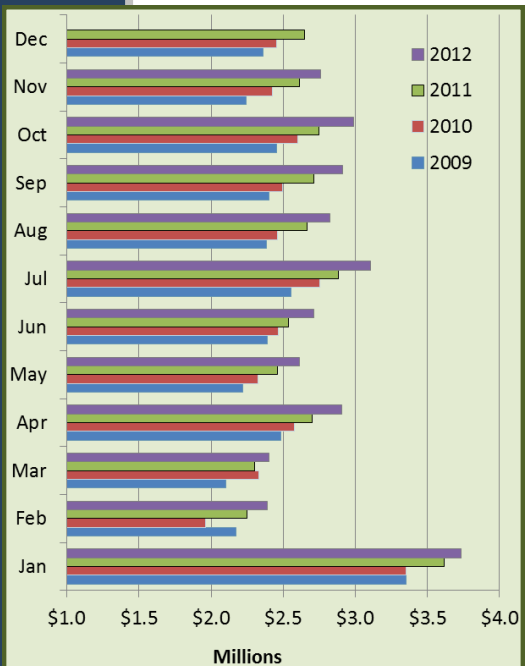
# Tax Totals & Comparisons

## Sales & Use Tax



	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 3,622,251	\$ 3,573,972	\$ 3,799,760	\$ 4,039,679	\$ 3,863,500	4.6%
Feb	2,374,608	2,191,609	2,465,447	2,649,229	2,353,490	12.6%
Mar	2,468,095	3,041,068	2,517,162	2,618,052	2,834,880	-7.6%
Apr	2,701,737	2,759,556	3,022,770	3,215,437	3,043,630	5.6%
May	2,428,860	2,550,227	2,769,526	2,966,032	2,777,110	6.8%
Jun	2,569,125	2,665,632	2,800,184	3,136,014	2,904,600	8.0%
Jul	2,794,222	3,004,324	3,129,254	3,480,123	3,254,770	6.9%
Aug	2,628,842	2,662,932	2,961,686	3,171,055	2,930,740	8.2%
Sep	2,782,768	2,732,087	3,008,637	3,225,155	2,992,510	7.8%
Oct	2,733,964	2,897,370	2,944,433	3,421,099	3,116,480	9.8%
Nov	2,522,092	2,690,549	2,853,360	3,092,095	2,881,350	7.3%
Dec	2,537,802	3,096,111	2,933,671		2,914,960	
	\$32,164,365	\$33,865,435	\$35,205,889	\$35,013,970	\$35,868,020	6.3%
YTD	\$29,626,563	\$30,769,324	\$32,272,219	\$35,013,970	\$32,953,060	6.3%

## Retail Sales Tax

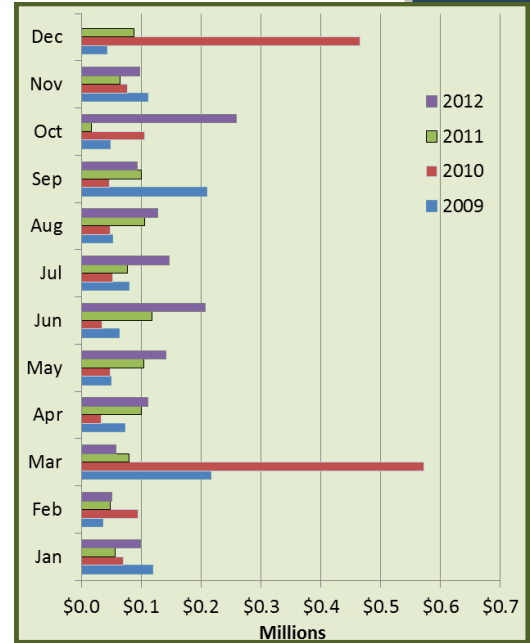


	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 3,354,704	\$ 3,352,821	\$ 3,613,881	\$ 3,733,310	\$ 3,648,890	2.3%
Feb	2,170,562	1,959,729	2,249,749	2,390,409	2,132,780	12.1%
Mar	2,100,216	2,328,701	2,299,237	2,403,380	2,534,340	-5.2%
Apr	2,482,752	2,579,918	2,702,024	2,905,558	2,807,740	3.5%
May	2,218,482	2,324,395	2,462,213	2,614,500	2,529,650	3.4%
Jun	2,390,535	2,468,207	2,536,541	2,711,906	2,686,160	1.0%
Jul	2,552,195	2,752,870	2,882,075	3,105,564	2,995,960	3.7%
Aug	2,383,119	2,458,382	2,667,674	2,823,319	2,675,470	5.5%
Sep	2,401,596	2,495,338	2,710,738	2,909,008	2,715,690	7.1%
Oct	2,457,158	2,602,599	2,746,866	2,991,034	2,832,420	5.6%
Nov	2,245,659	2,422,352	2,610,980	2,757,932	2,636,260	4.6%
Dec	2,358,273	2,455,821	2,647,162		2,672,660	
	\$29,115,253	\$30,201,133	\$ 32,129,139	\$31,345,918	\$32,868,020	3.8%
YTD	\$26,756,980	\$27,745,312	\$ 29,481,978	\$31,345,918	\$30,195,360	3.8%

# SnapShot

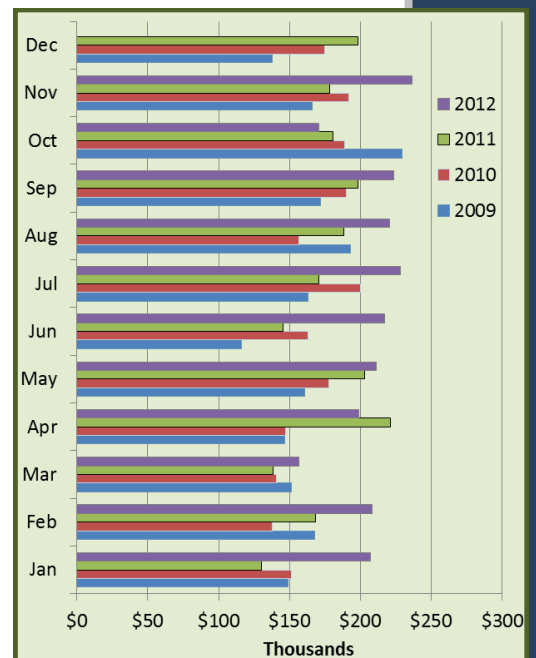
## Building Materials Use Tax

	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 118,719	\$ 70,117	\$ 55,542	\$ 99,108	\$ 67,230	47.4%
Feb	36,254	93,928	47,621	50,703	64,310	-21.2%
Mar	216,500	571,599	79,590	57,845	144,060	-59.8%
Apr	72,251	32,260	99,569	111,197	82,360	35.0%
May	49,434	48,145	104,373	140,470	75,760	85.4%
Jun	62,723	34,349	118,318	207,024	66,460	211.5%
Jul	79,061	51,657	76,488	146,570	76,580	91.4%
Aug	52,578	47,716	105,871	127,261	70,510	80.5%
Sep	209,338	46,646	99,544	92,415	93,610	-1.3%
Oct	47,437	105,818	17,021	259,279	80,030	224.0%
Nov	110,207	76,444	64,211	97,778	78,900	23.9%
Dec	41,844	465,626	88,033		100,190	
	\$1,096,346	\$1,644,305	\$956,181	\$1,389,649	\$1,000,000	54.4%
YTD	\$1,054,502	\$1,178,679	\$868,148	\$1,389,649	\$ 899,810	54.4%



## Motor Vehicle Use Tax

	2009	2010	2011	2012	2012 Budget	+ / - Budget
Jan	\$ 148,828	\$ 151,034	\$ 130,337	\$ 207,261	\$ 147,380	40.6%
Feb	167,793	137,951	168,077	208,117	156,400	33.1%
Mar	151,378	140,768	138,335	156,828	156,480	0.2%
Apr	146,734	147,378	221,177	198,682	153,530	29.4%
May	160,943	177,687	202,940	211,062	171,700	22.9%
Jun	115,867	163,076	145,325	217,084	151,980	42.8%
Jul	162,966	199,797	170,691	227,989	182,230	25.1%
Aug	193,144	156,834	188,141	220,475	184,760	19.3%
Sep	171,833	190,102	198,355	223,732	183,210	22.1%
Oct	229,369	188,953	180,546	170,786	204,030	-16.3%
Nov	166,225	191,753	178,169	236,385	166,190	42.2%
Dec	137,685	174,664	198,476		142,110	
	\$1,952,766	\$2,019,997	\$2,120,569	\$2,278,402	\$2,000,000	22.6%
YTD	\$1,815,081	\$1,845,333	\$1,922,093	\$2,278,402	\$1,857,890	22.6%



