

**LOVELAND CITY COUNCIL**  
**LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS**  
**SPECIAL MEETING AND STUDY SESSION**  
**TUESDAY, MAY 28, 2013**  
**CITY COUNCIL CHAMBERS**  
**500 EAST THIRD STREET**  
**LOVELAND, COLORADO**

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

**6:30 P.M. SPECIAL MEETING - City Council Chambers**

**CALL TO ORDER**

**ROLL CALL**

**1. CITY MANAGER**

**Proposed Intergovernmental Agreement (IGA) with Larimer County for Tax Increment Sharing from the Amended Block 41-Finley's Addition Urban Renewal Plan Area**

This is an administrative action to approve an IGA with Larimer County for sharing of tax increment income from the amended URA which enabled the Brinkman Project ("North Catalyst") to proceed. The agreement provides for sharing tax increment with Larimer County at a rate which escalates over time, and terminates when the Urban Renewal Area expires in 2027.

- A. A motion to adopt Resolution #R-33-2013 of the Loveland City Council Approving an Intergovernmental Agreement Regarding the North Catalyst Urban Renewal Project in the Amended Block 41-Finley's Addition Urban Renewal Plan Area

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

- B. A motion to adopt Resolution #R-34-2013 of the Board of Commissioners of the Loveland Urban Renewal Authority Approving an Intergovernmental Agreement Regarding the North Catalyst Urban Renewal Project in the Amended Block 41-Finley's Addition Urban Renewal Plan Area

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

**ADJOURN THE SPECIAL MEETING AND CONVENE THE STUDY SESSION**

**STUDY SESSION AGENDA**

1. **CITY ATTORNEY** (presenter: John Duval 60 minutes)  
**Issues Related to a Potential Ban on Fracking and a Two-Year Moratorium on Fracking**

The City Attorney will give a presentation and address several of the issues that the City would be presented with if a ban on fracking was placed on the upcoming November 5<sup>th</sup> ballot by the Council or by a citizen initiative adopted by the voters.

This presentation will also address these same issues as they relate to the citizen-initiated proposal recently filed with the City Clerk, presenting to the voters in November, a charter amendment imposing a two-year moratorium on fracking giving the City that time to conduct a study determining the effects of fracking on property values and



**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:** 1  
**MEETING DATE:** May 28, 2013  
**TO:** City Council  
**FROM:** William D. Cahill, City Manager  
**PRESENTER:** Bill Cahill

**TITLE:**

Proposed Intergovernmental Agreement (IGA) with Larimer County for Tax Increment Sharing from the Amended Block 41-Finley's Addition Urban Renewal Plan Area

**RECOMMENDED CITY COUNCIL ACTION:**

Move to Adopt a Resolution of the Loveland City Council Approving an Intergovernmental Agreement Regarding the North Catalyst Urban Renewal Project in the Amended Block 41-Finley's Addition Urban Renewal Plan Area

**RECOMMENDED LURA ACTION:**

Move to Adopt a Resolution of the Board of Commissioners of the Loveland Urban Renewal Authority Approving an Intergovernmental Agreement Regarding the North Catalyst Urban Renewal Project in the Amended Block 41-Finley's Addition Urban Renewal Plan Area

**OPTIONS:**

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Adopt a motion continuing the item to a future Council meeting

**DESCRIPTION:**

This is an administrative action to approve an IGA with Larimer County for sharing of tax increment income from the amended URA which enabled the Brinkman Project ("North Catalyst") to proceed. The agreement provides for sharing tax increment with Larimer County at a rate which escalates over time, and terminates when the Urban Renewal Area expires in 2027.

**BUDGET IMPACT:**

- Positive  
 Negative  
 Neutral or negligible

**SUMMARY:**

In January 2013, the City Council approved the Brinkman project at 6<sup>th</sup> and Lincoln in downtown Loveland. The project approval involved several different actions, one of which was an amendment to the Block 41-Finley's Addition URA. This amendment, taken together with a minor amendment to the existing Downtown URA, provided tax increment financing (TIF) to make the Brinkman project possible.

Prior to the Council adoption actions, staff had met with Larimer County staff to discuss possible ways to share TIF revenues with Larimer County. This process was incomplete at the time of Council adoption in January. During Council discussion of the Brinkman project, Council directed that the efforts toward TIF revenue sharing continue and return to the Council for decision.

An Intergovernmental Agreement (IGA) which accomplishes the desired revenue sharing is now presented to the Council and LURA for approval. The Agreement is also being presented to the Larimer County Board of Commissioners for action at their meeting of May 28, 2013.

The Agreement was developed through negotiations with the County. The initial concept included the sharing of a lump sum of cash to the County, but the County indicated greater interest in a sharing of TIF revenue over the life of the URA project area. This Agreement applies to both property tax and sales tax TIF from the project area.

In brief, the proposed Agreement includes the following:

- Existing obligations of the URA, including payments established to Lincoln Place and to the City for the Brinkman project, will be paid first, together with a reserve to assure the ability to pay those obligations.
- The County will receive a portion of the remaining available tax increment. The County's portion begins in 2015 at 30% of the County's ordinary share of property taxes from the project area, and escalates over time to 50% of the County's ordinary share.
- The County is paid only from TIF, and if insufficient TIF is available, neither the City nor the Loveland Urban Renewal Authority (LURA) is responsible for payments beyond the available TIF.

The Agreement meets the needs of all parties by assuring that the project obligations of the URA are paid as a priority, and then provides for sharing available income with the County. If the project generates more TIF income than expected, then both the City and the County share in that benefit.

