

AGENDA
LOVELAND CITY COUNCIL MEETING
LOVELAND GID #1 BOARD OF DIRECTORS
LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS
TUESDAY, NOVEMBER 5, 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 or 970-962-3319.

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

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PROCLAMATION – ANIMAL HOSPICE AWARENESS DAY (Dr. Kathleen Cooney)

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 CLERK** (presenter: Terry Andrews)
APPROVAL OF MINUTES
1. **A motion to approve the City Council minutes from the October 8, 2013 Special Meeting & Study Session.**
This is an administrative action to approve the October 8, 2013 Special Meeting & Study Session Minutes.
2. **A motion to approve the City Council minutes from the October 15, 2013 Regular Meeting.**

This is an administrative action to approve the October 15, 2013 Regular Meeting Minutes.

2. **CITY MANAGER** (presenter: Bill Cahill)
APPOINTMENT OF A MEMBER TO THE SENIOR ADVISORY BOARD
A motion to appoint Julie Demaree to the Senior Advisory Board for a partial term effective until December 31, 2015.
 This is an administrative action recommending the appointment of a member to the Senior Advisory Board.

3. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)
KING OF GLORY ANNEXATION
 1. **A motion to approve and order published on second reading an Ordinance Approving the Annexation of Certain Territory to the City of Loveland, Colorado, to be Known and Designated as "King of Glory Addition" to the City of Loveland.**
 A legislative action to adopt an ordinance on second reading annexing approximately 4.28 acres to be known as the King of Glory Addition.
 2. **A motion to approve and order published on second reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "King of Glory Addition" to the City of Loveland.**
 A quasi-judicial action to adopt an ordinance on second reading zoning the King of Glory Addition R1 – Developing Low Density Residential.
 The ordinances were adopted unanimously on first reading by City Council on October 15, 2013.

4. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)
ST. JOHN ADDITION VACATION OF PUBLIC RIGHT-OF-WAY
A motion to approve and order published on second reading an Ordinance Vacating a Portion of a Public Right-of-Way Located in the St. John Addition to the City of Loveland, City of Loveland, Larimer County, Colorado.
 This is a legislative action to adopt an ordinance on second reading vacating the public right-of-way for a portion of Truman Avenue located within the St. John Addition and Hill Top Addition. The applicants for the request are the St. John Church and the Thompson School District. The ordinance was adopted unanimously on first reading by City Council on October 15, 2013.

5. **DEVELOPMENT SERVICES** (presenter: Brian Burson)
AMENDMENTS TO THE ZONING REGULATIONS FOR BIG THOMPSON FARMS ADDITION
A motion to make the findings in Section VII of the Planning Commission Staff Report Dated September 9, 2013, and Based on those Findings, Adopt and Order Published on Second Reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for Certain Property Located in the Big Thompson Farms Addition, City of Loveland, Larimer County, Colorado.
 This is a quasi-judicial action by the City Council. This ordinance on second reading will rezone the easterly portion of Tract A of the Big Thompson Farms Addition, consisting of 15.26 acres, from R1, Developing Low-Density Residential District to DR, Developing Resources District. The property is located between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River corridor. On October 15, 2013, City Council unanimously approved a resolution amending the

Comprehensive Plan Land Use Map (from a land use classification of Low Density Residential to Development Reserve) and unanimously adopted the rezoning ordinance on first reading.

6. **DEVELOPMENT SERVICES** (presenter: Bethany Clark)
HISTORIC LANDMARK AMENDMENT FOR LOVELAND FEED & GRAIN BUILDING
A motion to approve and order published on second reading an Ordinance Amending Ordinance #4971 Designating as a Historic Landmark the Loveland Feed & Grain Building Located at 130 West 3rd Street in Loveland, Colorado.
 This is a legislative action to adopt an ordinance on second reading amending Ordinance #4971, which in 2005, designated as a Historic Landmark the Loveland Feed & Grain building located at 130 West 3rd Street. The proposed ordinance modifies the legal description of the historic designation, to eliminate from that legal description property west of the Loveland Feed and Grain building, on which Artspace LP proposes to construct a new multifamily affordable housing project. On October 15, 2013, City Council unanimously approved the ordinance on first reading.

7. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)
HOUSE OF NEIGHBORLY SERVICE GRANT & FEE WAIVER AGREEMENT AND SUPPLEMENTAL APPROPRIATION FOR THE COMMUNITY LIFE CENTER
A motion to approve and order published on second reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget to Provide Incentives to House of Neighborly Service for the Community Life Center.
 This is an administrative action on second reading to approve a supplemental appropriation ordinance of \$500,000 from the Council Reserve Fund. The agreement provides a total package valued at \$780,516.14 that includes reimbursements for public improvements, a matching grant, and fee waivers. On October 15, 2013, City Council unanimously approved the first reading of the ordinance and Resolution #R-88-2015 authorizing the City Manager to sign a Grant and Fee Waiver Agreement with the House of Neighborly Service (HNS) for the construction of the "*Community Life Center*" at 1511 East 11th Street.

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

8. **PUBLIC WORKS** (presenter: Keith Reester)
SUPPLEMENTAL APPROPRIATION TO THE GID #1 FOR DOWNTOWN PARKING IMPROVEMENTS
A motion to approve and order published on second reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 Loveland General Improvement District #1 for Downtown Parking Improvements.
 This is an administrative action. The ordinance on second reading appropriates an additional \$20,000 from reserves for the construction of the new parking lot on Railroad Avenue. This action brings the total project budget to \$90,000. The appropriation is from reserves reducing the flexibility to fund other projects. This ordinance was approved on first reading unanimously by City Council at the October 15, 2013 regular meeting.

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

9. **CITY CLERK** (presenter: Terry Andrews)
PUBLIC HEARING
VENDORS CODE AMENDMENT
A motion to approve and order published on first reading an Ordinance Amending the Loveland Municipal Code at Chapter 12.30 Concerning Licensing of Vendors in Public Rights-of-Way and Certain Other Public Places.
This is a legislative action. City Council directed Staff to draft an ordinance for consideration that would allow mobile vendors to be permitted to vend in the City of Loveland. This ordinance on first reading allows Staff to license mobile vendors in the City and defines the parameters under which the use may be permitted. Licensees will be subject to all other Restrictions in Chapter 12.30 for mobile vendors.
10. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)
PUBLIC HEARING
PARK LANE ADDITION AMENDMENT TO ORDINANCE #1587
A motion to approve and order published on first reading an Ordinance Amending Ordinance 1587 to Modify a Condition Set Forth Therein Pertaining to the Annexation and Zoning of the Park Lane Addition to the City of Loveland, Larimer County, Colorado.
This is a legislative action to adopt an ordinance on first reading modifying a condition on the Annexation Ordinance #1587 of the Park Lane Addition. The applicant for the request is Tribus Anstalt (property owner).
11. **FIRE RESCUE** (presenter: Randy Mirowski)
INTERGOVERNMENTAL MUTUAL AID AGREEMENT WITH LARAMIE COUNTY FIRE
A motion to adopt Resolution #R-91-2013 Approving an Intergovernmental Mutual Aid Agreement Between the Loveland Fire Rescue Authority and the Laramie County Fire District #2.
This is an administrative action to consider a resolution approving an intergovernmental mutual aid agreement between the Loveland Fire Rescue Authority (LFRA) and the Laramie County Fire District #2. The agreement was approved by the LFRA Board on October 10, 2013.
12. **FINANCE** (presenter: John Hartman)
LFRA SUPPLEMENTAL APPROPRIATION FOR 2013 LARIMER COUNTY FLOOD EXPENDITURES
A motion to adopt Resolution #R-92-2013 Approving the Loveland Fire Rescue Authority's 2013 Supplemental Budget and Appropriation for 2013 Larimer County Flood Expenditures.
This is an administrative action. The resolution provides for Council approval of supplemental changes to the Loveland Fire Rescue Authority 2013 Budget to appropriate funding related to the 2013 Flood response. The Council approval of the budget is required for the Authority's budget to be in effect. The resolution provides approval of the budget changes for additional expenses related to the 2013 Flood response. Implementation requires an additional contribution from the City of \$121,270 to be appropriated from reserves, reducing the flexibility for other projects. The City's contribution was approved in Ordinance #5818, approved by City Council on October 15, 2013.
13. **FINANCE** (presenter: Brent Worthington)
UTILITY RELIEF PROGRAM RELATED TO 2013 FLOOD

A motion to adopt Resolution #R-93-2013 Approving the City of Loveland Utility Relief Program to Assist City of Loveland Utility Customers Impacted by the 2013 Flood.

This is an administrative action. This resolution provides for the forgiveness of certain City of Loveland utility bills for utility customers who were affected by the Flood of 2013. If the resolution is approved there will be a relatively small decrease in revenues.

**14. FINANCE (presenter: John Hartman)
PUBLIC HEARING**

SUPPLEMENTAL APPROPRIATION FOR 2013 BUDGET WRAP-UP

A motion to approve and order published on first reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget.

This is an administrative action. Each year in November, staff brings a "wrap-up" ordinance to address any remaining issues and insure there are sufficient appropriations to meet projected expenditures. The ordinance is necessary to resolve several year-end issues and finalize the 2013 budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year. Revenues and fund balance of \$4,152,540 across several funds is appropriated. The appropriations are primarily funded by reserves reducing the flexibility to fund other projects. Grant and donation revenue is included to offset some of the costs.

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

EMERGENCY ORDINANCE FOR AMENDING ORDINANCE #5817 TEMPORARILY WAIVING BUILDING PERMIT FEES

A motion to approve and order published on first and only reading an Emergency Ordinance of the Loveland City Council Amending Ordinance #5817 Temporarily Waiving Building Permit Fees and Use Tax With Respect to Building Permits for the Renovation or Repair of Structures Located Within Loveland City Limits that Were Damaged by the 2013 Flood.

This is a legislative action considering an Emergency Ordinance to amend Ordinance #5817 waiving the building permit fees and construction materials use taxes for residential and nonresidential structures which are located within Loveland city limits and were damaged by the Flood. Ordinance #5187 was unanimously approved by Council on October 15, 2013, with the coversheet stating building permit applications must be made and accepted as complete by the City's Building Division during the program period. The amendment changes the ordinance language to clarify that the building permit applications must be submitted and deemed complete between October 15 and December 13, 2013. The building permit can be issued at any time thereafter and the applicant can still take advantage of the fee waiver. Approval of this emergency ordinance on first and only reading would require an affirmative vote of 2/3 of the entire City Council (6 votes).