# 2007 vs 2012 Tax Comparisons

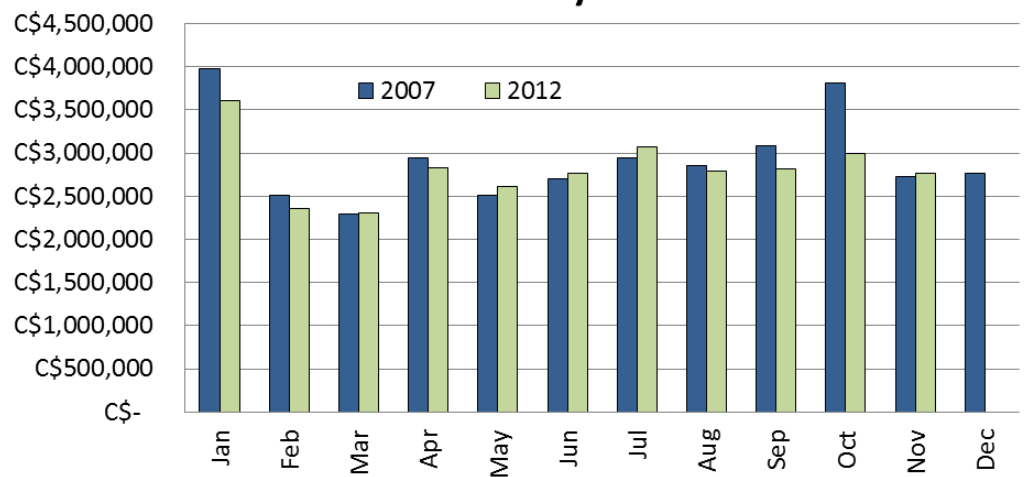
	2007	2012
Jan	\$3,972,513	\$4,039,678
Feb	2,520,486	2,649,229
Mar	2,319,579	2,618,053
Apr	3,003,780	3,215,437
May	2,581,830	2,966,032
Jun	2,781,786	3,136,014
Jul	3,022,815	3,480,123
Aug	2,931,667	3,171,054
Sep	3,176,883	3,225,155
Oct	3,936,330	3,421,099
Nov	2,835,420	3,092,095
Dec	2,869,916	
	\$35,953,006	\$35,013,969

### Sales & Use Tax 2007 v. 2012



	2007	2012
Jan	\$3,972,513	\$3,607,507
Feb	2,507,072	2,355,439
Mar	2,286,415	2,310,176
Apr	2,941,724	2,828,763
May	2,513,134	2,612,416
Jun	2,702,532	2,766,189
Jul	2,937,441	3,074,729
Aug	2,854,102	2,786,157
Sep	3,084,330	2,821,103
Oct	3,813,494	2,993,663
Nov	2,730,719	2,766,607
Dec	2,765,797	
	\$35,109,275	\$30,922,747

### Sales & Use Tax 2007 v. 2012 in Constant January 2007 Dollars



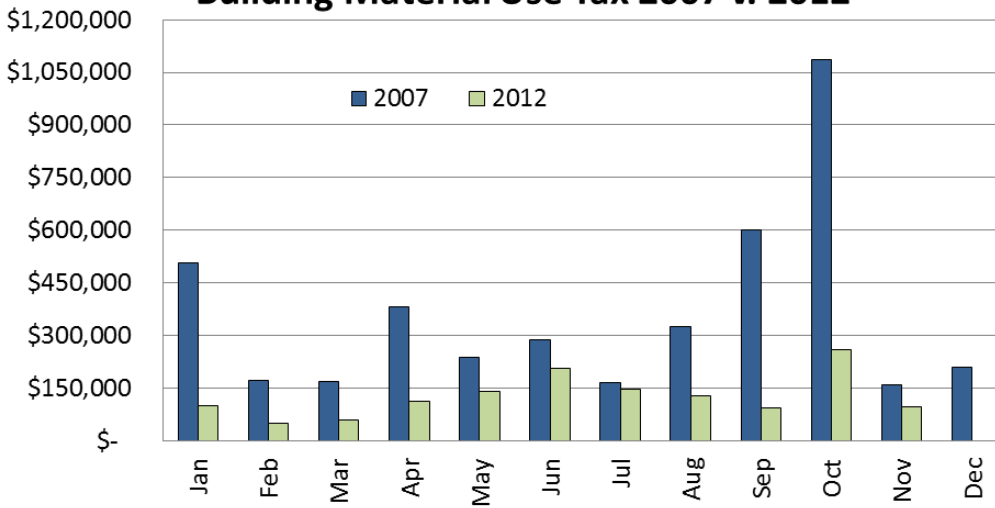
# SnapShot

### Retail Sales Tax 2007 v. 2012



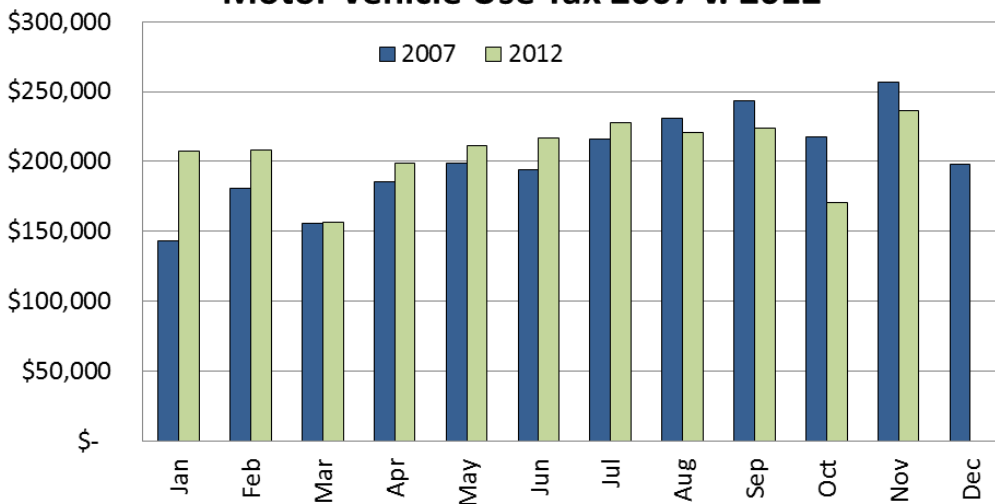
	2007	2012
Jan	\$3,324,067	\$3,733,309
Feb	2,167,873	2,390,409
Mar	1,994,635	2,403,380
Apr	2,437,958	2,905,558
May	2,146,685	2,614,500
Jun	2,300,533	2,711,906
Jul	2,640,223	3,105,564
Aug	2,376,534	2,823,319
Sep	2,332,844	2,909,008
Oct	2,632,667	2,991,034
Nov	2,419,051	2,757,932
Dec	2,464,559	
<b>Total</b>	<b>\$29,237,629</b>	<b>\$31,345,918</b>

### Building Material Use Tax 2007 v. 2012



	2007	2012
Jan	\$505,441	\$99,108
Feb	171,835	50,703
Mar	169,579	57,845
Apr	380,285	111,197
May	236,140	140,470
Jun	287,300	207,024
Jul	166,446	146,570
Aug	324,125	127,261
Sep	600,704	92,415
Oct	1,086,325	259,279
Nov	159,382	97,778
Dec	207,723	
<b>Total</b>	<b>\$4,295,285</b>	<b>\$1,389,649</b>

### Motor Vehicle Use Tax 2007 v. 2012



	2007	2012
Jan	\$143,005	\$207,261
Feb	180,778	208,117
Mar	155,365	156,828
Apr	185,537	198,682
May	199,005	211,062
Jun	193,953	217,084
Jul	216,146	227,989
Aug	231,008	220,475
Sep	243,336	223,732
Oct	217,338	170,786
Nov	256,987	236,385
Dec	197,634	
<b>Total</b>	<b>\$2,420,092</b>	<b>\$2,278,401</b>