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**REVIEWED BY CITY MANAGER:**

*William D. Cabell*

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**LIST OF ATTACHMENTS:**

City Council Resolution  
LURA Resolution  
Intergovernmental Agreement

Lincoln Place TIF Projections & Obligations

**RESOLUTION #R-33-2013**

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING AN INTERGOVERNMENTAL AGREEMENT REGARDING THE NORTH CATALYST URBAN RENEWAL PROJECT IN THE AMENDED BLOCK 41-FINLEY'S ADDITION URBAN RENEWAL PLAN AREA**

**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 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 ("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 City and LURA desire to facilitate an urban renewal project to redevelop the property located at 541 N. Lincoln, Loveland, Colorado, to include a mixed use commercial, live/work, and multifamily development referred to as the "Project" on that real property located at 541 N. Lincoln Ave., Loveland, Colorado (the "Project Site"); and

**WHEREAS**, the City and LURA are parties to that certain Disposition and Development Agreement dated January 30, 2013 (the "Project Agreement") for the Project; and

**WHEREAS**, to facilitate the Project, the City and LURA have approved a minor modification to remove the Project Site (and other specified property) from the Downtown Plan Area and a major modification to add the Project Site (and other specified property) to the Finley's Addition Plan Area (the Finley's Addition Plan Area, the Project Site and other properties identified in the Expanded Finley's Addition Plan (as defined below) are referred to collectively as the "Expanded Finley's Addition Plan Area"); and

**WHEREAS**, the City submitted to the County the proposed Expanded Finley's Addition Urban Renewal Plan (the "Expanded Finley's Addition Plan") which contemplates the Project, together with the "impact report" as required by Section 31-25-107 (3.5) of the Act; and

**WHEREAS**, the City and LURA desire to provide for a payment of a portion of the tax increment attributable to the Expanded Finley's Addition Plan Area to the County as set forth in

this Agreement and as authorized in C.R.S. §31-25-107(11) to compensate the County for any minimal impact of the Project; and

**WHEREAS**, the County desires to acknowledge its consent to, and recommendation to the City of, inclusion of the County Building Site located at 205 E. 6<sup>th</sup> Street, Loveland, Colorado in the Expanded Finley’s Addition Plan Area and approval of the Expanded Finley’s Addition Plan; and

**WHEREAS**, as governmental entities in Colorado, the City, LURA, and the County 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 Regarding the North Catalyst Urban Renewal Project in the Amended Block 41- Finley’s Addition Urban Renewal Plan Area (“Intergovernmental Agreement”), attached hereto as **Exhibit A** and incorporated herein by reference, is hereby approved.

**Section 2.** That the City Manager is 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 of Loveland.

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

ADOPTED this 28<sup>th</sup> day of May, 2013.

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

ATTEST:

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

APPROVED AS TO FORM:

J. Yost Schmidt  
Deputy City Attorney



**INTERGOVERNMENTAL AGREEMENT REGARDING THE NORTH  
CATALYST URBAN RENEWAL PROJECT IN THE AMENDED BLOCK 41-  
FINLEY'S ADDITION URBAN RENEWAL PLAN AREA**

**THIS INTERGOVERNMENTAL AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and among the **COUNTY OF LARIMER, COLORADO**, a political subdivision of the State of Colorado ("**County**"), the **CITY OF LOVELAND, COLORADO**, a Colorado municipal corporation ("**City**"), and the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic ("**LURA**"), collectively referred to herein as the "**Parties**".

**RECITALS**

**WHEREAS**, the Loveland City Council (the "Council") created LURA by adopting Resolution #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 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 (the "Lincoln Place MFA") 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 an urban renewal project to redevelop the property located at 541 N. Lincoln, Loveland, Colorado, to include a mixed use commercial, live/work, and multifamily development referred to as the "North Catalyst Project" or "Project"; and

**WHEREAS**, the North Catalyst Project will be located on that real property located at 541 N. Lincoln Ave., Loveland, Colorado (the “North Catalyst Project Site” or “Project Site”); and

**WHEREAS**, the City, LURA, 541 N. Lincoln LLC (“Developer”) and Woodbury Strategic Partners Fund, LP (“Guarantor”) have entered into that certain Disposition and Development Agreement dated January 30, 2013 (the “Project Agreement”) for the Project; and

**WHEREAS**, to facilitate the Project, the City and LURA have approved a minor modification to remove the Project Site (and other specified property) from the Downtown Plan Area and a major modification to add the Project Site (and other specified property) to the Finley’s Addition Plan Area (the Finley’s Addition Plan Area, the Project Site and other properties identified in the Expanded Finley’s Addition Plan (as defined below) are referred to collectively as the “Expanded Finley’s Addition Plan Area”); and

**WHEREAS**, pursuant to Section 20.2 of the Project Agreement, which Section may be amended by the City and LURA without the consent of the Developer or Guarantor, LURA is obligated to pay to the City all TIF Revenue (as defined therein) attributable to the Expanded Finley’s Addition Plan Area in excess of the Lincoln Place Tax Increment; and

**WHEREAS**, the City submitted to the County the proposed Expanded Finley’s Addition Urban Renewal Plan (the “Expanded Finley’s Addition Plan”) which contemplates the Project, together with the “impact report” as required by Section 31-25-107 (3.5) of the Act; and

**WHEREAS**, LURA’s collection of the tax increment under the Expanded Finley’s Addition Plan includes both real property tax increment and City sales tax increment and will end on September 30, 2027, which is the same date that LURA’s collection of the tax increment in the Downtown Plan Area will end; and