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

EMERGENCY ORDINANCE FOR BUSINESS FLOOD RELIEF AND LOVELAND DISASTER RECOVERY FUND AGREEMENT

1. A motion to approve an order published on first and only reading an Emergency Ordinance enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for a Business Flood Relief Program to Aid

Recovery from the 2013 Flood.

This is an administrative action. The ordinance provides funding for a Business Flood Relief Program to be conducted by the Loveland Chamber of Commerce. Approval of this emergency ordinance on first and only reading would require an affirmative vote of 2/3 of the entire City Council (6 votes).

2. A motion to adopt Resolution #R-94-2013 Approving an Agreement with the Loveland Chamber of Commerce for the Purpose of Operating the Loveland Disaster Recovery Fund

The resolution approves an agreement with the Loveland Chamber of Commerce to oversee and administer the business grant program. The program would be funded by fund balance in the Council Capital Reserve in the amount of \$200,000 and would reduce the flexibility to fund other programs.

17. DEVELOPMENT SERVICES (presenter: Karl Barton)
PUBLIC HEARING

TOWN OF JOHNSTOWN IGA REGARDING THE OVERLAP AREA**A motion to approve Resolution #R-95-2013 of the Loveland City Council Adopting the Intergovernmental Agreement Between the City of Loveland and Town of Johnstown.**

This is an administrative action to adopt a resolution approving the Intergovernmental Agreement (IGA) between the City of Loveland and the Town of Johnstown. The agreement defines the Overlap Area and establishes a cooperative process to be used by the two municipalities when processing annexation applications from property owners located in the Overlap Area. The Overlap Area would remain within the Growth Management Areas of both communities.

18. CITY ATTORNEY (presenter: John Duval)
FIFTH AMENDMENT FOR CENTERRA MFA

A motion to adopt Resolution #R-96-2013 of the Loveland City Council Approving the Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement for the Addition of Two Regional Improvements.

This is an administrative action. It is a resolution to approve a Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement to add two new "Regional Improvements" to the five Regional Improvements currently identified in the Centerra MFA.

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

19. CITY ATTORNEY (presenter: John Duval)
FIFTH AMENDMENT FOR CENTERRA MFA

A motion to adopt Resolution #R-97-2013 of the Loveland Urban Renewal Authority Approving the Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement for the Addition of Two Regional Improvements.

This is an administrative action. It is a resolution to approve a Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement to add two new "Regional Improvements" to the five Regional Improvements currently identified in the Centerra MFA.

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

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**

20. **HUMAN RESOURCES** (presenter: Julia Holland)
COMPENSATION FOR THE CITY MANAGER AND CITY ATTORNEY
 1. A motion to approve Resolution #R-98-2013 of the Loveland City Council Regarding the Compensation of the City Manager.
 2. A motion to approve Resolution #R-99-2013 of the Loveland City Council Regarding the Compensation of the City Attorney.

These are administrative actions regarding compensation of the City Attorney and the City Manager. As a result of the Executive Session and completion of evaluations of the City Manager and City Attorney, City Council may consider a merit increase and approve resolutions regarding compensation for the City Manager and City Attorney.

21. **WATER & POWER** (presenter: Larry Howard)
HOME SUPPLY/WTP DIVERSION STRUCTURE REPAIR AGREEMENT

A motion Directing the City Manager to Negotiate and Enter into an Agreement with the Consolidated Home Supply Irrigating & Reservoir Company ("Home Supply"), in Consultation with the City Attorney and on Terms Favorable to the City, Pursuant to Which the City Will Provide Financing to the Home Supply in an Amount not to Exceed \$400,000 to be Applied Toward the Cost of Repairing the Home Supply's Diversion Structure on the Big Thompson River

Consolidated Home Supply Irrigating & Reservoir Company (Home Supply) sustained significant damage in the September 13, 2013 Flood Disaster at its diversion structure shared diversion point on the Big Thompson River for the Home Supply and City of Loveland. This dam structure is used by the City under the terms of a December 19, 1895 Agreement with Home Supply to divert water directly from the Big Thompson River through Loveland's diversion structure and into a pipeline that flows into the water treatment plant at Chasteen Grove. In an effort to allow timely diversions of historic water rights, Home Supply is working to get the dam repaired, and has requested financial assistance from the City of Loveland. At the October 15, 2013 City Council

meeting, City Staff presented information and then City Council received comments from the Home Supply regarding the status of repairs and the amount of financial assistance they would like to receive. City Council directed Staff to work on a contract document that would evaluate options while considering City Council's comments and return with a recommendation. At this time City Staff is requesting permission to work with Home Supply to negotiate an agreement with the Home Supply Company for repairs.

ADJOURN



CITY COUNCIL

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PROCLAMATION

- WHEREAS** Nov. 2, 2013 is nationally recognized as Animal Hospice Awareness Day, aiming to educate veterinarians and pet owners about pet hospice in order to make an informed decision when the time comes;
- WHEREAS** The month of November has been recognized as National Animal Hospice Awareness Month and offers an opportunity to discuss pet hospice and its differences and similarities to human hospice;
- WHEREAS** Northern Colorado is home to many loveable pets and loyal pet owners – many whom would do whatever necessary to keep their pets safe and comfortable;
- WHEREAS** The concept of animal hospice has recently re-emerged thanks to dedicated individuals and veterinary organizations. Their hope is that families, and veterinary providers alike, recognize that dying animals, like people, have special needs and therefore the level of end-of-life care must remain high until a natural death occurs or euthanasia is chosen;
- WHEREAS** Dr. Kathleen Cooney and Home to Heaven are passionate about pet end-of-life care and have been on a mission to educate pet owners on this often-avoided part of life.
- WHEREAS** Dr. Cooney is a local veterinarian who has been nationally recognized for her work in pet end-of-life care and pet hospice, making the process more comforting and gentle for pets and more compassionate for pet owners.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim November 2, 2013, as

ANIMAL HOSPICE AWARENESS DAY

in Loveland, Colorado.

Signed this 5th day of November, 2013

Cecil A. Gutierrez, Mayor

MINUTES
LOVELAND CITY COUNCIL
SPECIAL MEETING & STUDY SESSION
TUESDAY, OCTOBER 8, 2013
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

5:00 P.M. SPECIAL MEETING - CITY COUNCIL CHAMBERS

SPECIAL MEETING AGENDA

CALL TO ORDER

Mayor Gutierrez called the Special Meeting of the Loveland City Council to order on the above date at 5:00 PM in the City Manager's Conference Room.

ROLL CALL

Councilors present: Mayor Gutierrez, Klassen, Trenary, Shaffer, McKean, Taylor, Farley, Fogle, and Clark.

1. **HUMAN RESOURCES** (presenter: Julia Holland)
Executive Session to Evaluate Performance of Council Appointed Staff
City Attorney, John Duval introduced this item to Council. **Councilor Taylor moved that the City Council go into executive session as authorized in C.R.S. Sections 24-6-402(4)(f) and (4)(g) and in Loveland Charter Sections 4-4(c)(5) and (c)(6) for the purpose of considering personnel matters, the annual evaluations of the City Manager, Municipal Judge, and City Attorney, and concerning these matters, to create, receive, consider and discuss documents not subject to public inspection under the Colorado Open Records Act, such as work-product documents. The motion, seconded by Councilor Trenary carried with all councilors present voting in favor thereof. Council recessed from the Executive Session at 6:45 p.m.**

2. **CITY MANAGER** (presenter: Bill Cahill)
Discussion of Possible Action Regarding Flood Related Issues
Mayor Gutierrez reconvened the Special Meeting in the City Council Chambers at 6:53 p.m. City Manager, Bill Cahill spoke about the need for this item to be heard by Council. Water and Power Director, Steve Adams presented this item to Council. After the flood and extensive damage to Highway 34, the CDOT contractor, Kiewit Corporation, asked to use the flood and dam removal debris for reconstruction of the highway. The Idylwilde Dam was heavily compromised and it was determined that it should be removed. Last week within 48 hours, all the agencies involved came together to get approval for the dam's removal. Discussion ensued regarding the replacement of the electricity generation and other options available to the City for the customers impacted in the canyon. Council directed staff to move forward and thanked staff for the presentation. **Councilor Shaffer moved to adopt a motion authorizing the City Manager or his designee to enter into negotiations with Kiewit Corporation, the contractor selected by the Colorado Department of Transportation ("CDOT") to reconstruct U.S. Highway 34 between Loveland and Estes Park, to demolish and dispose of the City's Idylwilde Dam and to remove the silt, sand, cobbles, and boulders that have accumulated behind Idylwilde Dam so that the materials can be provided to CDOT's contractor to be used in the U.S. Highway 34 reconstruction project, and to execute, on behalf of the City and in consultation with the City Attorney, any**

agreements and other documentation necessary to complete the demolition, disposal and removal work. The motion, seconded by Councilor Klassen carried with all councilors present voting in favor thereof.

ADJOURN

The Special Meeting was adjourned at 7:22 p.m.

STUDY SESSION- CITY COUNCIL CHAMBERS

The Study Session was convened at 7:22 p.m.

STUDY SESSION AGENDA

1. **LOVELAND RESCUE FIRE AUTHORITY** (presenter: Randy Mirowski, 60 min)
Information on Residential Fire Sprinklers

Fire Chief, Randy Mirowski presented this item to Council as an information only item in order to receive input and direction to address the issue of residential fire sprinklers and the future implications of including them as part of the adopted residential code to enhance community and citizen safety. Fire Marshal, Ned Sparks and Fire Inspector, Carie Dann were present to address Council and answer questions. Staff recommendations included: The establishment of a coalition of stakeholders in the community to help develop a five year plan that would include: 1) community education; 2) creation of meaningful incentives to encourage installation of residential sprinklers; and 3) adoption of a residential sprinkler code by 2018. Discussion ensued. Council directed staff to move forward with the recommendation and thanked the panel for the presentation.

ADJOURN

Having no further business to come before Council, the October 8, 2013 Study Session was adjourned at 9:27 p.m.