# Sales Tax Collections

November 2012

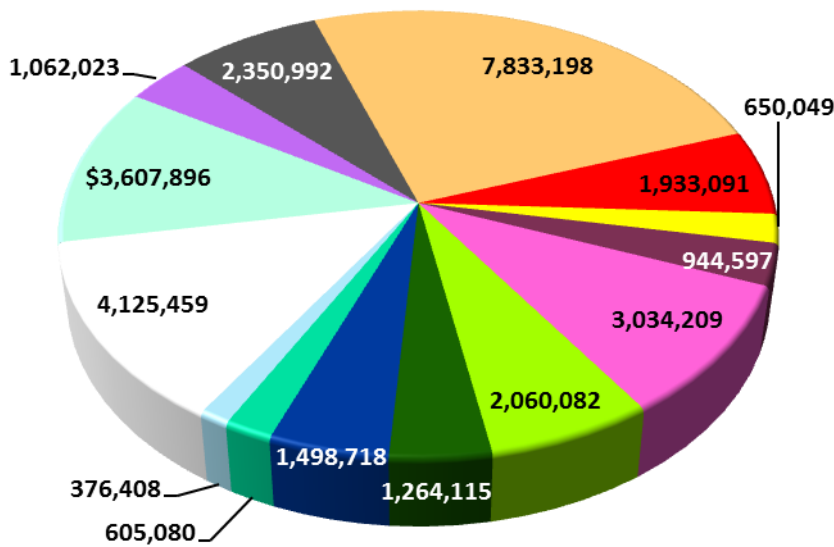
Description	YTD 2012	YTD 2011	\$ Change	% Change	% of Total	Total %
Department Stores & General Merchandise	\$ 7,037,440	\$ 6,767,294	\$ 270,146	4.0%	22.5%	22.5%
Restaurants & Bars	4,007,142	3,600,356	406,786	11.3%	12.8%	35.2%
Grocery Stores & Specialty Foods	3,111,744	3,000,501	111,243	3.7%	9.9%	45.2%
Clothing & Clothing Accessories Stores	2,298,277	2,164,873	133,404	6.2%	7.3%	52.5%
Building Material & Lawn & Garden Supplies	2,119,529	1,946,899	172,631	8.9%	6.8%	59.3%
Motor Vehicle Dealers, Auto Parts & Leasing	2,100,203	1,819,751	280,453	15.4%	6.7%	66.0%
Utilities	1,579,794	1,538,085	41,709	2.7%	5.0%	71.0%
Sporting Goods, Hobby, Book & Music Stores	1,555,609	1,419,492	136,117	9.6%	5.0%	76.0%
Broadcasting & Telecommunications	1,226,660	1,215,980	10,681	0.9%	3.9%	79.9%
Used Merchandise Stores	975,256	843,328	131,928	15.6%	3.1%	83.0%
Beer, Wine & Liquor Stores	751,993	660,843	91,150	13.8%	2.4%	85.4%
Hotels, Motels & Other Accommodations	712,773	645,328	67,445	10.5%	2.3%	87.7%
Consumer Goods & Commercial Equipment Rental	546,324	472,396	73,928	15.6%	1.7%	89.4%
Health & Personal Care Stores	519,670	497,810	21,860	4.4%	1.7%	91.1%
Electronics & Appliance Stores	429,467	576,231	(146,763)	-25.5%	1.4%	92.4%
Electronic Shopping & Mail-Order Houses	423,401	416,043	7,358	1.8%	1.4%	93.8%
Furniture & Home Furnishing Stores	402,513	398,156	4,357	1.1%	1.3%	95.1%
Office Supplies, Stationery & Gift Stores	289,264	299,678	(10,414)	-3.5%	0.9%	96.0%
Gasoline Stations with Convenience Stores	251,072	229,688	21,384	9.3%	0.8%	96.8%
All Other Categories	1,007,787	969,247	38,541	4.0%	3.2%	100.0%
<b>Total</b>	<b>\$31,345,918</b>	<b>\$29,481,978</b>	<b>\$1,863,940</b>	<b>6.3%</b>	<b>100.0%</b>	

- ⇒ By business category, Used Merchandise Stores and Consumer Goods & Commercial Equipment Rentals both hold the top spot so far this year with 15.6% year-to-date increase over 2011. Restaurants & Bars continue their consistently strong growth with an 11.3% increase and continue to lead all categories for total dollar increases from the same period last year. The “Beer, Wine & Liquor Stores” category, posted a 13.8% increase through November and the “Motor Vehicle Dealers, Auto Parts & Leasing” has climbed into the top three with year-to-date increases of 15.4%.
- ⇒ 2012 sales tax revenue is 6.3% above the 2011 level year-to-date. The North East Loveland area has the strongest growth over last year with a 20.2% increase over this time last year. North East Loveland’s performance through November continues with the strong performance of the new and existing restaurants coupled with a large increase from the hotels in the area. Two areas continue to trail their 2011 pace and one area is virtually even. 2012 started with the Downtown area showing a 9% to 10% decline in sales over 2011. As new retail stores have opened for business in the downtown area and overall sales improved, the year-to-date deficit has decreased to 2.4% below the same time in 2011. This positive trend should carry into 2013 providing there are no major store closings in the downtown area’s future. Through audit, it was discovered that a major retailer in the Promenade Shops had been over-reporting sales. This error has been corrected; as a result, sales show a 2.7% negative trend. However, after adjusting for this reporting issue, the remaining Promenade Shops show a 5.6% positive trend so far in 2012. We will continue to track the adjusted sales trend throughout the year for the Promenade Shops.
- ⇒ Lodging Tax Revenue received in 2012 is at \$625,646 year-to-date.



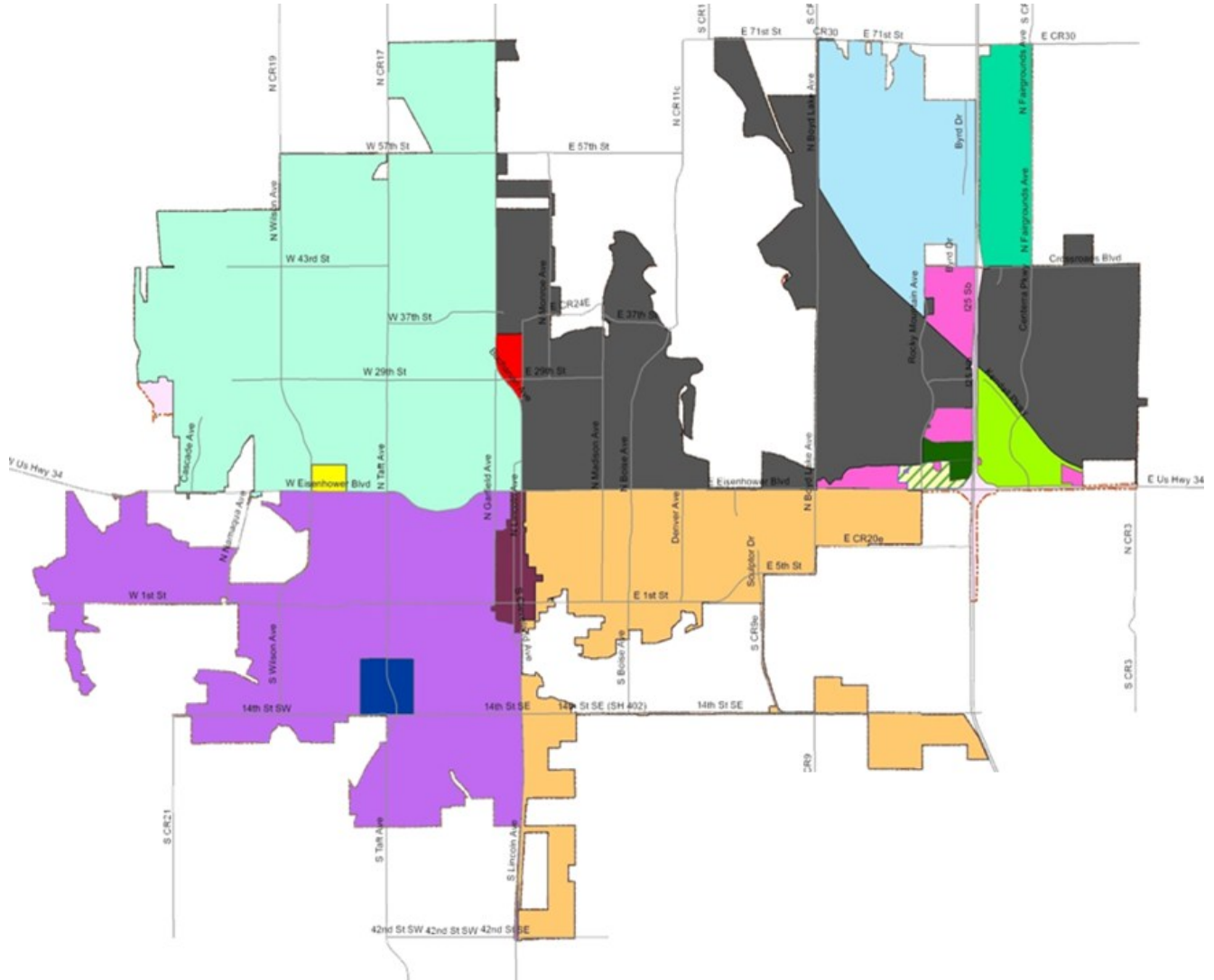
Geographical Area	YTD 2012	YTD 2011	Change
North West Loveland	\$3,607,896	\$3,418,571	5.5%
South West Loveland	1,062,023	999,902	6.2%
North East Loveland	2,350,992	1,956,045	20.2%
South East Loveland	7,833,198	7,308,125	7.2%
Orchards Shopping Center	1,933,091	1,838,931	5.1%
Columbine Shopping Center	650,049	604,270	7.6%
Downtown	944,597	968,207	-2.4%
Centerra	3,034,209	2,735,096	10.9%
Promenade Shops	2,060,082	2,116,426	-2.7%
Outlet Mall	1,264,115	1,189,300	6.3%
Thompson Valley Shopping Center	1,498,718	1,409,237	6.3%
The Ranch	605,080	604,528	0.1%
Airport	376,408	360,231	4.5%
All Other Areas	4,125,459	3,973,109	3.8%
<b>Total</b>	<b><u>\$31,345,918</u></b>	<b><u>\$29,481,978</u></b>	<b><u>6.3%</u></b>