**WHEREAS**, the City and LURA desire to provide for a payment of a portion of the tax increment attributable to the Expanded Finley’s Addition Plan Area to the County as set forth in this Agreement and as authorized in C.R.S. §31-25-107(11) to compensate the County for any minimal impact of the Project; and

**WHEREAS**, based on the terms and conditions of this Agreement, the Board of County Commissioners of the County desires to acknowledge its consent to, and recommendation to the City of, inclusion of the County Building Site located at 205 E. 6<sup>th</sup> Street, Loveland, Colorado (the “County Building Site”) in the Expanded Finley’s Addition Plan Area and approval of the Expanded Finley’s Addition Plan; and

**WHEREAS**, as governmental entities in Colorado, the Parties 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**, in consideration of the foregoing Recitals and the Parties' mutual covenants and agreements contained herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

1. **Inclusion of County Building Site and Approval of Plan.** The County, by execution of this Agreement, consents to inclusion of the County Building Site in the Expanded Finley's Addition Plan Area and approves the Expanded Finley's Addition Plan and Expanded Finley's Addition Plan Area.

2. **Allocation of Tax Increment from Expanded Finley's Addition Plan Area.** Section 20.2 of the Project Agreement is hereby amended, as between the City and LURA, to provide that tax increment (as hereinafter defined) from the Expanded Finley's Addition Plan Area shall be paid by LURA in accordance with the following provisions.

- a. **Definitions:** The following definitions shall apply for purposes of calculating that portion of tax increment to be paid to the City and County and to be retained by LURA.
  - i. "Tax Increment" shall mean tax revenues actually received by LURA during any calendar year during the Term of this Agreement, which are generated by (i) the levy of property taxes based on the incremental increase in property values within the Expanded Finley's Addition Plan Area; and (ii) the levy of City sales tax based on the incremental increase in sales subject to City sales tax within the Expanded Finley's Addition Plan Area.
  - ii. "Unobligated Tax Increment" shall mean Tax Increment actually received by LURA during any calendar year during the Term of the Agreement minus:
    - (1) All obligations payable by LURA and/or the City under the Lincoln Place MFA for the same calendar year; and
    - (2) All obligations payable by LURA to the City under the Project Agreement for the same calendar year, but not to exceed the maximum amount for such calendar year set forth on **Exhibit A** attached hereto and incorporated herein; and
    - (3) Payments by LURA into a reserve account for the foregoing obligations in an amount sufficient to maintain a reserve

balance which shall not exceed 20% of the total sum of payments due under (1) and (2) above (the "Reserve").

iii. "County Share" shall mean that portion of the Unobligated Tax Increment that would have been paid to the County in the absence of the existence of the Urban Renewal Plan.

b. **Calculation and Payment.** Commencing with calendar year 2015 (for 2014 real property taxes due and payable in 2015), LURA shall annually calculate and, to the extent of Tax Increment actually received by LURA and available for expenditure for such year, make the following payments in the following order:

- i. First: pay all amounts due under the Lincoln Place MFA;
- ii. Second: pay all amounts due to the City under the Project Agreement, but not to exceed the maximum amounts for such calendar year set forth on **Exhibit A** attached hereto and incorporated herein;
- iii. Third: retain all amounts due to fund the Reserve; and
- iv. Fourth: pay a portion of the County Share, if any, to the County according to the following schedule:

2015	Thirty percent (30%) of County Share
2016	Thirty percent (30%) of County Share
2017	Thirty percent (30%) of County Share
2018	Thirty percent (30%) of County Share
2019	Forty five percent (45%) of County Share
2020	Forty five percent (45 %) of County Share
2021	Forty five percent (45 %) of County Share
2022	Fifty percent (50%) of County Share
2023	Fifty percent (50%) of County Share
2024	Fifty percent (50%) of County Share
2025	Fifty percent (50%) of County Share
2026	Fifty percent (50%) of County Share
2027	Fifty percent (50%) of County Share

The payments due to the County as set forth above are referred to herein collectively as the "County Payment". The County Payment shall be cumulative and any portion of the County Payment not paid in any year shall carry forward to the subsequent year.

Notwithstanding the foregoing, neither the City nor LURA shall be obligated to make any payment to the County in excess of the amounts set forth above. Any portion of the County Payment that has

accumulated and remains unpaid as of September 30, 2027 when the Expanded Finley’s Addition Plan expires shall be extinguished.

- v. Fifth: the remaining Tax Increment, if any, shall remain the property of LURA to be used for purposes allowed by law, including payment pursuant to the Project Agreement.
- c. **Reserve.** The Reserve shall remain the property of LURA and, upon the expiration of the Expanded Finley’s Addition Plan, shall be paid by LURA to the City under the Project Agreement.

3. **Term.** The term of this Agreement shall commence upon its execution by all Parties and shall automatically terminate on September 30, 2027, when the Expanded Finley’s Addition Plan expires.

4. **Notice.** Any notice required or desired to be given by any party to this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; sent by telephone facsimile with a hard copy sent by regular mail; or sent by a nationally recognized receipted overnight delivery service, including United States Postal Service, United Parcel Service, Federal Express, or Airborne Express, for earliest delivery the next day. Any such notice shall be deemed to have been given as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit in the United States mail, postage prepaid; when by telephone facsimile, on the day sent if sent on a day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next day at 9 a.m.; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses and facsimile numbers of the mailing, transmitting, or delivering of notices shall be as follows:

If to **County:** County of Larimer  
 ATTN: County Manager  
 200 West Oak Street  
 Fort Collins, CO 80521  
 Fax: (970) 498-7006

With a copy to: Larimer County Attorney  
 Cortina Building  
 224 Canyon Avenue, Suite 200  
 P.O. Box 1606  
 Fort Collins, CO 80522

If to **City:** City of Loveland  
 ATTN: City Manager

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 **LURA**:

City of Loveland  
ATTN: City Manager  
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

Notice of a change of address or facsimile number of a Party shall be given in the same manner as all other notices as hereinabove provided.