Respectfully Submitted,

 Jeannie M. Weaver, Deputy City Clerk

 Cecil A. Gutierrez, Mayor

MINUTES
LOVELAND CITY COUNCIL MEETING
LOVELAND URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS
THE LOVELAND GID#1 BOARD OF DIRECTORS
THE LOVELAND SID#1 BOARD OF DIRECTORS
TUESDAY, OCTOBER 15, 2013
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

6:30 P.M. REGULAR MEETING - City Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

Roll was called and the following responded: Mayor Gutierrez, Councilors Klassen, Shaffer, Fogle, Farley, Clark, Trenary, Taylor, and McKean.

PROCLAMATION – PANCREATIC CANCER AWARENESS MONTH

Councilor Taylor read the proclamation and it was received by Kara Friedrich.

Presentation from Ed Aiken, Steven Rylant and Harold Gosse and 50 Vietnam Veterans presented Council with Certificate of Appreciation in honor of Veteran's Day. This year particular in honoring Vietnam Veterans (50th year).

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.

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. Consensus of Council was to remove Item #17 from the Agenda. Councilor Klassen requested Items #5 and #19 be pulled from the Consent Agenda and moved the Regular Agenda. Councilor Shaffer moved to approve the Consent Agenda with the exceptions of Items #5, #17, and #19. Councilor Trenary seconded the motion which carried with all councilors present voting in favor thereof.

CONSENT AGENDA

1. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)
ASPEN KNOLLS VACATION FOR ALL PUBLIC RIGHTS-OF-WAY AND AMENDMENT RELATING TO ZONING
 1. A motion to approve and order published on second reading Ordinance #5804 Vacating All Public Rights-Of-Way Located in the Aspen Knolls First and Second Subdivisions, City of Loveland, Larimer County, Colorado was approved.
A legislative action for adoption of an ordinance on second reading to vacate all public rights-of-way within the Aspen Knolls First and Second Subdivisions.
 2. A motion to approve and order published on second reading Ordinance #5805 Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "P-50 - Aspen Knolls " to the City of Loveland was approved.
A quasi-judicial action for adoption of an ordinance on second reading to rezone the property from P-50 – Aspen Knolls Planned Unit Development (PUD) to DR – Developing Resource. These ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

2. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)
ARTSPACE SUPPLEMENTAL APPROPRIATION FOR ACQUISITION OF THE FEED & GRAIN PROPERTY
A motion to approve and order published on second reading Ordinance #5807 Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for a Loan to Artspace Inc. for Acquisition of the Feed and Grain Property was approved.
This is an administrative action to approve the ordinance on second reading. The ordinance appropriates, from the City Council Reserve Fund, \$300,000 to be repaid over 30 years at 1.75% interest. Annual payments will be made to the City according to the repayment schedule in the agreement which City Council approved unanimously at the October 1, 2013 regular meeting. The loan would fill the gap in funding and complete the financing package to allow Artspace to close on the acquisition of the property and to close on the tax credits.

3. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)
ARTSPACE VACATION OF A PORTION OF A PUBLIC RIGHT-OF-WAY
A motion to approve and order published on second reading Ordinance #5808 Vacating a Portion of a Public Right-of-Way Located in the Loveland Addition to the City of Loveland, City of Loveland, Larimer County, Colorado was approved.
Consideration of a legislative action for adoption of an ordinance on second reading to vacate a portion of existing public alley located within Block 21 of the Loveland Addition. The public right-of-way to be vacated is associated with the Artspace project. Upon vacation, the former right-of-way will be retained as a public access and utility easement. The ordinance was adopted unanimously on first reading by Council at the October 1, 2013 regular meeting.

4. **HUMAN RESOURCES** (presenter: Julia Holland)
AMENDING THE CODE TO ALLOW ADOPTION OF THE PAY PLAN BY RESOLUTION
A motion to approve and order published on second reading Ordinance #5806 Amending Section 2.68.020 of the Loveland Municipal Code Regarding the Manner of Adopting the Employee Pay Plan was approved.

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

5. **FINANCE** (presenter: John Hartman)
2014 CITY OF LOVELAND BUDGET
 This item was moved from the Consent Agenda to the Regular Agenda.

CITY COUNCIL ADJOURNED AND CONVENED AS THE BOARD OF DIRECTORS OF THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID)

6. **FINANCE** (presenter: John Hartman)
2014 BUDGET FOR THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 (SID)
A motion to approve and order published on second reading Ordinance #5812 Adopting the 2014 Budget for the Loveland Special Improvement District #1 was approved.

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

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

7. **FINANCE** (presenter: John Hartman)
2014 BUDGET FOR THE LOVELAND URBAN RENEWAL AUTHORITY (LURA)
A motion to approve and order published on second reading Ordinance #5813 of the Board of Commissioners of the Loveland Urban Renewal Authority Adopting the 2014 Budget for the Loveland Urban Renewal Authority was approved.

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

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

8. **FINANCE** (presenter: John Hartman)
2014 BUDGET FOR THE GENERAL IMPROVEMENT DISTRICT #1 (GID)
 1. **A motion to approve and order published on second reading Ordinance #5814**

Adopting the 2014 Budget for the Loveland General Improvement District #1 was approved.

The ordinance adopting the budget is an administrative action.

2. A motion to approve and order published on second reading Ordinance #5815 Setting the 2013 Mill Levy for the Loveland General Improvement District #1 was approved.

The ordinance setting the mill levy is a legislative action. City Council serves as the ex-officio Board of Directors for the District. The Board must approve a budget and set the mill levy for the District. The City of Loveland serves as staff for the District. These items establish a budget and appropriate funds for District expenses in 2014, and set the mill levy rate for the property tax collections. The ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 ADJOURNED AND RECONVENED AS CITY COUNCIL

9. **FINANCE** (presenter: John Hartman)
2014 SCHEDULE OF RATES, CHARGES & FEES AND 2014 AIRPORT BUDGET
A motion to approve and order published on second reading Ordinance #5816 Adopting the 2014 Budget for the Fort Collins-Loveland Municipal Airport was approved.

This is an administrative action. The City of Loveland provides staff support to the Airport through the Intergovernmental agreement with the City of Ft. Collins. As a part of this function the City Council approves the Airport budget, which includes the City's share of the Airport Budget. The ordinance establishes a budget and appropriates funds for Airport expenses in 2014. This ordinance was approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

10. **FINANCE** (presenter: John Hartman)
2014 BUDGET FOR THE LOVELAND FIRE AND RESCUE AUTHORITY
A motion to adopt Resolution #R-85-2013 Approving the Loveland Fire Rescue Authority 2014 Schedule of Rates, Charges, and Fees for Services and 2014 Budget was approved.

This is an administrative action. The resolution provides for Council approval of the Loveland Fire Rescue Authority Budget and fees schedule for 2014. Council approval of the budget is required for the Authority's budget to be in effect.

11. **CITY MANAGER** (presenter: Bill Cahill)
AMENDMENT TO DATE AND LOCATION OF SCHEDULED MEETING FOR HUMAN SERVICES COMMISSION AND APPOINTMENT FOR LIAISON

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

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

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

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

conflict with the new meeting date.

12. **CITY CLERK** (presenter: Terry Andrews)
SPECIAL MEETING FOR NOVEMBER 12, 2013 TO SWEAR IN COUNCILORS
A motion Calling for a Special Meeting on November 12, 2013 at 6:30 Prior to the Regularly Scheduled Study Session of City Council was approved.
 This is an administrative action setting a Special Meeting to consider the November 5, 2013 Regular Meeting minutes and to swear in newly appointed councilors. This meeting would be immediately followed by the Study Session.
13. **ECONOMIC DEVELOPMENT** (presenter: Betsey Hale)
EMERGENCY ORDINANCE TEMPORARILY WAIVING BUILDING PERMIT FEES RELATED TO THE FLOOD
A public hearing was held and a motion to approve and order published on first and only reading Emergency Ordinance #5817 of the City Council of the City of Loveland Temporarily Waiving Building Permit Fees Owed to the City Under Loveland Municipal Code Title 15 and Use Tax Owed to the City Under Loveland Municipal Code Chapter 3.16 With Respect to Building Permits Issued for the Renovation or Repair of Residential and Nonresidential Structures Located Within Loveland City Limits That Were Damaged by the 2013 Big Thompson Flood was approved.
 This is a legislative action considering an emergency ordinance waiving the building permit fees and construction materials use taxes for residential and nonresidential structures which are located within Loveland city limits and were damaged by the flood. Building permit applications must be made and accepted as complete by the City's building division sixty days from the adoption of this ordinance.
14. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)
KING OF GLORY ANNEXATION AND REZONING
A public hearing was held and:
1. **A motion to approve Resolution #R-87-2013 Concerning the Annexation to the City of Loveland, Colorado, of a Certain Area Designated as "King of Glory Addition" More Particularly Described Herein, and Setting Forth Findings of Fact and Conclusions Based Thereon as Required by the Colorado Constitution and by State Statute was approved.**
 A public hearing to consider the following actions concerning the annexation of the King of Glory Lutheran Church:
 A resolution that finds the property to be in compliance with the Colorado Revised Statutes for annexation;
 2. **A motion to approve and order published on first reading an Ordinance Approving the Annexation of Certain Territory to the City of Loveland, Colorado, to be Known and Designated as "King of Glory Addition" to the City of Loveland was approved.**
 A legislative action to adopt an ordinance on first reading annexing approximately 4.28 acres to be known as the King of Glory Addition;
 3. **A motion to move to make the findings in Section VII of the Planning Commission staff report dated July 22, 2013, and based on those findings, approve and order published on first reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "King of Glory Addition" to the City of Loveland was approved.**
 A quasi-judicial action to adopt an ordinance on first reading zoning the King of Glory Addition R1 – Developing Low Density Residential