- North West Loveland
- Thompson Valley Shopping Center
- Centerra
- North East Loveland
- Airport
- Outlet Mall
- Orchards Shopping Center
- South West Loveland
- The Ranch
- Downtown
- South East Loveland
- All Other Areas
- Promenade Shops
- Columbine Shopping Center



# Geographical Codes

November 2012



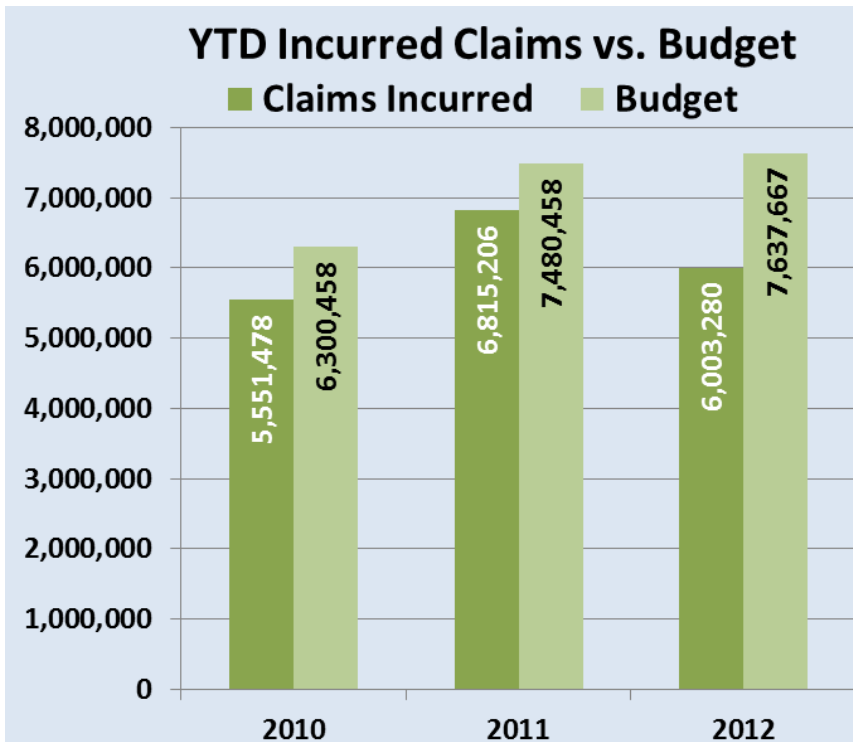
For a larger view of this map, please visit:

- ⇒ [www.cityofloveland.org](http://www.cityofloveland.org)
- ⇒ Departments
- ⇒ Finance
- ⇒ Administration
- ⇒ Financial Reports
- ⇒ View Monthly Financial Reports
- ⇒ “Click here” below monthly SnapShot links

*click + magnifier to zoom*

Cash Basis of Claims Paid					\$ Over / (Under) Budget	% Over / (Under) Budget	
		OAP	HRA	Total	Budget		
2012	November	409,600	71,804	481,404	694,333	(212,929)	-30.7%
	YTD	4,697,955	1,305,325	6,003,280	7,637,667	(1,634,387)	-21.4%
2011	November	589,283	145,898	735,181	680,042	55,139	8.1%
	YTD	5,687,372	1,128,357	6,815,206	7,480,458	(665,252)	-8.9%
Change	November	(179,683)	(74,094)	(253,777)			
	% November	-30.5%	-50.8%	-34.5%			
	YTD	(989,417)	176,968	(811,926)			
	% YTD	-17.4%	15.7%	-11.9%			

This chart represents claims paid by Cigna in the current month, but due to the timing of when Accounting receives the information, the claims do not get recorded as an expenditure until the following month. ⇒ OAP—Open Access Plan ⇒ HRA—Health Reimbursement Arrangement



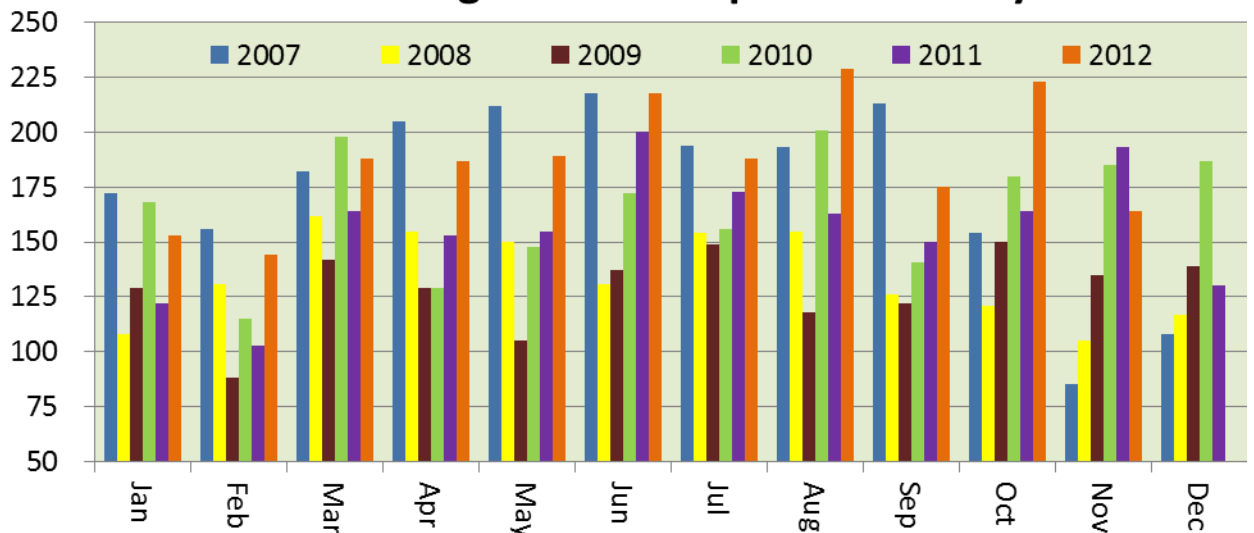
YTD Claims Over \$25k				
Comparison (2009-2012)				
	2009	2010	2011	2012
November				
# of claims	38	45	57	51
Cost of claims	\$2,415,408	\$3,524,512	\$3,018,727	\$2,647,895
2012 # of stoploss claims:	1			

# Activity Measures

Measures	November '10	November '11	November '12	2010 YTD	2011 YTD	2012 YTD
# of Building Permits	185	193	164	1,793	1,740	2,058
Building Permit Valuations	\$7,299,999	\$5,084,362	\$7,208,457	\$110,730,891	\$78,717,041	\$126,746,938
# of Certified Occupancies	29	27	32	176	231	314
Net # of Sales Tax Licenses	9	15	10	112	193	(67)
New Residential Electric Meter Sets	21	22	44	265	335	264
# of Utility Bills Sent	35,149	35,795	36,288	385,271	391,450	397,260
Rounds of Golf	3,923	3,573	5,258	116,860	117,204	122,155
Health Claim Costs/Emp.	\$ 926.69	\$ 852.62	\$ 747.52	\$ 9,936.42	\$ 10,556.59	\$ 9,406.37
# of Vacant Positions	5	23	37	98	173	367
# of Frozen Vacant Positions	16	9	9	146	127	99
# of Eliminated Positions	42	46	47	436	488	514
KWH Demand (kH)	99,057	90,400	94,437	1,139,872	1,174,414	1,190,613
KWH Purchased (kwh)	57,308,177	58,269,268	56,458,490	641,019,372	667,395,077	679,818,254
Gallons of Water Sold	195,082,515	191,206,518	171,188,431	3,427,566,596	3,519,549,558	4,038,497,023
# of Workers' Comp Claims	8	3	6	114	105	94
\$ of Workers' Comp Claims Paid	\$ 192,695.00	\$ 63,475.05	\$ 158,852.00	\$ 809,090.00	\$ 209,982.05	\$ 523,146.05
# of Open Claims Current Year	16	17	10	110	161	111
# of Total Open Claims	20	19	13	156	193	168
\$ of Total Open Claims	\$ 172,112.00	\$ 211,494.00	\$ 243,280.00	\$2,293,806.00	\$1,398,198.00	\$2,821,563.05
\$ of Lodging Tax Collected	\$ 42,693.00	\$ 45,502.02	\$ 54,699.79	\$ 454,685.31	\$ 542,987.73	\$ 625,645.79