5. **Assignment.** The Parties to this Agreement shall not be permitted to assign or transfer any of their interests, rights or obligations under this Agreement without the express prior written consent of the remaining Parties. Any assignment made without the required prior written consent of the other party shall be deemed null and void.

6. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by consent, their respective successors and assigns.

7. **Interpretation.** The terms and provisions of this Agreement have been negotiated among the parties and shall not be construed in favor of or against the party primarily responsible for the drafting of this Agreement.

8. **Jurisdiction and Venue.** The Parties stipulate and agree that in the event of any dispute arising out of this Agreement, venue shall be in the State District Court, 8<sup>th</sup> Judicial District, County of Larimer, State of Colorado.

10. **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

11. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision shall be fully severable and this Agreement shall be construed and enforced, and shall not be affected by the illegal, invalid or unenforceable provision or by the severance of such provision from this Agreement.

12. **Third Party Beneficiaries.** No rights created in favor of any party shall be construed as benefiting any person that is not a party to this Agreement.

13. **Specific Performance.** In the event of default in the performance of any of the terms or conditions of this Agreement, the nondefaulting party shall have the right, in addition to any other remedies provided by law or in equity, to an action for specific performance.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement as of the day and year first written above.

*[remainder of page intentionally left blank]*

**COUNTY:**

COUNTY OF LARIMER, COLORADO,  
a political subdivision of the State of  
Colorado

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

\_\_\_\_\_, Chair

Board of County Commissioners

**ATTEST:**

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

Clerk to the Board

**APPROVED AS TO FORM:**

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

County Attorney



**CITY:**

CITY OF LOVELAND, COLORADO,  
a home rule municipality

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
John R. Duval, City Attorney

**LURA:**

LOVELAND URBAN RENEWAL AUTHORITY,  
a Colorado body corporate and politic

By: \_\_\_\_\_  
Cecil A. Gutierrez, Chairman

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

**EXHIBIT A**

<u>YEAR</u>	<u>CITY PAYMENT</u>
2014	\$ 58,920.00
2015	\$152,920.00
2016	\$152,920.00
2017	\$250,270.00
2018	\$250,270.00
2019	\$250,270.00
2020	\$250,270.00
2021	\$250,270.00
2022	\$250,270.00
2023	\$250,270.00
2024	\$250,270.00
2025	\$250,270.00
2026	\$250,270.00
2027	<u>\$250,270.00</u>
TOTAL	\$3,117,730.00

*Note: The maximum payments due to the City as set forth above shall be cumulative and that portion of the maximum payment not paid in any year shall carry forward to the subsequent year. For example, if the amount paid to the City in 2014 is \$50,000.00, then \$8,920.00 shall carry forward, the amount due and payable in 2015 shall increase by \$8,920.00, and the maximum payment to the City for 2015 shall be \$161,840.00.*

**RESOLUTION #R-34-2013**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE LOVELAND URBAN RENEWAL AUTHORITY APPROVING AN INTERGOVERNMENTAL AGREEMENT REGARDING THE NORTH CATALYST URBAN RENEWAL PROJECT IN THE AMENDED BLOCK 41-FINLEY'S ADDITION URBAN RENEWAL PLAN AREA**

**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 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 ("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 City and LURA desire to facilitate an urban renewal project to redevelop the property located at 541 N. Lincoln, Loveland, Colorado, to include a mixed use commercial, live/work, and multifamily development referred to as the "Project" on that real property located at 541 N. Lincoln Ave., Loveland, Colorado (the "Project Site"); and

**WHEREAS**, the City and LURA are parties to that certain Disposition and Development Agreement dated January 30, 2013 (the "Project Agreement") for the Project; and

**WHEREAS**, to facilitate the Project, the City and LURA have approved a minor modification to remove the Project Site (and other specified property) from the Downtown Plan Area and a major modification to add the Project Site (and other specified property) to the Finley's Addition Plan Area (the Finley's Addition Plan Area, the Project Site and other properties identified in the Expanded Finley's Addition Plan (as defined below) are referred to collectively as the "Expanded Finley's Addition Plan Area"); and

**WHEREAS**, the City submitted to the County the proposed Expanded Finley's Addition Urban Renewal Plan (the "Expanded Finley's Addition Plan") which contemplates the Project, together with the "impact report" as required by Section 31-25-107 (3.5) of the Act; and

**WHEREAS**, the City and LURA desire to provide for a payment of a portion of the tax increment attributable to the Expanded Finley's Addition Plan Area to the County as set forth in

this Agreement and as authorized in C.R.S. §31-25-107(11) to compensate the County for any minimal impact of the Project; and

**WHEREAS**, the County desires to acknowledge its consent to, and recommendation to the City of, inclusion of the County Building Site located at 205 E. 6<sup>th</sup> Street, Loveland, Colorado in the Expanded Finley’s Addition Plan Area and approval of the Expanded Finley’s Addition Plan; and

**WHEREAS**, as governmental entities in Colorado, the City, LURA, and the County 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 URBAN RENEWAL AUTHORITY OF THE CITY OF LOVELAND, COLORADO:**

**Section 1.** That the Intergovernmental Agreement Regarding the North Catalyst Urban Renewal Project in the Amended Block 41- Finley’s Addition Urban Renewal Plan Area (“Intergovernmental Agreement”), attached hereto as **Exhibit A** and incorporated herein by reference, is hereby approved.