15. **DEVELOPMENT SERVICES** (presenter: Troy Bliss)
ST. JOHN ADDITION VACATION OF PUBLIC RIGHT-OF-WAY
 A public hearing was held and a motion to approve and order published on first reading an Ordinance Vacating a Portion of a Public Right-Of-Way Located in the St. John Addition to the City of Loveland, City of Loveland, Larimer County, Colorado was approved.
 This is a legislative action to adopt of an ordinance on first reading to vacate the public right-of-way for a portion of Truman Avenue located within the St. John Addition and Hill Top Addition. The applicants for the request are the St. John Church and the Thompson School District.
16. **ECONOMIC DEVELOPMENT** (presenter: Mike Scholl)
HOUSE OF NEIGHBORLY SERVICE GRANT & FEE WAIVER AGREEMENT AND SUPPLEMENTAL APPROPRIATION FOR THE COMMUNITY LIFE CENTER
 A public hearing was held and:
 1. A motion to adopt Resolution #R-88-2013 Approving a Grant and Fee Waiver Agreement with the House of Neighborly Service for the Community Life Center was approved.
 The resolution is an administrative action and would authorize the City Manager to sign a Grant and Fee Waiver agreement with the House of Neighborly Services (HNS) for the construction of the "Community Life Center" at 1511 E. 11th Street. The agreement would provide a total package valued at \$780,516.14 that includes reimbursements for public improvements, a matching grant, and fee waivers. The item was considered by Council at the August 13, 2013, Council Study Session.
 2. A motion to approve and order published on first reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget to Provide Incentives to House of Neighborly Service for the Community Life Center was approved.
 This is an administrative action. Ordinance is on first reading. It would budget and appropriate \$500,000 from Council reserve for the Incentive agreement. (The City would fund \$500,000 from Council reserves and forego \$280,516.14 in waived fees.)
17. **DEVELOPMENT SERVICES** (presenter: Bob Paulsen)
CODE MODIFICATION FOR WEED CONTROL
 This item was removed from the Agenda.
18. **DEVELOPMENT SERVICES** (presenter: Bethany Clark)
HISTORIC LANDMARK AMENDMENT FOR LOVELAND FEED & GRAIN BUILDING
 A public hearing was held and a motion to approve and order published on first reading an Ordinance Amending Ordinance #4971 Designating as a Historic Landmark the Loveland Feed & Grain Building Located at 130 West 3rd Street in Loveland, Colorado was approved.
 This is a legislative action to adopt an ordinance on first reading amending Ordinance #4971, which in 2005, designated as a Historic Landmark the Loveland Feed & Grain building located at 130 West 3rd Street. The proposed ordinance modifies the legal description of the historic designation to eliminate from that legal description, property west of the Loveland Feed and Grain building, on which Artspace LP proposes to construct a new multifamily affordable housing project.
19. **PUBLIC WORKS** (presenter: Keith Reester)

SUPPLEMENTAL APPROPRIATION TO THE GID #1 FOR DOWNTOWN PARKING IMPROVEMENTS

This item was moved from the Consent Agenda to the Regular Agenda.

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

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

This is an administrative action. This contract is a combination of two grants awarded to the City of Loveland Water and Power Department by the Colorado Department of Health and Welfare from an appropriation proposed by Colorado Governor John Hickenlooper and enacted by the Colorado General Assembly to ease the financial impact of the new nutrient removal regulations on rate payers in affected jurisdictions. One grant is for \$80,000 for modeling and selection of appropriate nutrient removal technology for the Wastewater Treatment Facility. This part of the grant includes matching funds of \$20,000 from the City. These funds are currently available in our operating budget and will not require a supplemental budget request. The second grant is for \$1,000,000 and does not include any matching funds requirement. These funds must be used for design and construction of the selected nutrient removal technology. All funds must be used by May 31, 2016. Current planning shows the entire Nutrient Removal Project totaling over approximately \$6,000,000 and lasting into 2017.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

CITY COUNCIL

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

Councilors:

Farley: Announced the Loveland Community Foundation Committee for "Destination Downtown" at the Rialto Theater on October 30, 2013 from 4:30 -7 p.m.

Shaffer: Attended Artspace Feed & Grain Open House; Announced the Art Studio Tour; Announced Candidate Forum on Sunday, October 20, 2013 at 6:30 p.m. in the Gertrude Scott Room, at the Loveland Library.

Taylor: Attended Jimmy & Roslyn Carter's work project sponsored by Habitat for Humanity.

Trenary: Acknowledged support for Loveland Habitat for Humanity; Announced the Quarterly Meeting of the Big Thompson Watershed Board of Directors.

Klassen: Attended Colorado State University conference for School of Real Estate.

Fogle: Announced the Mexican Inn reopened; Announced Engaging Loveland entity dissolution, dealing with shortfalls from events, and will appear before the Community Marketing Commission for assistance in hopes of making the business participants from the event "Loveland loves Barbeques, Bands and Brews" whole.

Mayor Gutierrez:

Attended the Art Studio Tour; Pastels on 5th Street between Cleveland & Lincoln; Governor Hickenlooper announced new Website for Statewide Flood Relief (coloradounited.com); Attended Colorado State University Oil & Gas Symposium dealing with air & water quality, October 15 & 16, 2013.

c. City Manager Report

None

d. City Attorney Report

None

PROCEDURAL INFORMATION

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

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

CITY COUNCIL ADJOURNED AND CONVENED AS THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 at 7:13 p.m.

**19. PUBLIC WORKS (presenter: Keith Reester)
SUPPLEMENTAL APPROPRIATION TO THE GID #1 FOR DOWNTOWN PARKING IMPROVEMENTS**

Public Works Director, Keith Reester introduced this item to Council. This is an administrative action. The ordinance on first reading appropriates an additional \$20,000 from reserves for the construction of the new parking lot on Railroad Avenue. This action brings the total project budget to \$90,000. The appropriation is from reserves reducing the flexibility to fund other projects. Mayor Gutierrez opened the public hearing at 7:13 p.m. Hearing no comment the public hearing was closed at 7:13 p.m.

Councilor Shaffer moved to approve and order published on first reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 Loveland General Improvement District #1 for Downtown Parking Improvements. Councilor Farley seconded the motion which carried with all councilors voting in favor thereof.

THE BOARD OF DIRECTORS FOR THE LOVELAND GENERAL IMPROVEMENT DISTRICT #1 ADJOURNED AND RECONVENED AS CITY COUNCIL at 7:14 p.m.

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

Budget Officer, John Hartman introduced this item to Council. This is an administrative action to adopt the fee resolutions and ordinances, except for the mill levy ordinance, and to approve the 2014 Budget on second reading. The adoption of the 2013 mill levy is a legislative action. Included are all the Fee Resolutions and Ordinances necessary to adopt and implement the 2014 Budget. City ordinance requires that the fee resolutions for the utilities be approved on two readings. These items establish the budget for the City of Loveland, Colorado in 2014 and implement fees and rates to meet the revenue

projections in the budget. The Fee Resolutions and the ordinances were approved unanimously on first reading by Council at the October 1, 2013 regular meeting.

Councilors discussed designating funds currently identified as Downtown Infrastructure Improvements TBD for business assistance for Flood relief and recovery for businesses throughout the City. Mindy McCloughan discussed the Chamber of Commerce was implementing a program to raise funds and for businesses impacted by the 2013 Flood.

1) Councilor Klassen moved to approve and order published on second reading Ordinance #5810 Adopting the 2014 Budget for the City of Loveland, Colorado with amended language. Councilor Fogle seconded the motion. Mayor Gutierrez opened the public hearing at 8:25 p.m. Downtown property owner, Barry Floyd spoke in opposition to the amended language "Business Assistance for Flood Relief and Recovery". With no further public comment the public hearing was closed at 8:27 p.m. Discussion ensued. [Councilor Klassen called the question. Councilor Fogle seconded the motion which carried with five councilors voting in favor and Mayor Gutierrez and Councilors Farley, Shaffer and Trenary voting against.] Roll was called on the original motion which carried with five councilors voting in favor and Mayor Gutierrez and Councilors Shaffer, Farley, and Trenary voting against.

2) Councilor Shaffer moved to approve on second reading Resolution #R-79-2013 Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the Storm Water Enterprise of the City of Loveland, Colorado and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees. Councilor Trenary seconded the motion which carried with seven councilors voting in favor and Mayor Gutierrez and Councilor Shaffer voting against.

3) Councilor Shaffer moved to approve on second reading Resolution #R-80-2013 Adopting the 2014 Schedule of Rates, Charges, and Fees for Services Provided by the Water and Power Department of the City of Loveland and Superseding All Prior Resolutions Establishing Such Rates, Charges, and Fees. Councilor Trenary seconded the motion which carried with six councilors voting in favor and Mayor Gutierrez and Councilors Shaffer and Trenary voting against.

4) Councilor Shaffer moved to approve and order published on second reading Ordinance #5809 Adopting the 2013 Mill Levy for the General Fund of the City of Loveland, Colorado. Councilor Trenary seconded the motion which carried with eight councilors voting in favor and Mayor Gutierrez voting against.

5) Councilor Shaffer moved to approve and order published on second reading Ordinance #5811 Making an Appropriation for the Fiscal Year Beginning January 1, 2014 and Ending December 31, 2014 for the City of Loveland, Colorado. Councilor Trenary seconded the motion which carried with seven councilors voting in favor and Mayor Gutierrez and Councilor Shaffer voting against.

**21. CITY CLERK (presenter: Terry Andrews)
APPROVAL OF MINUTES**

City Clerk, Terry Andrews introduced this item to Council.

1. This is an administrative action to approve the September 24, 2013 Study Session minutes. Councilor Klassen was absent. **Councilor Shaffer moved to approve the September 24, 2013 Study Session minutes. Councilor Trenary seconded the motion which carried with all councilors present voting in favor thereof. Councilor Klassen abstained.**

2. This is an administrative action to approve the October 1, 2013 Regular minutes. Councilor Taylor was absent. **Councilor Shaffer moved to approve the October 1, 2013 Regular minutes. Councilor Trenary seconded the motion which carried with all councilors present voting in favor thereof. Councilor Taylor abstained.**

**22. DEVELOPMENT SERVICES (presenter: Brian Burson)
AMENDMENTS TO THE COMPREHENSIVE PLAN AND ZONING REGULATIONS
FOR BIG THOMPSON FARMS ADDITION**

Senior City Planner, Brian Burson introduced this item to Council. Kim Lambreck from Landmark Surveyors and Brad Fancher from Ready Mix were present for the presentation.