November 2012

### Building Permit Comparison History



## Capital Projects \$500,000+

Project Title	2012 Budget	2012 Expenditures	Remaining 2012 Budget	% of 2012 Budget (Exp/Bud)
<b>Water Capital</b>				
Morning Dr Alt Waterline 30"	\$ 1,924,700	\$ 406,360	\$ 1,518,340	21.11%
Filter Plant 2 Improvements	804,860	678,174	126,686	84.26%
29th St Waterline Replacement	581,370	487,023	94,347	83.77%
<b>Raw Water Capital</b>				
Windy Gap Firming Project	1,205,060	82,727	1,122,333	6.86%
Purchase of Colorado-Big Thompson Project (CBT) Water	2,606,600	2,119,005	487,595	81.29%
<b>Wastewater Utility Capital</b>				
Carlisle Phase IV from Taft to Railroad	597,100	539,580	57,520	90.37%
South Horseshoe Lift Station	1,216,210	60,097	1,156,113	4.94%
Fairgrounds/Namaqua Interceptor	733,600	709,151	24,449	96.67%
<b>Power Capital</b>				
East Sub to Crossroads Sub on Railroad	1,894,640	284,294	1,610,346	15.01%
Horseshoe Sub along Hwy 287 to 29th St.	1,338,910	611	1,338,299	0.05%
<b>Stormwater Capital</b>				
Washington Ave Outfall Phase 4	1,254,151	804,955	449,196	64.18%
MeHaffey Park Regional Detention Pond	580,210	14,963	565,247	2.58%
<b>Streets Transportation Program</b>				
2012 Street Rehabilitation	3,644,900	3,401,623	243,278	93.33%
Fiber network to signals and other facilities	1,084,000	12,875	1,071,125	1.19%
US 287 - Garfield Traffic Signal	668,420	28,563	639,857	4.27%
<b>All Other</b>				
Fire Station 6 Remodel and Expansion	929,970	702,028	227,942	75.49%
Rialto Theater Center	1,114,000	926,649	187,351	83.18%
Library Expansion	857,520	699,343	158,177	81.55%
Police Dispatch Console Replacement	1,200,000	869,493	330,507	72.46%
Facilities Maintenance Capital Projects	655,440	289,689	365,751	44.20%
Mehaffey Park Development	8,550,000	947,207	7,602,793	11.08%
Open Lands Acquisition	3,036,170	390,852	2,645,318	12.87%
Leslie the Cleaner Demolition and Remediation	\$ 500,000	\$ 192,219	\$ 307,781	38.44%

## November 2012 SnapShot

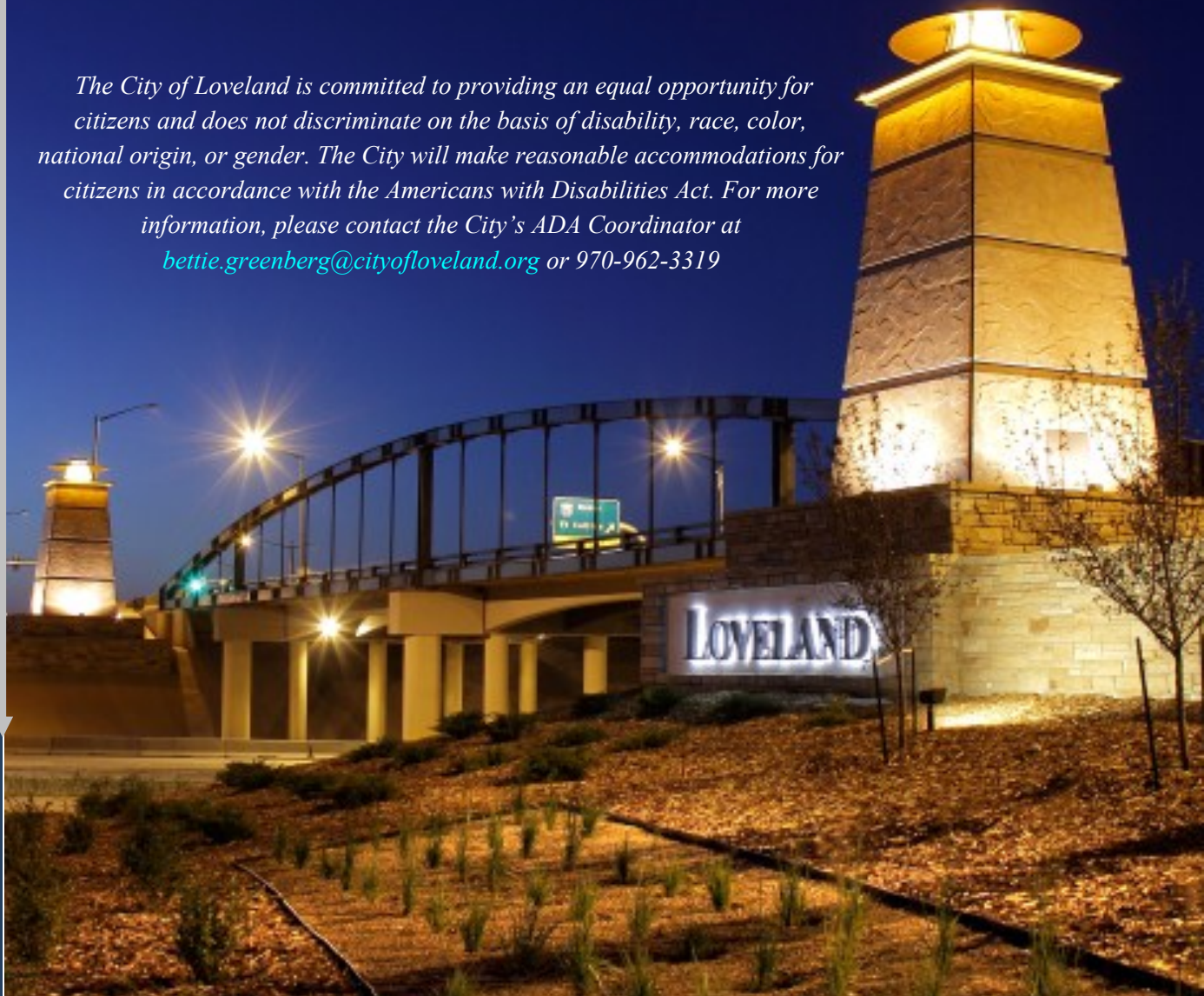
**City Of Loveland  
500 East 3rd Street  
Loveland, CO 80537**

**For more information regarding this report contact:**

Brent Worthington, Finance Director

970.962.2300 or [brent.worthington@cityofloveland.org](mailto:brent.worthington@cityofloveland.org)

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





# Snapshot

## November 2012

**Brent Worthington**  
Finance Director

**Presented**  
January 15, 2012

# November 2012 Snapshot

- Citywide Revenue
  - \$194 million, excluding transfers
  - 3.7% above budget projections
  
- Citywide Expenditures
  - \$173 million, excluding transfers
  - 17.8% below budget projections
  
- Citywide revenues exceed expenditures by \$21 million.



# November 2012 Snapshot

- General Fund Revenue: \$63.6 million YTD
  - 8.1% above 2012 YTD Budget
  - 15.8% above same period last year
  
- Sales and Use Tax Revenue: \$35 million
  - 6.3% above budget projections
  - 8.5% above same period as last year
  
- Sales Tax only: \$31.3 million YTD
  - 3.8% above budget projections
  - 6.3% above same period last year