**Section 2.** That the Chairman of the Board of Commissioners of LURA is 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 LURA.

**Section 3.** That the Chairman and Secretary of the Board of Commissioners of LURA are hereby authorized and directed to execute the Intergovernmental Agreement on behalf of LURA.

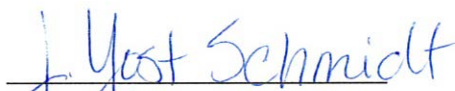
**Section 4.** That this Resolution shall take effect as of the date and time of its adoption.

ADOPTED this 28<sup>th</sup> day of May, 2013.

\_\_\_\_\_  
Cecil A. Gutierrez, Chairman

ATTEST:

\_\_\_\_\_  
Board Secretary  
APPROVED AS TO FORM:

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

**INTERGOVERNMENTAL AGREEMENT REGARDING THE NORTH  
CATALYST URBAN RENEWAL PROJECT IN THE AMENDED BLOCK 41-  
FINLEY’S ADDITION URBAN RENEWAL PLAN AREA**

**THIS INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and among the **COUNTY OF LARIMER, COLORADO**, a political subdivision of the State of Colorado (“**County**”), the **CITY OF LOVELAND, COLORADO**, a Colorado municipal corporation (“**City**”), and the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic (“**LURA**”), collectively referred to herein as the “**Parties**”.

**RECITALS**

**WHEREAS**, the Loveland City Council (the “Council”) created LURA by adopting Resolution #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 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 (the “Lincoln Place MFA”) 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 an urban renewal project to redevelop the property located at 541 N. Lincoln, Loveland, Colorado, to include a mixed use commercial, live/work, and multifamily development referred to as the “North Catalyst Project” or “Project”; and

**WHEREAS**, the North Catalyst Project will be located on that real property located at 541 N. Lincoln Ave., Loveland, Colorado (the “North Catalyst Project Site” or “Project Site”); and

**WHEREAS**, the City, LURA, 541 N. Lincoln LLC (“Developer”) and Woodbury Strategic Partners Fund, LP (“Guarantor”) have entered into that certain Disposition and Development Agreement dated January 30, 2013 (the “Project Agreement”) for the Project; and

**WHEREAS**, to facilitate the Project, the City and LURA have approved a minor modification to remove the Project Site (and other specified property) from the Downtown Plan Area and a major modification to add the Project Site (and other specified property) to the Finley’s Addition Plan Area (the Finley’s Addition Plan Area, the Project Site and other properties identified in the Expanded Finley’s Addition Plan (as defined below) are referred to collectively as the “Expanded Finley’s Addition Plan Area”); and

**WHEREAS**, pursuant to Section 20.2 of the Project Agreement, which Section may be amended by the City and LURA without the consent of the Developer or Guarantor, LURA is obligated to pay to the City all TIF Revenue (as defined therein) attributable to the Expanded Finley’s Addition Plan Area in excess of the Lincoln Place Tax Increment; and

**WHEREAS**, the City submitted to the County the proposed Expanded Finley’s Addition Urban Renewal Plan (the “Expanded Finley’s Addition Plan”) which contemplates the Project, together with the “impact report” as required by Section 31-25-107 (3.5) of the Act; and

**WHEREAS**, LURA’s collection of the tax increment under the Expanded Finley’s Addition Plan includes both real property tax increment and City sales tax increment and will end on September 30, 2027, which is the same date that LURA’s collection of the tax increment in the Downtown Plan Area will end; and

**WHEREAS**, the City and LURA desire to provide for a payment of a portion of the tax increment attributable to the Expanded Finley’s Addition Plan Area to the County as set forth in this Agreement and as authorized in C.R.S. §31-25-107(11) to compensate the County for any minimal impact of the Project; and

**WHEREAS**, based on the terms and conditions of this Agreement, the Board of County Commissioners of the County desires to acknowledge its consent to, and recommendation to the City of, inclusion of the County Building Site located at 205 E. 6<sup>th</sup> Street, Loveland, Colorado (the “County Building Site”) in the Expanded Finley’s Addition Plan Area and approval of the Expanded Finley’s Addition Plan; and

**WHEREAS**, as governmental entities in Colorado, the Parties 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**, in consideration of the foregoing Recitals and the Parties' mutual covenants and agreements contained herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

1. **Inclusion of County Building Site and Approval of Plan.** The County, by execution of this Agreement, consents to inclusion of the County Building Site in the Expanded Finley's Addition Plan Area and approves the Expanded Finley's Addition Plan and Expanded Finley's Addition Plan Area.

2. **Allocation of Tax Increment from Expanded Finley's Addition Plan Area.** Section 20.2 of the Project Agreement is hereby amended, as between the City and LURA, to provide that tax increment (as hereinafter defined) from the Expanded Finley's Addition Plan Area shall be paid by LURA in accordance with the following provisions.