1. This is a legislative action to consider a parcel-specific amendment to the Land Use Map in the Section 4.7 of the City of Loveland 2005 Comprehensive Plan for Tracts A and B of the Big Thompson Farms Addition. The proposed amendment would change the recommended land use for these two tracts, consisting of 32.78 acres, from Low-Density Residential (LDR) to Development Reserve (DR). The property is located between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River corridor. Mayor Gutierrez opened the public hearing at 9:12 p.m. and with no further public comment the public hearing was closed at 9:12 p.m. **Councilor Shaffer moved to approve Resolution #R-90-2013 Approving Amendments to the City of Loveland "2005 Comprehensive Plan" by the Amendment of Section 4.7 Land Use Plan Map. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

2. This is a quasi-judicial action to consider rezoning the easterly portion of Tract A of the Big Thompson Farms Addition, consisting of 15.26 acres, from R1, Developing Low-Density Residential District to DR, Developing Resources District. The property is located between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River corridor. **Councilor Shaffer moved to make the findings in Section VII of the Planning Commission Staff Report dated September 9, 2013, and based on these findings, approve and order published on first reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for Certain Property Located in the Big Thompson Farms Addition, City of Loveland, Larimer County, Colorado. Councilor McKean seconded the motion which carried with all councilors present voting in favor thereof.**

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

Budget Officer, John Hartman introduced this item to Council. This is an administrative action. The Emergency Ordinance appropriates funding of \$4,872,010 for the costs of responding to and recovery from the 2013 Flood. The appropriation is funded by unassigned fund balance which reduces the flexibility to fund other projects or programs. Mayor Gutierrez opened the public hearing at 9:35 p.m. and hearing no comment the public hearing was closed at 9:35 p.m. **Councilor Shaffer moved to approve and order published on first and only reading an Emergency Ordinance #5818 Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Costs Related to the Response and Initial Recovery from the 2013 Flood. Councilor Klassen seconded the motion which carried with all councilors present voting in favor thereof.**

**24. WATER & POWER (presenter: Larry Howard)
CONSOLIDATED HOME SUPPLY IRRIGATING & RESERVOIR COMPANY
AGREEMENT**

Senior Civil Engineer, Larry Howard introduced this item to Council The Home Supply's diversion structure on the Big Thompson River sustained significant damage as a result

of the September 2013 Flood. Initial estimates indicate that it may cost up to \$600,000 to repair the diversion structure. The City is obligated under an 1895 agreement with the Home Supply to pay approximately 11% of the cost to repair the diversion structure, which the City has used since 1895 to divert water (currently delivered through a City-owned pipeline into the City's water treatment plant). Because the Home Supply does not have adequate cash reserves or existing financing to cover the remaining 89% of the cost to repair the diversion structure, the Home Supply is requesting additional financial assistance from the City in an amount not to exceed \$300,000. Gary Gerard from Home Supply spoke. Water & Power Director, Steve Adams participated in the discussion to Council. **Councilor Shaffer moved to direct the City Manager to Negotiate an Agreement with the Consolidated Home Supply Irrigating & Reservoir Company (Home Supply), in Consultation with the City Attorney and on terms favorable to the City, pursuant to which the City will provide financing to the Home Supply and return to City Council with an agreement for approval. Councilor Farley seconded the motion which carried with all councilors present voting in favor thereof.**

25. **HUMAN RESOURCES** (presenter: Julia Holland)
Executive Session Regarding Performance Evaluations for Appointed Employees
Councilor Shaffer moved that the City Council go into Executive Session, as authorized in CRS Sections 24-6-402(4)(b), (4)(f), and (4)(g) and in Loveland Charter Sections 4-4(c)(3), (c)(5), and (c)(6), for the purpose of considering personnel matters, those being the annual performance evaluation of the City Manager, Municipal Judge, and City Attorney, and concerning these matters, to create, receive, consider and discuss documents not subject to public inspection under the Colorado Open Records Act, such as work-product document, and to receive legal advice from the City Attorney. Councilor Farley seconded the motion which carried with all councilors voting in favor thereof. The Executive Session began at 10:56 p.m. All Council members were present. Jo Mattoon entered the meeting at 11:09 p.m. Bill Starks arrived at 11:15 p.m. Bill Starks left at 11:45 p.m. John Duval arrived at 11:47 p.m. John Duval left at 12:18 a.m. Bill Cahill arrived at 12:20 a.m. Bill Cahill left at 1:11 a.m. Bill Cahill returned at 1:14 a.m. Bill Cahill left again at 1:15 a.m. Adjourned from Executive Session at 1:18 a.m. and reconvened in the regular meeting at 1:19 a.m.

ADJOURNMENT

Having no further business to come before Council, the October 15, 2013 Regular Meeting was adjourned on October 16, 2013 at 1:19 a.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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

AGENDA ITEM: 2
MEETING DATE: 11/5/2013
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:
Appointment of a Member to the Senior Advisory Board

RECOMMENDED CITY COUNCIL ACTION:
Motion to appoint Julie Demaree to the Senior Advisory Board for a partial term effective until December 31, 2015.

- OPTIONS:**
1. Adopt the action as recommended
 2. Deny the action

SUMMARY:
This is an administrative action recommending the appointment of a member to the Senior Advisory Board.

- BUDGET IMPACT:**
- Positive
 - Negative
 - Neutral or negligible

BACKGROUND:
Paula Clark resigned her Senior Advisory Board ("SAB") membership in September. Julie Demaree applied for SAB. At the October 2, 2013 meeting, the Senior Advisory Board unanimously approved the recommendation for Ms. Demaree to be appointed for a term effective until December 31, 2015.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:
None



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

AGENDA ITEM: 3
MEETING DATE: 11/5/2013
TO: City Council
FROM: Greg George, Director of Development Services
PRESENTER: Troy Bliss

TITLE:

1. An Ordinance on Second Reading Approving the Annexation of Certain Territory to the City of Loveland, Colorado, to be Known and Designated as "King of Glory Addition" to the City of Loveland; and
2. An Ordinance on Second Reading Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "King of Glory Addition" to the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following actions:

1. Adopt on second reading an ordinance approving the annexation of certain territory to the City of Loveland, Colorado, to be known and designated as "King of Glory Addition" to the City of Loveland; and
2. Move to make the findings in Section VIII of the Planning Commission staff report dated July 22, 2013, and based on those findings, adopt on second reading an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for "King of Glory Addition" to the City of Loveland.

OPTIONS:

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

SUMMARY:

Consideration of the following actions concerning the annexation of the King of Glory Lutheran Church:

1. A legislative action to adopt an ordinance on second reading annexing approximately 4.28 acres to be known as the King of Glory Addition; and
2. A quasi-judicial action to adopt an ordinance on second reading zoning the King of Glory Addition R1 – Developing Low Density Residential.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible
-

BACKGROUND:

The property proposed for annexation and zoning to Low Density Residential is located at the northwest corner of North Wilson Avenue and West 29th Street. The property is being annexed and zoned to facilitate future development/redevelopment of the existing church facility. While the church has no immediate plans for construction or expansion of buildings, church officials anticipate the erection of a columbarium/memorial wall upon annexation.

Staff believes that all key issues have been resolved based on City codes and standards. The King of Glory Addition is a property that is becoming more and more surrounded by the City's municipal boundaries in northwest Loveland, as a result of recent annexations that have included the Fire Station 2 and Mehaffey Park. The property is in the City's Growth Management Area (GMA) and is currently served by City water and sewer.

The resolution and the two ordinances were adopted unanimously on first reading by City Council on October 15, 2013.

REVIEWED BY CITY MANAGER:


LIST OF ATTACHMENTS:

1. Ordinance for Annexation (with Annexation Agreement- listed as Exhibit A)
 2. Ordinance for Zoning
 3. Staff Memorandum
-

FIRST READING: October 15, 2013

SECOND READING: November 5, 2013

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS "KING OF GLORY ADDITION" TO THE CITY OF LOVELAND

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

Section 1. That a Petition for Annexation, together with four (4) copies of the map of said territory as required by law, was filed with the City on June 10, 2013, by more than fifty percent (50%) of the owners who own more than fifty percent (50%) of the area of the territory hereinafter described, exclusive of public streets and alleys. The Council, by resolution at its regular meeting on October 15, 2013, found and determined that the proposed annexation complies with and meets the requirements of the applicable parts of Section 30 of Article II of the Colorado Constitution §§31-12-104 and 31-12-105, C.R.S. and further determined that an election was not required under Section 30(1)(a) of Article II of the Colorado Constitution §31-12-107(2), C.R.S. and further found that no additional terms and conditions were to be imposed upon said annexation except those set out on said Petition.

Section 2. That the annexation to the City of Loveland of the following described property to be designated as "**KING OF GLORY ADDITION**" to the City of Loveland, Larimer County, Colorado is hereby approved:

That portion of the Southeast Quarter of Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 4 as bearing North 01°40'40" East (assumed) and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 4; thence along the South line of the Southeast Quarter of said Section 4 South 89°59'16" West 30.01 feet, more or less, to a point on the West line of FAIRWAY WEST FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado, said point also being a point on the East line of FIRE STATION NO. 2 ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said South line of the Southeast Quarter of said Section 4 and along said West line of FAIRWAY WEST FIRST ADDITION and along said East line of FIRE STATION NO. 2 ADDITION North 01°40'40" East 38.01 feet to a point on the South line of said FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING;

thence departing said East line of FIRE STATION NO. 2 ADDITION and continuing along said West line of FAIRWAY WEST FIRST ADDITION North 01°40'40" East 379.41 feet to the Southeast corner of VANGUARD-FAMLECO EIGHTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said West line of FAIRWAY WEST FIRST ADDITION and along the Southerly line of said VANGUARD-FAMLECO EIGHTH SUBDIVISION and the Southerly line of Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION North 90°00'00" West 491.99 feet; thence along the Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION South 01°40'40" West 379.52 feet, more or less, to a point on the North line of said FIRE STATION NO. 2 ADDITION; thence departing said Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION and along said North line of said FIRE STATION NO. 2 ADDITION North 89°59'16" East 491.99 feet to a point on the West line of said FAIRWAY WEST FIRST ADDITION; said point also being a point on the East line of FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres (186,612.3 square feet), more or less, and is subject to all existing easements and/or rights of way of record.

Section 3. That the annexation of said territory is subject to any conditions set forth in Paragraph (14) of the Petition for Annexation of said territory filed with the City of Loveland.

Section 4. That the Annexation Agreement, attached hereto as **Exhibit A** and incorporated herein by reference (the "Annexation Agreement") is hereby approved. The City Manager is authorized, following consultation with the City Attorney, to approve changes to the form of the Annexation Agreement provided that such changes do not impair the intended purpose of the Annexation Agreement as approved by this Ordinance. The City Manager and the City Clerk are authorized and directed to execute the Annexation Agreement on behalf of the City of Loveland.