# November 2012 Snapshot

## Sales & Use Tax 2007 v. 2012



# November 2012 Snapshot

## Sales & Use Tax 2007 v. 2012 in Constant January 2007 Dollars



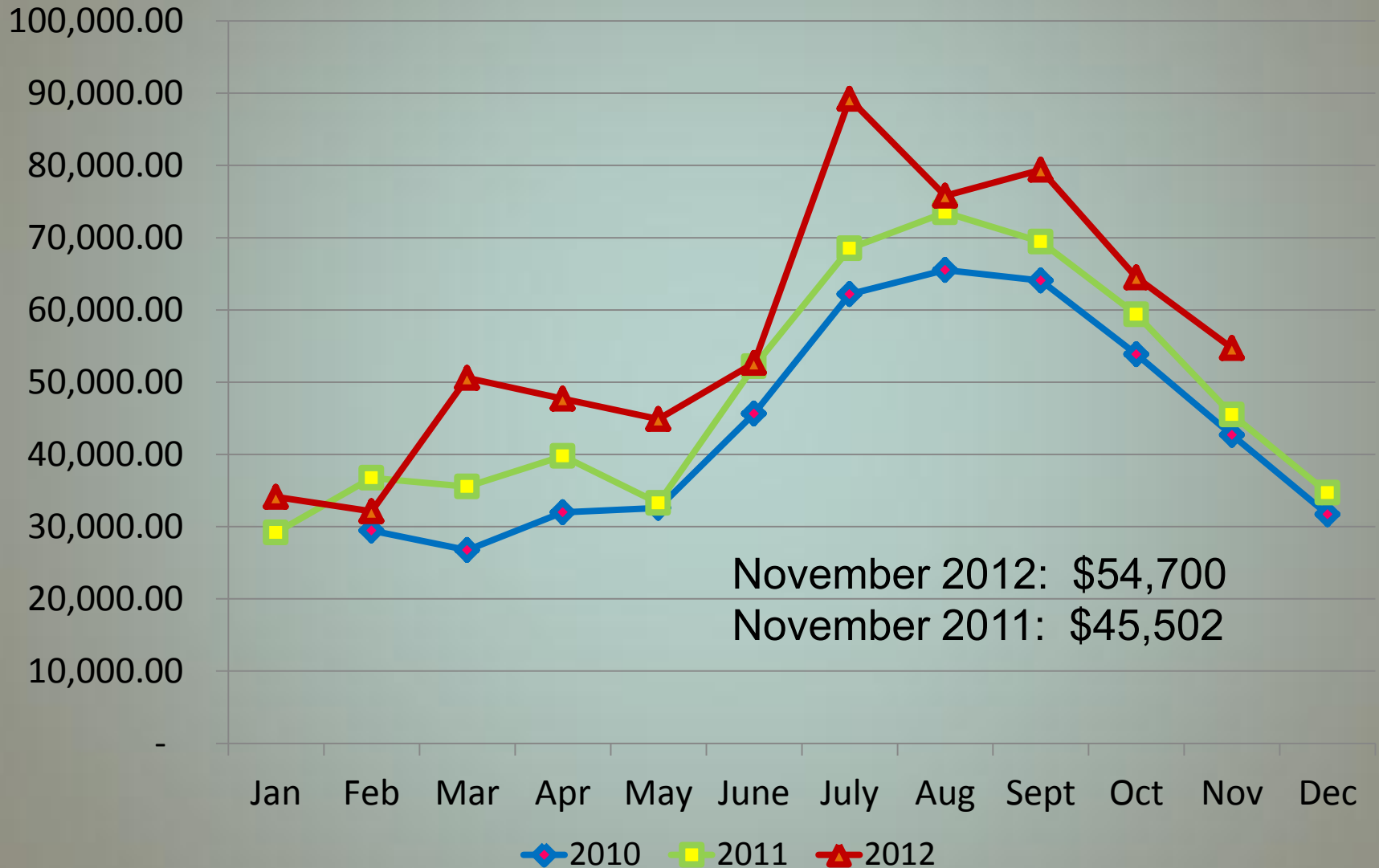
# November 2012 Snapshot

- General Fund Expenditures
  - \$53.9 million YTD, excluding transfers
  - 6.9% below budget projections
  
- General Fund Revenues Exceed Expenditures by \$7.8 million
  
- Health Claims
  - November Claims \$481,404
  - 30.7% below November budget projections
  - 2012 YTD decreased from \$6.8 million to \$6.0 million from same time as last year (11.9%)

# November 2012 Snapshot

- Other highlights
  - Lodging tax YTD is \$625,646 (15.2% higher than 2011 YTD).

# Lodging Tax Comparison



# November 2012 Snapshot



Questions?

**Brent Worthington**  
Finance Director

**Presented**  
January 15, 2012



**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:** 14  
**MEETING DATE:** 1/15/2013  
**TO:** City Council  
**FROM:** Alan Krcmarik, Executive Fiscal Advisor  
**PRESENTER:** Alan Krcmarik

**TITLE:** Investment Report for November 2012

**RECOMMENDED CITY COUNCIL ACTION:** This is an information only item. No Council action is required.

**DESCRIPTION:** The budget estimate for investment earnings for 2012 was \$2,729,560. Through November 2012, the amount posted to the investment account is \$2,334,153 including realized gains. Actual year-to-date earnings are lower than the year-to-date projection by \$159,945. Based on the monthly statement, the estimated annualized yield on the securities held by USBank was up from last month 1.24%, well under the annual target rate of 1.70% for 2012. Reinvestment rates are near record low levels, much lower than the budget projection.

**SUMMARY:** At the end of November the City's portfolio had an estimated market value of \$213.8 million, about \$1.3 million more than a month ago. Of this amount, USBank held (including accrued interest) \$186.3 million in trust accounts; other funds are held in local government investment pools, in operating accounts at WellsFargo Bank, and a few miscellaneous accounts. Interest rates have trended significantly lower over since March and are projected to remain low for years. Investments are in US Treasury Notes, high-rated US Agency Bonds, high-rated corporate bonds, money market accounts, and local government investment pools. The City's investment strategy emphasizes safety of principal, then sufficient liquidity to meet cash needs, and finally, return on investment. Each percent of earnings on the portfolio equates to about \$2.1 million annually.

**REVIEWED BY CITY MANAGER:**

*William D. Cabill*

**LIST OF ATTACHMENTS:** Investment Focus November 2012





Loveland Municipal Building

# Investment Focus

Monthly Investment Report

November 2012

## What's in here?

- Focal Points** 1
- Gain / Loss**
- Rate Trends** 2
- Cash Statement** 3
- Portfolio size** 4
- Investment types**
- Transactions /** 5
- Maturity**
- Future Scan** 6

## Focal Points

- \* **2012 targets for the City's portfolio: 1) the interest rate target is 1.7%; 2) the earnings goal = \$2,729,560.**
- \* **City investments are in high quality, low risk securities, in compliance with state law and the adopted investment policy.**
- \* **Revenue posted to accounts = \$2,334,153 – 6.7% under target. This includes realized gains on security sales of \$234,805.**
- \* **Each 1% of the total portfolio amounts to about \$2.1 million.**
- \* **The month end market value shows the unrealized loss decreased, down to \$110,125 at the end of November.**

## Americans are whittling down their debt.

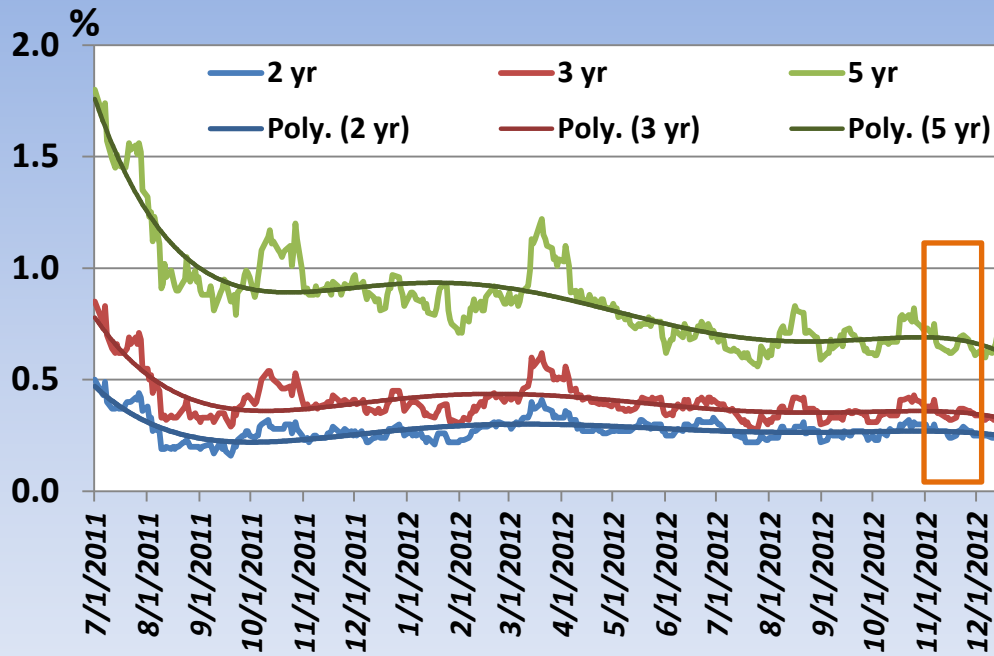
Outstanding debt held by household and nonprofits—including mortgages, student loans, auto loans and credit cards—was equivalent to 112.7% of disposable income at the end of September compared with 116.4% a year earlier. Consumers are both paying off debts and seeing their after-tax incomes rise modestly.

(Source: Federal Reserve, reported in *The Wall Street Journal* Vital Signs on December 7, 2012.)