- a. **Definitions:** The following definitions shall apply for purposes of calculating that portion of tax increment to be paid to the City and County and to be retained by LURA.
  - i. "Tax Increment" shall mean tax revenues actually received by LURA during any calendar year during the Term of this Agreement, which are generated by (i) the levy of property taxes based on the incremental increase in property values within the Expanded Finley's Addition Plan Area; and (ii) the levy of City sales tax based on the incremental increase in sales subject to City sales tax within the Expanded Finley's Addition Plan Area.
  - ii. "Unobligated Tax Increment" shall mean Tax Increment actually received by LURA during any calendar year during the Term of the Agreement minus:
    - (1) All obligations payable by LURA and/or the City under the Lincoln Place MFA for the same calendar year; and
    - (2) All obligations payable by LURA to the City under the Project Agreement for the same calendar year, but not to exceed the maximum amount for such calendar year set forth on **Exhibit A** attached hereto and incorporated herein; and
    - (3) Payments by LURA into a reserve account for the foregoing obligations in an amount sufficient to maintain a reserve



balance which shall not exceed 20% of the total sum of payments due under (1) and (2) above (the "Reserve").

iii. "County Share" shall mean that portion of the Unobligated Tax Increment that would have been paid to the County in the absence of the existence of the Urban Renewal Plan.

b. **Calculation and Payment.** Commencing with calendar year 2015 (for 2014 real property taxes due and payable in 2015), LURA shall annually calculate and, to the extent of Tax Increment actually received by LURA and available for expenditure for such year, make the following payments in the following order:

- i. First: pay all amounts due under the Lincoln Place MFA;
- ii. Second: pay all amounts due to the City under the Project Agreement, but not to exceed the maximum amounts for such calendar year set forth on **Exhibit A** attached hereto and incorporated herein;
- iii. Third: retain all amounts due to fund the Reserve; and
- iv. Fourth: pay a portion of the County Share, if any, to the County according to the following schedule:

2015	Thirty percent (30%) of County Share
2016	Thirty percent (30%) of County Share
2017	Thirty percent (30%) of County Share
2018	Thirty percent (30%) of County Share
2019	Forty five percent (45%) of County Share
2020	Forty five percent (45 %) of County Share
2021	Forty five percent (45 %) of County Share
2022	Fifty percent (50%) of County Share
2023	Fifty percent (50%) of County Share
2024	Fifty percent (50%) of County Share
2025	Fifty percent (50%) of County Share
2026	Fifty percent (50%) of County Share
2027	Fifty percent (50%) of County Share

The payments due to the County as set forth above are referred to herein collectively as the "County Payment". The County Payment shall be cumulative and any portion of the County Payment not paid in any year shall carry forward to the subsequent year.

Notwithstanding the foregoing, neither the City nor LURA shall be obligated to make any payment to the County in excess of the amounts set forth above. Any portion of the County Payment that has

accumulated and remains unpaid as of September 30, 2027 when the Expanded Finley’s Addition Plan expires shall be extinguished.

- v. Fifth: the remaining Tax Increment, if any, shall remain the property of LURA to be used for purposes allowed by law, including payment pursuant to the Project Agreement.
- c. **Reserve.** The Reserve shall remain the property of LURA and, upon the expiration of the Expanded Finley’s Addition Plan, shall be paid by LURA to the City under the Project Agreement.

3. **Term.** The term of this Agreement shall commence upon its execution by all Parties and shall automatically terminate on September 30, 2027, when the Expanded Finley’s Addition Plan expires.

4. **Notice.** Any notice required or desired to be given by any party to this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; sent by telephone facsimile with a hard copy sent by regular mail; or sent by a nationally recognized receipted overnight delivery service, including United States Postal Service, United Parcel Service, Federal Express, or Airborne Express, for earliest delivery the next day. Any such notice shall be deemed to have been given as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit in the United States mail, postage prepaid; when by telephone facsimile, on the day sent if sent on a day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next day at 9 a.m.; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses and facsimile numbers of the mailing, transmitting, or delivering of notices shall be as follows:

If to **County:** County of Larimer  
 ATTN: County Manager  
 200 West Oak Street  
 Fort Collins, CO 80521  
 Fax: (970) 498-7006

With a copy to: Larimer County Attorney  
 Cortina Building  
 224 Canyon Avenue, Suite 200  
 P.O. Box 1606  
 Fort Collins, CO 80522

If to **City:** City of Loveland  
 ATTN: City Manager

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 **LURA**:

City of Loveland  
ATTN: City Manager  
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

Notice of a change of address or facsimile number of a Party shall be given in the same manner as all other notices as hereinabove provided.

5. **Assignment.** The Parties to this Agreement shall not be permitted to assign or transfer any of their interests, rights or obligations under this Agreement without the express prior written consent of the remaining Parties. Any assignment made without the required prior written consent of the other party shall be deemed null and void.

6. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by consent, their respective successors and assigns.

7. **Interpretation.** The terms and provisions of this Agreement have been negotiated among the parties and shall not be construed in favor of or against the party primarily responsible for the drafting of this Agreement.

8. **Jurisdiction and Venue.** The Parties stipulate and agree that in the event of any dispute arising out of this Agreement, venue shall be in the State District Court, 8<sup>th</sup> Judicial District, County of Larimer, State of Colorado.

10. **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

11. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision shall be fully severable and this Agreement shall be construed and enforced, and shall not be affected by the illegal, invalid or unenforceable provision or by the severance of such provision from this Agreement.

12. **Third Party Beneficiaries.** No rights created in favor of any party shall be construed as benefiting any person that is not a party to this Agreement.

13. **Specific Performance.** In the event of default in the performance of any of the terms or conditions of this Agreement, the nondefaulting party shall have the right, in addition to any other remedies provided by law or in equity, to an action for specific performance.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement as of the day and year first written above.