Section 5. That the City Council hereby consents to the inclusion of the annexed territory in the Municipal Subdistrict of the Northern Colorado Water Conservancy District pursuant to Section 37-45-136 (3.6), C.R.S.

Section 6. Should any court of competent jurisdiction determine that any portion of the land annexed in this ordinance was unlawfully annexed, then it is the intent of the City Council that the remaining land lawfully annexed to the City of Loveland should be so annexed and the City Council affirmatively states that it would have annexed the remaining land even though the court declares the annexation of other portions of the land to have been unlawfully annexed.

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

Section 8. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Dated this ____ day of _____, 2013.

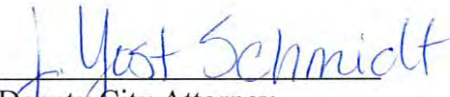
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A

**ANNEXATION AGREEMENT
PERTAINING TO THE
KING OF GLORY ADDITION
TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2013, by and between King of Glory Lutheran Church, (the "Developer"); and the CITY OF LOVELAND, COLORADO, a home rule municipality (the "City").

RECITALS

WHEREAS, the Developer owns +/- 4.28 acres, more or less, of real property located in Larimer County, Colorado, more particularly described in Exhibit A attached hereto, but not including any existing public streets and highways which may be included in said description, which description, by this reference, is incorporated herein and designated as “the Property”;

WHEREAS, the Developer is requesting that the City annex and zone said Property to allow for the coordinated development of the Property to the benefit of the parties, including the City; and

WHEREAS, the City is unable to annex the Property under the terms of this Agreement without the consent of the Developer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Consent to annexation. Developer has petitioned for the annexation of the Property described in the attached Exhibit A. The Developer hereby consents to the annexation of the Property subject to the terms of the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the City Council of the annexation, the parties agree that the binding effect of this Agreement and the effectiveness of the annexation and zoning of the Property in accordance with the Developer’s application is expressly conditioned upon such approval by the City Council and the execution and delivery of this Agreement by all parties thereto.

2. Terms of annexation.

A. CURRENT PLANNING

- i. The existing worship building has a height of sixty-five (65) feet. Upon annexation, this building will be considered legal non-conforming. Any future remodeling of the existing worship building shall not be allowed to increase height, unless a variance is permitted and approved pursuant to the City Municipal Code.
- ii. The existing building antennas located on the worship building shall be considered legal non-conforming. Additional building antennas including but not limited to panel antennas, wiring, ground cabinets, or equipment shelters shall not be permitted unless Special Review approval is issued for such uses in the R1 - Developing Low-Density Residential District. (Currently, the R1 zoning district permits wireless service facilities by special review only. If any future changes to the R1 zoning district are approved to prohibit wireless service facilities, the existing facilities could remain but no new facilities would be allowed.) No towers associated with a wireless service facility shall be permitted. Additional wireless service shall not be considered an expansion of use or a building addition with regards to paragraph A.iii below.
- iii. This property does not conform with the City of Loveland landscape standards including landscape bufferyards along both Wilson Avenue and 29th Street, street canopy trees spaced 30 to 40 feet on center along both Wilson Avenue and 29th Street, curb/gutter/sidewalk for the reconfigured right-of-way on 29th Street, internal parking lot landscaping/screening, and irrigation systems throughout all landscaped areas.

For purposes of this Section, the erection of columbarium/memorial walls in the general vicinity of the northwest corner of the site shall be permitted without providing these improvements. However, these improvements will be required in conjunction with any redevelopment/development of the property, change in use, expansion of use, building additions or on the fifth anniversary of recording this agreement, whichever comes first. Any development application (including but not limited to a Site Development Plan, Special Review, or Building Permit) shall provide a phasing plan and cost estimate associated with the required improvements to the City for approval. The phasing plan shall incrementally detail what specific improvements would be made over time.

- iv. The Developer will be responsible for the construction necessary to bring the existing parking lot adjacent to W. 29th Street into compliance with the City of Loveland landscape standards to include canopy street trees, screening, and a detached sidewalk in conjunction with any redevelopment/development of the property, change in use, expansion of use, or building additions that require the need for developing the full right-of-way. Such required construction in the

parking lot adjacent to W. 29th Street shall not be required in connection with the erection of columbarium/memorial walls described in paragraph A.iii above.

B. TRANSPORTATION

- i. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS) and the 2030 Transportation Plan and any updates to either in effect at the time of a site specific development, Minor Subdivision and/or a building permit application. Any and all variances from these standards and plans require specific written approval by the City Engineer.
- ii. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the timing of the dedications shall be as follows:
 - a. Right-of-way for 29th Street shall be dedicated prior to the recording of the annexation.
 - b. Right-of-way for Wilson Avenue shall be dedicated prior to the recording of the annexation.
- iii. The Developer agrees to acquire and dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a site specific development application, Minor Subdivision and/or a building permit application within this addition, the Developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire and dedicate sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.
- iv. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layouts, street alignments, access locations, turning movements, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a site specific development application, Minor Subdivision and/or a building permit application.
- v. The existing curb cut access to Wilson Avenue shall be removed and replaced with curb, gutter, and sidewalk per the satisfaction of the City in a time period not to exceed 12 months after the recording of the annexation. The owner shall apply for and receive a Right-of-Way Work Permit from the City prior to any construction activity within the City's public right-of-way.

GENERAL PROVISIONS

3. Waiver of Damages. In the future, the Developer may be granted vested property rights associated with the approval of a site specific development plan within the Property. In the event that such vested property rights are granted, and the City applies an initiated or referred measure to the property which would (a) change any

term of this Agreement, (b) impose a moratorium on development within the Property, or otherwise materially delay the development of the Property, or (c) limit the number of building or utility permits to which the Developer would otherwise be entitled, the Developer agrees to waive any right to damages against the City to which Developer may otherwise be entitled under the Vested Rights Statute.

4. Incorporation. The terms of this Agreement shall be deemed to be incorporated into the Developer's Petition for annexation of the Property.
5. Integration and Amendment. This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard to the Property. If conflicts between the Annexation Conditions listed in the Staff Report for City Council on _____, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail. This Agreement may only be amended by written agreement signed by the Developer and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.
6. Remedies. In the event that a party breaches its obligations under this Agreement, the injured party shall be entitled only to equitable relief, including specific performance, and such other equitable remedies as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to recover costs and reasonable attorneys' fees.
7. Effective Date. This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City does not annex the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.
8. Binding Effect and Recordation. The promises made in this Agreement by the Developer shall be deemed to have been made by any corporation or other business affiliated with Developer that acquires ownership or possession of all or any portion of the Property. The parties agree to execute a memorandum of this Agreement that the City shall record with the Clerk and Recorder for Larimer County, Colorado. It is the intent of the parties that their respective rights and obligations set forth in this Agreement shall constitute equitable servitudes that run with the Property and shall benefit and burden any successors to the parties. The Final Annexation Map for the Property shall be recorded by the Developer within sixty (60) days of final adoption of the ordinance annexing the Property, such Map shall contain a note that the Property is subject to this Agreement. The Developer agrees to all promises made by the Developer, which shall constitute equitable servitudes that run with the land.

9. Notices. Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, or by mailing same by certified, return receipt requested mail, to the party for whom it is intended. Notices to any of the parties shall be addressed as follows:

To City: City Clerk
 City of Loveland
 500 E. Third Street
 Loveland, CO 80537

To Developer: King of Glory Lutheran Church
 Attn: Administrative Council President
 2919 N. Wilson Avenue
 Loveland, CO 80538

A party may at any time designate a different person or address for the purposes of receiving notice by so informing the other party in writing. Notice by certified, return receipt requested mail shall be deemed effective as of the date it is deposited in the United States mail.

10. Waiver. No waiver by the City or Developer of any term of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

11. Applicable Law/Severability. This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

THE CITY OF LOVELAND, COLORADO

By: _____
William Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO SUBSTANCE:

Greg George, Development Services Director

APPROVED AS TO FORM:

Assistant City Attorney

DEVELOPER: King of Glory Lutheran Church

By: _____
Darell Zimbelman

STATE OF _____)
)ss
County of _____)

The foregoing Agreement was executed before me this _____ day of _____, 2013 by

(Developer)

WITNESS my hand and official seal.

My commission expires _____ .

SEAL

Notary Public

EXHIBIT A
(legal description)

PROPERTY DESCRIPTION – KING OF GLORY ADDITION

That portion of the Southeast Quarter of Section 4 and the Northeast Quarter of Section 9, all in Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 4 as assumed to bear North 01°40'40" East and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 4; thence along the South line of said Southeast Quarter South 89°59'16" West 30.01 feet to a point on the West line of Fairway West First Addition, to the City of Loveland, Colorado, said point being the TRUE POINT OF BEGINNING; thence along said West line of Fairway West First Addition North 01°40'40" East 417.43 feet to the Southeast corner of Vanguard-Famleco Eighth Subdivision, to the City of Loveland, Colorado; thence along the Southerly line of said Vanguard-Famleco Eighth Subdivision and the Southerly line of Tract A, Vanguard-Famleco Eighth Subdivision North 90°00'00" West 491.99 feet; thence along the Easterly line of said Tract A and the Southerly prolongation of said Easterly line South 01°40'40" West 447.54 feet to a point on the South line of that certain parcel of land recorded at Reception Number 2000062756, records of Larimer County; thence along the South line of said Reception Number 2000062756 North 89°59'16" East 323.26 feet to a point on the West line of that certain parcel of land recorded at Reception Number 97067379, records of Larimer County; thence along the Westerly and Southerly lines of said Reception Number 97067379 South 00°43'53" East 20.00 feet and again North 89°59'16" East 170.00 feet to a point on the Westerly line of Windemere Second Addition, to the City of Loveland, Colorado; thence along the Westerly line of said Windemere Second Addition and the East line of said Reception Number 97067379 North 00°43'53" West 50.00 feet to a point on the South line of the Southeast Quarter of said Section 4 and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres, more or less, and is subject to all existing easements and/or rights of way of record.