Type of Investment	Purchase Price	Market Value	Unrealized Gain or Loss
Checking Accounts	\$ 9,926,563	\$9,926,563	--
Investment Pools	17,613,404	17,613,404	--
Money Markets	<u>2,778,841</u>	<u>2,778,841</u>	--
<b>Subtotal</b>	<b>\$ 30,318,808</b>	<b>\$ 30,318,808</b>	--
Notes and Bonds	<u>183,626,334</u>	<u>183,516,210</u>	<b>\$ (110,125)</b>
<b>Total Portfolio</b>	<b>\$ 213,945,143</b>	<b>\$ 213,835,018</b>	<b>\$ (110,125)</b>
<b>Data Sources</b>	<b>(Morgan Stanley)</b>	<b>(US Bank)</b>	

Due to rounding, column and row totals may not add exactly.

## Treasury rate trends / Debt deleveraging



Interest rates on US treasuries finished the month of November down when compared to the end of October. Based on the 2-year treasury, the November month-end rate was 5 basis points lower. The 3-year was 4 points lower. The 5-year finished 11 basis points lower. These shifts in the yield curve increased the value of securities in the portfolio. The rate on purchases was slightly lower.

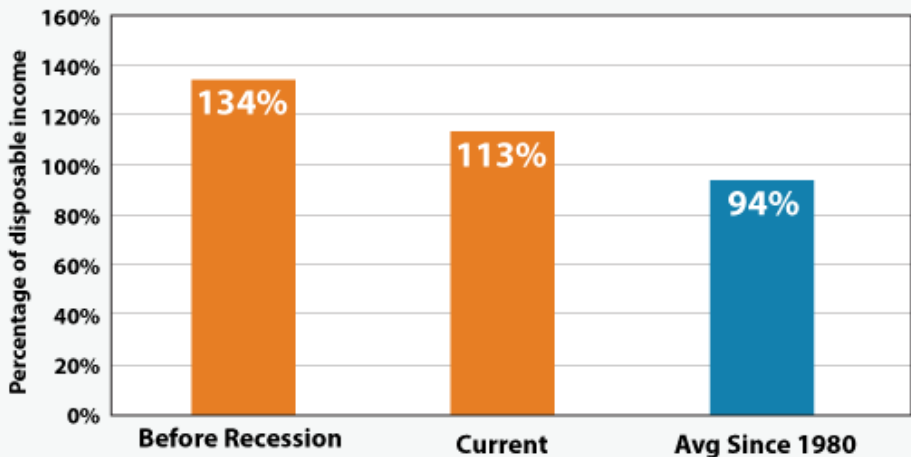
“Recessions suck. But there is one good thing about them. They force us to change our spending habits. And the Great Recession is leading to a Great De-Leveraging.

Based on the latest Federal Reserve data, household debt as a share of disposable income sank to 112.7% in the third quarter. At first blush that might not sound like a good thing. But it is.

Of course, we’re still far from normal levels. The long-term average since 1980 is 94%. But come on people! Deleveraging’s a marathon, not a sprint. It’s all about putting one foot in front of the other, again and again.”

### Deleveraging: It’s a Marathon, Not a Sprint

Household debt as a percentage of disposable income



Source: Federal Reserve

www.wallstreetdaily.com

Quote and chart from Louis Basenese, Co-Founder, Chief Investment Strategist, **Wall Street Daily**.

# Cash Position Summary

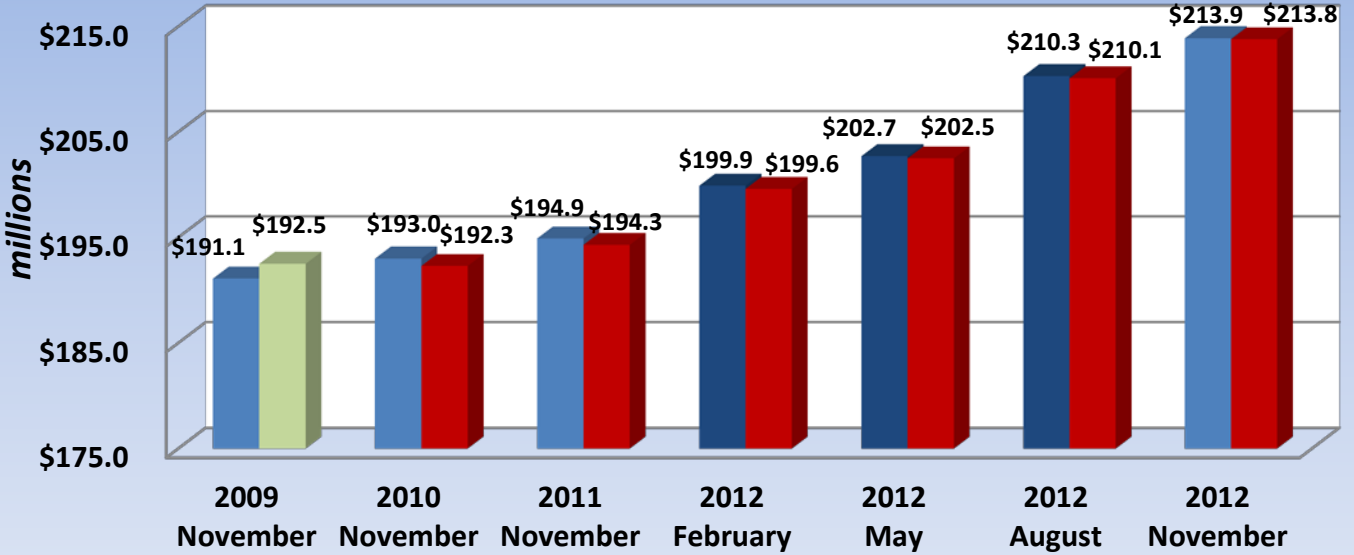
## Cash & Reserves (unaudited)

		2012 Beginning	YTD Activity	Month End Total
	<b>Restricted Reserves</b>	Due to rounding, column and row totals may not add exactly.		
1	Capital Expansion Fees	\$ 33,634,541	\$ 928,568	\$ 34,563,109
2	Water System Impact Fees	7,351,374	1,241,884	8,593,258
3	Raw Water Revenue – Windy Gap	22,362,750	<b>(1,388,111)</b>	20,974,639
4	Wastewater System Imp. Fees	4,509,816	552,327	5,062,143
5	Storm Drain System Imp. Fees	1,344,721	180,465	1,525,186
6	Power Plant Investment Fees	6,866,635	1,239,086	8,105,721
7	Cemetery Perpetual Care	2,971,970	<b>(892,971)</b>	2,078,999
8	Other Restricted	28,771,419	3,180,420	31,951,839
9	<b>Total Restricted</b>	<b>\$ 107,813,225</b>	<b>\$ 5,041,668</b>	<b>\$ 112,854,894</b>
	<b>Committed/ Assigned</b>			
10	General Fund	\$ 11,622,515	<b>\$ (2,434,527)</b>	\$ 9,187,988
11	Enterprise Funds	5,098,358	232,548	5,330,906
12	Internal Service Funds	17,970,582	1,846,283	19,816,865
13	<b>Total Reserves</b>	<b>\$ 34,691,455</b>	<b>\$ (355,697)</b>	<b>\$ 34,335,758</b>
14	<b>Total Restricted and Reserved</b>	<b>\$ 142,504,681</b>	<b>\$ 4,685,972</b>	<b>\$ 147,190,652</b>
	<b>Unassigned Balance</b>			
15	General Fund	\$ 17,142,212	\$ 7,604,993	\$ 24,747,206
16	Airport	897,343	241,728	1,139,071
17	Internal Service – Vehicle Maint	142,091	54,756	196,846
18	Enterprise Funds	36,427,968	2,491,419	38,919,388
19	<b>Total Unrestricted</b>	<b>\$ 54,609,615</b>	<b>\$ 10,392,896</b>	<b>\$ 65,002,511</b>
20	<b>TOTAL CASH</b>	<b>\$ 197,114,296</b>	<b>\$ 15,078,868</b>	<b>\$ 212,193,163</b>