*[remainder of page intentionally left blank]*

**COUNTY:**

COUNTY OF LARIMER, COLORADO,  
a political subdivision of the State of  
Colorado

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

\_\_\_\_\_, Chair

Board of County Commissioners

**ATTEST:**

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

Clerk to the Board

**APPROVED AS TO FORM:**

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

County Attorney

**CITY:**

CITY OF LOVELAND, COLORADO,  
a home rule municipality

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

**ATTEST:**

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
John R. Duval, City Attorney

**LURA:**

LOVELAND URBAN RENEWAL AUTHORITY,  
a Colorado body corporate and politic

By: \_\_\_\_\_  
Cecil A. Gutierrez, Chairman

**ATTEST:**

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

**EXHIBIT A**

<u>YEAR</u>	<u>CITY PAYMENT</u>
2014	\$ 58,920.00
2015	\$152,920.00
2016	\$152,920.00
2017	\$250,270.00
2018	\$250,270.00
2019	\$250,270.00
2020	\$250,270.00
2021	\$250,270.00
2022	\$250,270.00
2023	\$250,270.00
2024	\$250,270.00
2025	\$250,270.00
2026	\$250,270.00
2027	<u>\$250,270.00</u>
TOTAL	\$3,117,730.00

*Note: The maximum payments due to the City as set forth above shall be cumulative and that portion of the maximum payment not paid in any year shall carry forward to the subsequent year. For example, if the amount paid to the City in 2014 is \$50,000.00, then \$8,920.00 shall carry forward, the amount due and payable in 2015 shall increase by \$8,920.00, and the maximum payment to the City for 2015 shall be \$161,840.00.*







**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

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**AGENDA ITEM:** 1  
**MEETING DATE:** 5/28/2013  
**TO:** City Council  
**FROM:** John Duval, City Attorney's Office  
**PRESENTER:** John Duval, City Attorney

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**TITLE:**

Issues Related to a Potential Ban on Fracking and a Two-Year Moratorium on Fracking

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**DESCRIPTION:**

The City Attorney will give a presentation and address several of the issues that the City would be presented with if a ban on fracking was placed on the upcoming November 5<sup>th</sup> ballot by the Council or by a citizen initiative adopted by the voters.

This presentation will also address these same issues as they relate to the citizen-initiated proposal recently filed with the City Clerk, presenting to the voters in November, a charter amendment imposing a two-year moratorium on fracking giving the City that time to conduct a study determining the effects of fracking on property values and human health risks.

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**SUMMARY:**

This past March, when City Council adopted its ordinance to regulate oil and gas activities in Loveland, four members of Council requested this presentation.

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**REVIEWED BY CITY MANAGER:**

**LIST OF ATTACHMENTS:**

PowerPoint Presentation  
Article Regarding Lifting Fracking Ban

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# **ISSUES RELATED TO A POTENTIAL BAN AND A TWO-YEAR MORATORIUM ON FRACKING**

**MAY 28, 2013, COUNCIL STUDY SESSION**

**JOHN DUVAL, CITY ATTORNEY**

## **Have any bills been adopted by the General Assembly this past session which negatively or positively affect local control of oil and gas operations?**

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- ▶ No
- ▶ With no new legislation, existing appellate court decisions related to limits on local control of oil and gas activities remain unaffected

## What is the status of the fracking bans in Longmont and Fort Collins?

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- ▶ The Colorado Oil and Gas Association's lawsuit against Longmont is still in the trial court and no significant court rulings have been issued
- ▶ The Fort Collins Council adopted a fracking ban in March, but exempted oil and gas wells and pad sites existing in the city on February 19, 2013, provided the operator has entered into an operator agreement with the city. Fort Collins has so far entered into one operator agreement, but has not yet been sued.

# Are there any advantages or disadvantages to Council placing a fracking ban on the ballot versus it happening through a citizen initiative?

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- ▶ No procedural advantages or disadvantages
- ▶ Unlike Fort Collins' charter which **only** allows its council to amend or repeal a voter-approved ordinance if the ordinance is placed on the ballot by the council, Loveland's charter has no such limitations
- ▶ Loveland Charter § 7-4(a) allows Council to amend or repeal voter-approved ordinances, regardless of whether placed on the ballot by the Council or by citizen initiative, at any time by a two-thirds vote of the entire Council (six votes) or by a majority vote of the entire Council (five votes) at any time one year after the election
- ▶ An amendment to Loveland's charter can also be placed on the ballot by Council or by a citizen initiative, which, if approved, can only be amended or repealed by a subsequent vote of the citizens
- ▶ One substantive advantage to Council placing a fracking ban on the ballot is the ability to control the wording of the proposed ordinance or charter amendment

## **What is the Council's deadline for placing a ballot question for a fracking ban on the November 5 ballot?**

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- ▶ If Council wishes to place a fracking-ban question on the ballot, whether as an ordinance or as a charter amendment, it must adopt on second reading by its August 20 meeting an ordinance submitting that ballot question to the voters



## **What are the important deadlines for placing on the November ballot the citizen-initiated ballot question to amend the Charter to impose a two-year moratorium on fracking?**

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- ▶ The proponents of the Charter amendment will probably need to file with the City Clerk by August 19 their petitions with the requisite number of valid signatures
- ▶ The Council will need to adopt at its September 3<sup>rd</sup> meeting a resolution submitting the Charter amendment ballot question to the voters on November 5



# What might be the legal implications to the City in enforcing a voter-approved ban or a two-year moratorium on fracking?