FIRST READING: October 15, 2013

SECOND READING: November 5, 2013

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "KING OF GLORY ADDITION" TO THE CITY OF LOVELAND

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

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

That the following described property recently annexed to the City of Loveland and within the area known as "KING OF GLORY ADDITION" to the City of Loveland, Colorado, shall be included within the boundaries of the district designated as follows:

R-1 – DEVELOPING LOW DENSITY RESIDENTIAL:

Considering the East line of the Southeast Quarter of said Section 4 as bearing North 01°40'40" East (assumed) and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 4; thence along the South line of the Southeast Quarter of said Section 4 South 89°59'16" West 30.01 feet, more or less, to a point on the West line of FAIRWAY WEST FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado, said point also being a point on the East line of FIRE STATION NO. 2 ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said South line of the Southeast Quarter of said Section 4 and along said West line of FAIRWAY WEST FIRST ADDITION and along said East line of FIRE STATION NO. 2 ADDITION North 01°40'40" East 38.01 feet to a point on the South line of said FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING; thence departing said East line of FIRE STATION NO. 2 ADDITION and continuing along said West line of FAIRWAY WEST FIRST ADDITION North 01°40'40" East 379.41 feet to the Southeast corner of VANGUARD-FAMLECO EIGHTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said West line of FAIRWAY WEST FIRST ADDITION and along the Southerly line of said VANGUARD-FAMLECO EIGHTH SUBDIVISION and the Southerly line of Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION North 90°00'00" West

491.99 feet; thence along the Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION South 01°40'40" West 379.52 feet, more or less, to a point on the North line of said FIRE STATION NO. 2 ADDITION; thence departing said Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION and along said North line of said FIRE STATION NO. 2 ADDITION North 89°59'16" East 491.99 feet to a point on the West line of said FAIRWAY WEST FIRST ADDITION; said point also being a point on the East line of FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres (186,612.3 square feet), more or less, and is subject to all existing easements and/or rights of way of record.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 3. That the City Clerk is hereby directed to record the Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

Dated this ____ day of _____, 2013.

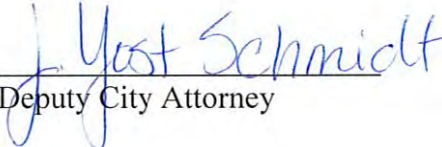
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:


Deputy City Attorney



Development Services Current Planning

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

MEMORANDUM

TO: City Council

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

DATE: October 15, 2013

SUBJECT: King of Glory Addition, Annexation and Zoning

I. EXHIBITS

- A. Planning Commission packet
- B. Planning Commission minutes
- C. Signed Annexation Agreement
- D. Slide presentation

II. KEY ISSUES

City staff believes that all key issues associated with the annexation and zoning request have been addressed. At the neighborhood meeting, there were no questions or concerns voiced about the annexation. In fact, neighbors had already thought the property was within City limits. Planning Commission also recommended unanimous approval of the annexation.

III. BACKGROUND

The subject property is generally located at the northwest corner of N. Wilson Avenue and W. 29th Street. It contains approximately 4.28 acres located within the City's Growth Management Area (GMA) having a land use designation of Low Density Residential (LDR) per the Comprehensive Master Plan. The property was first developed in 1978 when the original King of Glory Lutheran Church was constructed. After the two existing structures were built in 1984 and 2005, the original building was razed in 2006. The oldest building constructed in 1984, includes primarily the worship assembly and some offices. The newest building constructed in 2005 includes classrooms, a library, a fellowship room and a kitchen. The site is generally comprised of a large paved surface parking lot accessed from W. 29th Street, an outdoor

worship space, a playground, a fenced vegetable garden, and associated landscaped areas throughout.

In 1984, when the church was under construction, the City signed an agreement with the King of Glory Lutheran Church allowing out of city services (i.e. water and sewer) without requiring annexation. At the time, the Church was not capable of meeting the financial obligations associated with annexation but needed the ability to expand its facilities. The agreement stipulated that the Church would pursue application for annexation prior to December 31, 1987. This provision was never enforced.

IV. ANNEXATION AND ZONING

The King of Glory Addition has followed the proper procedures for seeking annexation into the City of Loveland. All associated State of Colorado requirements for annexation have been met in connection with this property. Adopted City findings and criteria for annexation have also been analyzed and found to be in compliance. With the annexation, a zoning designation of R1 – Developing Low Density Residential is being proposed. This is to conform with the Comprehensive Master Plan relative to the LDR land use designation and align with the surrounding land uses which predominately include single-family residential. In terms of considering annexation of a developed property, it is important to identify that there are existing non-conformities relative to City standards under an R1 zoning. This includes the height of the worship assembly building (approximately 65 feet) and an existing wireless service facility. Future development/redevelopment of the existing building would be prohibited from adding additional building height without approval of a height exception application. Additional wireless service facilities would be prohibited without approval of a special review application. Existing uses and conditions can be considered through the powers of annexation. However, it is important to identify them up front and build allowances into the annexation. Conditions are being recommended that would address these non-conformities as well as site improvements that would be required with future development/redevelopment. These conditions are reflected in an annexation agreement that would run with the property.

V. PLANNING COMMISSION REVIEW

Planning Commission held a public hearing on the King of Glory Addition, Annexation and Zoning on July 22, 2013. The associated minutes from this hearing are attached (see **Exhibit B**). Planning Commission recommended unanimous approval of the request for annexation and zoning citing that the associated findings have been met.

VI. RECOMMENDATION

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinances on first reading as recommended by the Planning Commission subject to the following conditions that have been included in the attached (see **Exhibit C**) annexation agreement and signed by the King of Glory Lutheran Church:

A. CURRENT PLANNING

i. The existing worship building has a height of sixty-five (65) feet. Upon annexation, this building will be considered legal non-conforming. Any future remodeling of the existing worship building shall not be allowed to increase height, unless a variance is permitted and approved pursuant to the City Municipal Code.

ii. The existing building antennas located on the worship building shall be considered legal non-conforming. Additional building antennas including but not limited to panel antennas, wiring, ground cabinets, or equipment shelters shall not be permitted unless Special Review approval is issued for such uses in the R1 - Developing Low-Density Residential District. (Currently, the R1 zoning district permits wireless service facilities by special review only. If any future changes to the R1 zoning district are approved to prohibit wireless service facilities, the existing facilities could remain but no new facilities would be allowed.) No towers associated with a wireless service facility shall be permitted. Additional wireless service shall not be considered an expansion of use or a building addition with regards to paragraph A.iii below.

iii. This property does not conform with the City of Loveland landscape standards including landscape bufferyards along both Wilson Avenue and 29th Street, street canopy trees spaced 30 to 40 feet on center along both Wilson Avenue and 29th Street, curb/gutter/sidewalk for the reconfigured right-of-way on 29th Street, internal parking lot landscaping/screening, and irrigation systems throughout all landscaped areas.

For purposes of this Section, the erection of columbarium/memorial walls in the general vicinity of the northwest corner of the site shall be permitted without providing these improvements. However, these improvements will be required in conjunction with any redevelopment/development of the property, change in use, expansion of use, building additions or on the fifth anniversary of recording this agreement, whichever comes first. Any development application (including but not limited to a Site Development Plan, Special Review, or Building Permit) shall provide a phasing plan and cost estimate associated with the required improvements to the City for approval. The phasing plan shall incrementally detail what specific improvements would be made over time.

iv. The Developer will be responsible for the construction necessary to bring the existing parking lot adjacent to W. 29th Street into compliance with the City of Loveland landscape standards to include canopy street trees, screening, and a detached sidewalk in conjunction with any redevelopment/development of the property, change in use, expansion of use, or building additions that require the need for developing the full right-of-way. Such required construction in the parking lot adjacent to W. 29th Street shall not be required in connection with the erection of columbarium/memorial walls described in paragraph A.iii above.

B. TRANSPORTATION

i. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS) and the 2030 Transportation Plan and any updates to either in effect at the time of a site specific development, Minor Subdivision and/or a building permit application. Any and all variances from these standards and plans require specific written approval by the City Engineer.

ii. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the timing of the dedications shall be as follows:

a. Right-of-way for 29th Street shall be dedicated prior to the recording of the annexation.

- b. Right-of-way for Wilson Avenue shall be dedicated prior to the recording of the annexation.
- iii. The Developer agrees to acquire and dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a site specific development application, Minor Subdivision and/or a building permit application within this addition, the Developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire and dedicate sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.
- iv. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layouts, street alignments, access locations, turning movements, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a site specific development application, Minor Subdivision and/or a building permit application.
- v. The existing curb cut access to Wilson Avenue shall be removed and replaced with curb, gutter, and sidewalk per the satisfaction of the City in a time period not to exceed 12 months after the recording of the annexation. The owner shall apply for and receive a Right-of-Way Work Permit from the City prior to any construction activity within the City's public right-of-way.

Development Services Current Planning

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Planning Commission Staff Report

July 22, 2013

Agenda #: Regular Agenda - 2
Title: King of Glory Addition (PZ #12-00110)
Applicant: King of Glory Lutheran Church
Request: **Annexation and Zoning**
Location: Northwest corner of N. Wilson Avenue and W. 29th Street (2919 N. Wilson Avenue)
Existing Zoning: County FA -Farming
Proposed Zoning: R1 - Developing Low Density Residential
Staff Planner: Troy Bliss

Staff Recommendation

APPROVAL of the annexation and zoning.

Recommended Motions:

1. Move to make the findings listed in Section VIII of the Planning Commission staff report dated July 22, 2013 and, based on those findings, recommend that City Council approve the King of Glory Addition, subject to the conditions listed in Section IX, as amended on the record, and zone the addition R1 Developing Low Density Residential.

Summary of Analysis

This is a public hearing concerning the annexation and zoning of a 4.28 acre parcel owned by the King of Glory Lutheran Church located at the northwest corner of N. Wilson Avenue and W. 29th Street. The property would be annexed and zoned to facilitate future development/redevelopment of the existing church facility. No development/redevelopment is however being proposed in conjunction with the annexation. However, there is the anticipation of erecting columbarium/memoria walls upon annexation. The hearing is to consider the following items:

- A legislative action for annexation of 4.28 acres; and
- A quasi-judicial action for zoning the property to R1- Developing Low Density Residential District.

Staff believes that all key issues have been resolved based on City Codes and standards. The King of Glory Addition is a property that is becoming more and more surrounded by the City's municipal boundaries in northwest Loveland as a result of recent annexations that have included the Fire Station 2 and Mehaffey Park. The property is in the City's Growth Management Area (GMA) and is currently served by City water and sewer.