# Monthly Investment Report

## Portfolio Size / Types of Investments

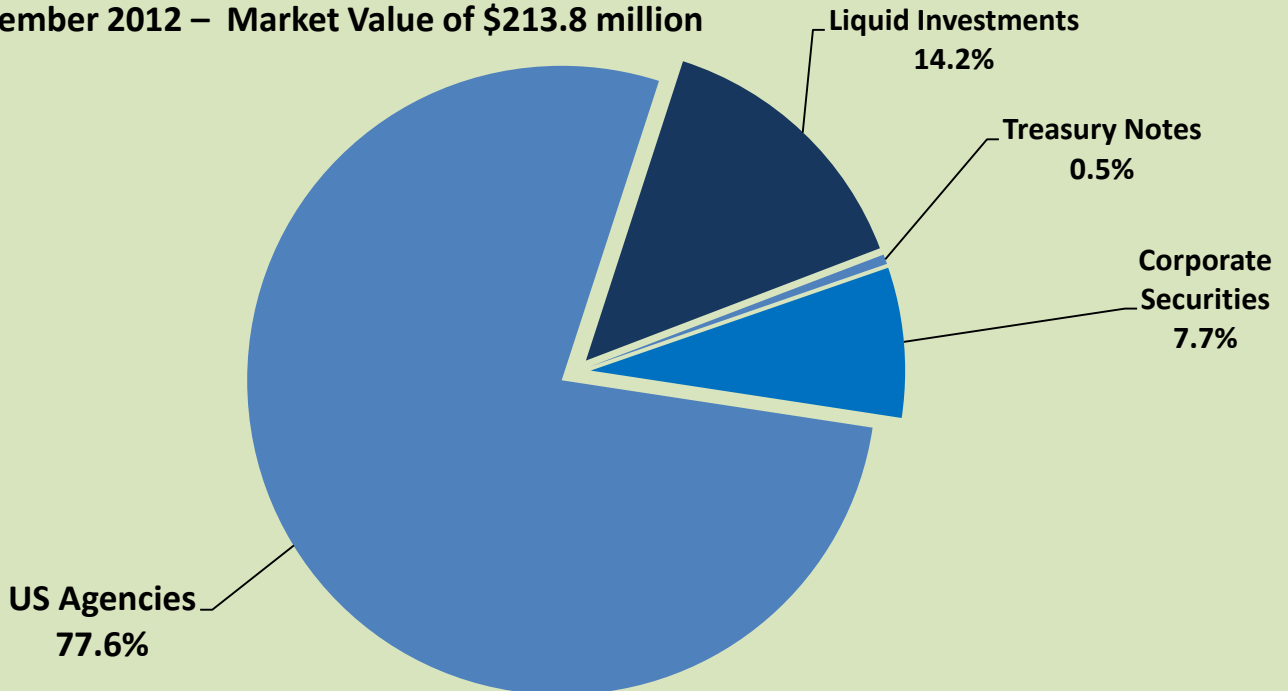
### Portfolio Size since November 2009



Blue bars show Purchase value, red and green bars show market value, red = loss and green = gain

### Portfolio by Type of Investment

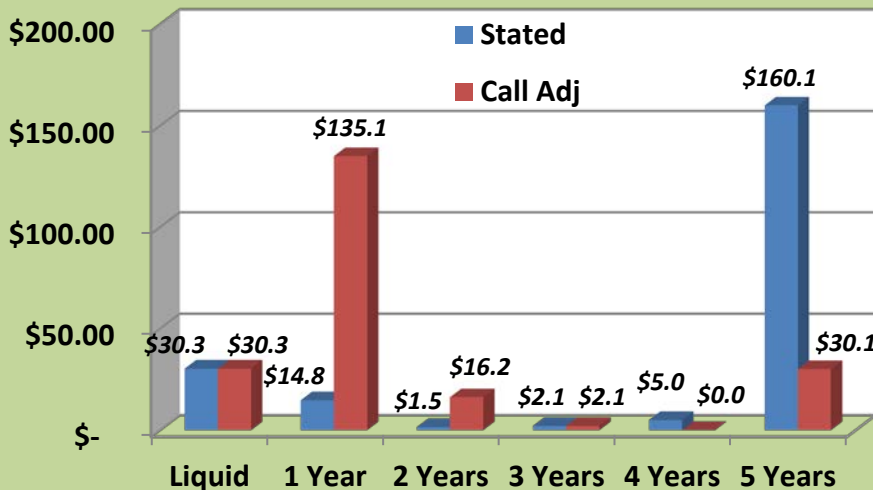
November 2012 – Market Value of \$213.8 million



# Transactions / Portfolio by Maturity

	Maturity Date	Face Value	Purchase \$	Stated Rate
<b><u>Purchases</u></b>				
Federal Farm Credit Bank	11/27/2017	\$ 5,000,000	\$ 5,000,000.00	0.930%
Federal Farm Credit Bank	11/13/2017	\$ 5,000,000	\$ 5,000,000.00	0.930%
Federal Home Loan Bank	11/15/2017	\$ 5,000,000	\$ 5,000,000.00	1.050%
Fed. Nat'l. Mortgage Assn.	11/07/2017	\$ 5,000,000	\$ 5,000,000.00	0.900%
Fed. Nat'l. Mortgage Assn.	11/15/2017	\$ 5,000,000	\$ 5,000,000.00	1.000%
Fed. Nat'l. Mortgage Assn.	11/21/2017	<u>\$ 5,000,000</u>	<u>\$ 5,000,000.00</u>	1.000%
		\$30,000,000	\$ 30,000,000.00	
<b><u>Matured</u></b>				
None this month				
<b><u>Called</u></b>				
Federal Farm Credit Bank	11/07/2016	\$ 5,000,000	<u>Call Value \$</u> \$ 5,000,000.00	1.570%
<b><u>Sales</u></b>				
None this month				
<b><u>Gain \$</u></b>				

**Portfolio by Estimated Maturity Term**  
(in millions - Total = \$213.8 at the end of November 2012)



The target rate for 2012 is 1.7%. Rates are now up slightly ahead of near record lows. Through November, the portfolio proceeds are below the earnings target level for 2012.

To support earnings or to reposition the portfolio, bonds may be sold. Gains on sales total \$234,805 to date.

The blue bars show the stated term. Red bars show the calls. Most of the five year bonds will be called early.



## Future Scan: Fed sets economic targets, continues purchases

- ❖ The **Federal Open Market Committee** (“FOMC” or “Fed” or “Committee”) met on December 11-12.
  - The Committee will continue purchasing additional agency mortgage-backed securities at a pace of \$40 billion per month. The Committee also will purchase longer-term Treasury securities after its program to extend the average maturity of its holdings of Treasury securities is completed at the end of the year, initially at a pace of \$45 billion per month. The purpose is to drive interest rates lower.
  - The Committee decided to keep the target range for the federal funds rate at 0 to 1/4 percent and currently anticipates that this exceptionally low range for the federal funds rate will be appropriate at least as long as the unemployment rate remains above 6-1/2 percent, inflation between one and two years ahead is projected to be no more than a half percentage point above the Committee’s 2 percent longer-run goal, and longer-term inflation expectations continue to be well anchored. (Source: Press Release, Governors of the Federal Reserve, December 12, 2012.)
- ❖ **Morgan Stanley Smith Barney (“MS”): “Living on the edge.”**
  - Any short-term fiscal patch will not be a final resolution. The lack of a solution will continue to subject the markets to uncertainty. The “kick the can down the road” solution is the most likely and would cause interest rates on treasury securities to remain in the same sluggish channel they have been in the last several months. If the income tax and payroll tax cuts are reversed and automatic cuts are implemented, interest rates would drop and may set new record lows. A broad based agreement (the least likely scenario) would pressure rates upward (about the 2.40% level for the 10-year treasury).
  - “The outlook for the next calendar year remains a sluggish one with 2013 real GDP rising a modest 1.4%. . . MS is estimating real GDP to rise only +0.7% in the fourth quarter of 2012.”
  - “The recent drop in the Index of Consumer Sentiment highlighted how the fiscal cliff is finally having a negative impact on confidence levels.” (Source: **Basis Points Fixed Income Strategy**, Kevin Flanagan and John Mackay, December 12, 2012.)
- ❖ The November 2012 Colorado Employment Situation was released on December 21, 2012. Using non-seasonally adjusted employment data, **Colorado’s unemployment rate** for November was estimated to be 7.5% compared to the national unemployment rate of 7.4%. Larimer County rose to 6.0%. Boulder County stayed at 5.7% and Weld County rose to 8.2%. Data for cities were nearly flat to a month ago. Loveland’s unemployment rate is estimated to be 6.8%, the same as October; down from 7.3% one year ago. Fort Collins was 5.8%, Boulder 5.2%, and Greeley 8.2%. (See chart.)
- ❖ **Recession Outlook:** “The economy has been walking a tightrope during much of year. However, the rebound in last week’s release of the November Personal Income data was quite encouraging. And this follows the strong rebound in November Industrial Production reported the previous week. In my opinion the economic data does not support the claim that a recession began in July 2012.” (Source: **Advisor Perspectives**, Doug Short, December 16, 2012)

[For more information regarding this report, please contact:](#)

***Alan Krcmarik, Executive Fiscal Advisor 970.962.2625 or [Alan.Krcmarik@cityofloveland.org](mailto:Alan.Krcmarik@cityofloveland.org)***

# Updated Colorado Labor Data

- ❑ Loveland’s workforce **contracted** in **November**, **down** 647 jobs from October 2012.
- ❑ Compared to one year ago in November, there are 323 **more** jobs.