P. 41

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- ▶ Both are likely to be challenged in the courts by the State, the Colorado Oil and Gas Association, an oil and gas operator wishing to drill in Loveland or by a mineral-interest owner in Loveland, but moratorium less likely to be challenged
- ▶ Under existing appellate court decisions, *Voss v. Lundvall* in particular (the Greeley decision), a fracking ban is likely to be struck down by the courts
- ▶ If the ban is struck down, the City may be subject to “temporary taking” claims from affected oil and gas operators and mineral-interest owners and the City would likely have to pay the suing party’s attorney fees and court costs
- ▶ Moratoria on land uses are generally upheld by the courts “so long as the duration is reasonable under the circumstances and the enactment was made in good faith without discrimination” and, in such circumstances, there is no “temporary taking”
- ▶ The City would also be required to pay its attorney fees if it retains outside legal counsel and to pay its court costs in defending either a ban or a moratorium

# If a ban or two-year moratorium on fracking is enacted by the voters, would the City be required to defend them in the courts?

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- ▶ Nothing under State law or in the City's Charter or Code requires that a defense be asserted by the City in the courts
- ▶ Consideration would need to be given as to whether a "good faith" defense could be asserted by the City in the litigation
- ▶ Under Rule 11 of the Colorado Rules of Civil Procedure, the City's legal counsel would be required to certify in any pleadings filed with the court in defense of the ban that such defense "is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law"
- ▶ Rule 3.1 of the Colorado Rules of Professional Conduct governing lawyers has the same requirement for being able to assert a good faith defense, the violation of which could subject the City's legal counsel to disciplinary action ranging from public censure to disbarment
- ▶ *Voss v. Lundvall* calls into question the availability of a good faith defense to a home rule city's fracking ban
- ▶ It is more likely that a good faith defense would exist with regard to a two-year moratorium to be used by the City to study the impacts of fracking

# Questions?

## Fort Collins City Council lifts fracking ban on Prospect Energy

Written by Kevin Duggan  
May 22, 2013 |

coloradoan.com

The only oil and gas production company working in Fort Collins can go back to work.

The City Council late Tuesday voted to lift a citywide moratorium on oil and gas operations as it applies to Prospect Energy. The vote was 4-3, with council members Ross Cunniff, Bob Overbeck and Lisa Poppaw opposed.

Council members also approved by the same vote an amended operating agreement with Prospect Energy that spells out how it may work in the Fort Collins Field, an oil field on the northeast corner of city limits, as well as a 2-square-mile area near the Anheuser-Busch brewery.

The agreement holds the company to standards that are stricter than those of the Colorado Oil and Gas Conservation Commission, or COGCC, which regulates the oil and gas industry statewide, city officials said.

The vote came after an emotional discussion among council members and after dozens of residents urged the council to stand up to the oil company and not allow it to drill and frack new wells within city limits.

Overbeck said residents are concerned about the impact oil drilling and hydraulic fracturing, or fracking, could have on their health, and they should be protected.

“I come down on the side of sound science and health and safety,” Overbeck said.

But Mayor pro tem Gerry Horak said the council had little choice on the matter.

To continue the ban on Prospect Energy would invite a lawsuit the city would have little chance of winning, he said.

The city would end up spending a tremendous amount of taxpayer money defending itself in court and the oil company could operate under less stringent COGCC rules, he said. The moratorium is scheduled to expire in August.

The agreement holds Prospect Energy to standards intended to ensure the health and safety of the public and the environment, he said.

“We have an agreement that is far and above anything else in the state,” Horak said.

Under the agreement, the company may not re-enter plugged and abandoned wells in the Fort Collins Field or in the undeveloped acreage, or UDA, near the Anheuser-Busch brewery where it holds surface rights.

The company also would follow best management practices with its wells and carry \$10 million in liability insurance to cover the cost of cleanup in the event of an accident.

The agreement also requires a 1,000-foot setback between wells and homes, and a 1,500-foot from future school sites.

Prior to the vote, speaker after speaker urged the council to keep the city’s ban on fracking in place even with the threat of legal action.

Longtime Fort Collins resident and attorney John Gascoyne said the city could face class-action lawsuits if it fails to protect the health of residents.

“Let’s don’t let possible lawsuits from any direction stop the City Council from doing the right thing and protecting the citizens,” he said.

The council approved a ban on hydraulic fracturing, or fracking, in March. But the action had the caveat that an agreement could be reached with individual companies if they meet stringent environmental standards.

Fracking is a commonly used process that pushes oil and gas deposits from shale deposits deep underground by forcing water, sand and chemicals down a well under high pressure.

Critics say fracking poses a serious contamination threat to groundwater and air quality and could expose nearby residents to carcinogenic materials.

Industry representatives say the practice has not been clearly connected to health problems.

In other action

### **In other action**

The Fort Collins City Council on Tuesday:

- Approved on first reading an ordinance authorizing the city to buy solar energy from local owners of photovoltaic systems for distribution to the community for 20 years. The goal of the Fort Collins Utilities Solar Power Purchase Program is to encourage the installation of solar systems on houses and businesses.
- Appropriated \$1.3 million for moving a Platte River Power Authority transmission power line as part of preparing the Link-n-Greens site for redevelopment by Woodward. By contract, Woodward fronted the money for moving the line to the city.

Appeal denied

### **Appeal denied**

The City Council on Tuesday upheld the approval of the Carriage House apartment development by the Planning and Zoning Board.

The planning board's decision was appealed to the council by a neighbor who claimed a traffic impact study done for the developer grossly underestimated the number of trips that would be generated by the project near the CSU campus.

The project calls for tearing down houses at 1305 and 1319 S. Shields St. and replacing them with five, three-story multifamily buildings with 57 units and a total of 97 bedrooms.

The council found the planning board conducted a fair hearing on the project's development plan.