I. SUMMARY

The King of Glory Addition includes a property containing approximately 4.28 acres generally located at the northwest corner of N. Wilson Avenue and W. 29th Street. The property is occupied by the King of Glory Lutheran Church, which includes two attached structures of approximately 18,000 square feet total. The property is located within the City of Loveland Growth Management Area (GMA) per the Comprehensive Plan. As a result of being within the GMA, the property has a land use designation of LDR – Low Density Residential. This land use designation anticipates development to contain low density offering a variety of housing types but includes primarily detached single family residential. Churches are other uses considered as appropriate within the LDR land use designations. In terms of seeking annexation and applying a City zoning to the property, the R1 – Developing Low Density Residential, as proposed, is in alignment with the LDR land use designation.

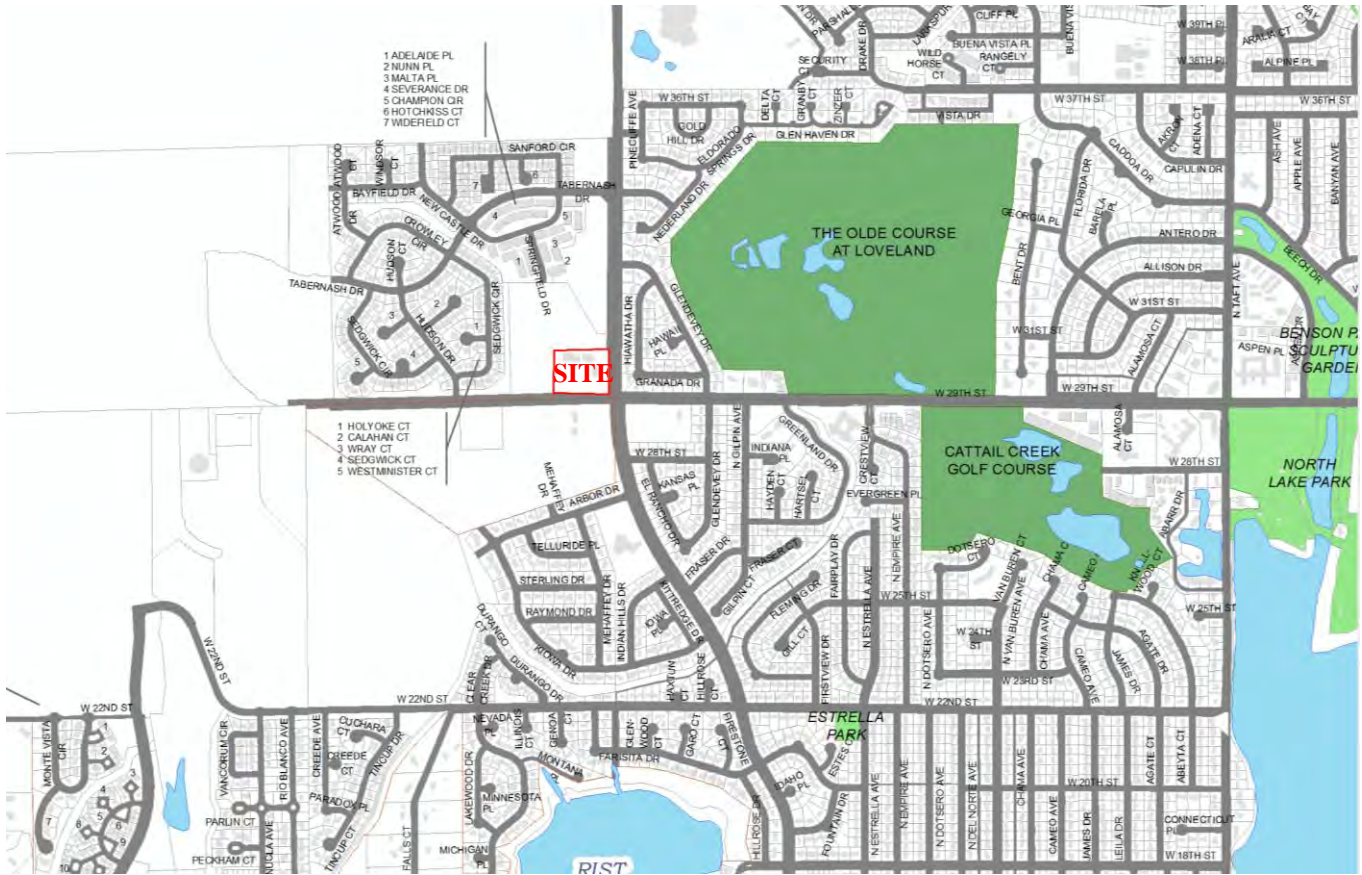
Properties directly north, east, and west of this site fall within the City's municipal boundaries. Consequently, this site is eligible for annexation per requirements of the Colorado Revised Statutes as well as being desirable, considering that it is served by City services and utilities.

In terms of considering annexation of a developed property, it is important to identify that there are existing non-conformities relative to City standards under an R1 zoning. This includes the height of the worship assembly building (approximately 65 feet) and an existing wireless service facility. Future development/redevelopment of the existing building would be prohibited from adding additional building height without approval of a height exception application. Additional wireless service facilities would be prohibited without approval of a special review application. Existing uses and conditions can be considered through the powers of annexation. However, it important to identify them up front and build allowances into the annexation. Staff is recommending conditions that would address these non-conformities as well as site improvements that would be required with future development/redevelopment.

II. ATTACHMENTS

1. Chapter 18.12 R1 - Developing Low Density Residential
2. Conceptual site plan
3. Annexation Map
4. Rezoning Map

III. VICINITY MAP



IV. SITE DATA

A. ANNEXATION

| | |
|--------------------------------------|--|
| ACREAGE OF SITE GROSS | 4.28 AC |
| MASTER PLAN DESIGNATION | LOW DENSITY RESIDENTIAL |
| EXISTING ZONING | LARIMER COUNTY FA FARMING |
| PROPOSED ZONING | R1 DEVELOPING LOW DENSITY RESIDENTIAL |
| EXISTING USE | CHURCH |
| EXIST ADJ ZONING & USE - NORTH | PUD HUNTERS RUN / SF RESIDENTIAL |
| EXIST ADJ ZONING & USE - SOUTH | COUNTY FA / VACANT FARMED LAND |
| EXIST ADJ ZONING & USE - WEST | PUD HUNTERS RUN / SF RESIDENTIAL |
| EXIST ADJ ZONING & USE - EAST | R1 DEVELOPING LOW DENSITY RESIDENTIAL / SF RESIDENTIAL |
| UTILITY SERVICE – WATER, SEWER | CITY OF LOVELAND |
| UTILITY SERVICE – ELECTRIC | XCEL |

V. KEY ISSUES

City staff believes that all key issues associated with the annexation and zoning request have been addressed. At the neighborhood meeting, there were no questions or concerns voiced about the annexation. In fact, neighbors had already thought the property was within City limits.

VI. BACKGROUND

The subject property was first developed in 1978 when the original King of Glory Lutheran Church was constructed. After the two existing structures were built in 1984 and 2005, the original building was razed in 2006. The oldest building constructed in 1984, includes primarily the worship assembly and some offices. The newest building constructed in 2005 includes classrooms, a library, a fellowship room and a kitchen. The site is generally comprised of a large paved surface parking lot accessed from W. 29th Street, an outdoor worship space, a playground, a fenced vegetable garden, and associated landscaped areas throughout.

In 1984, when the church was under construction, the City signed an agreement with the King of Glory Lutheran Church allowing out of city services (i.e. water and sewer) without requiring annexation. At the time, the Church was not capable of meeting the financial obligations associated with annexation but needed the ability to expand its facilities. The agreement stipulated that the Church would pursue application for annexation prior to December 31, 1987. This provision was never enforced.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

- A. **Notification:** An affidavit was received from Merlin Green with the Darell Zimbelman certifying that written notice was mailed to all property owners within 1,200 feet of the property on June 28, 2013 and notices were posted in a prominent location on the perimeter of the site at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on July 6, 2013.
- B. **Neighborhood Response:** A neighborhood meeting was held at 7:00 p.m. on March 18, 2013 at the King of Glory Lutheran Church. The meeting was attended by 11 neighbors and interested parties along with City staff. At the meeting, there were no objections voiced to the annexation and zoning requests.

VIII. FINDINGS AND ANALYSIS

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

Annexation and Zoning

A. Annexation Policies and Eligibility

1. Loveland Comprehensive Master Plan, Section 4.2

- a. **Annexation ANX2.A:** *Whether the annexation encourages a compact pattern of urban development.*
- b. **Annexation ANX2.B:** *Whether the annexation would result in the creation of an enclave*

- c. **Annexation ANX5.B:** *Whether the applicant has demonstrated that reasonable efforts have been made to assemble adjoining land parcels to allow for the preparation of a master plan for a larger area, rather than submit separate individual proposals.*
 - d. **Annexation ANX1.C and 6:** *Whether the annexation encourages infill development and ensures that land is immediately contiguous to other land in the City that is already receiving City services, discouraging leapfrog and scattered site development.*
 - e. **Growth Management GM7:** *Whether the land proposed for annexation is within the City of Loveland Growth Management Area.*
2. **Loveland Municipal Code, Section 17.04.020:** *The annexation complies with the laws of the State of Colorado regarding annexation and the property proposed for annexation is otherwise eligible to be annexed because there is at least one-sixth contiguity between the City and the area seeking annexation and there is no evidence that two or more of the following conditions have been met:*
- a. *Less than 50% of the adult residents of the area proposed to be annexed use some of the recreation, civic, social, religious, industrial or commercial facilities of the municipality and less than 25% of its adult residents are employed in the annexing municipality.*
 - b. *One-half or more of the land proposed to be annexed is agricultural, and the landowners of such agricultural land have expressed an intention under oath to devote the land to agricultural use for at least five years.*
 - c. *It is not physically practical to extend urban service which the municipality provides normally.*

Planning: Staff believes that the findings can be met, based on the following facts:

- A.1.a & d. With the existing developed church there is already an establishment of a compact pattern of urban development. Future development/redevelopment will not leapfrog or scatter development. The land is immediately contiguous to other land in the City that is already receiving City services.
- A.1.b. No new enclaves will be created by this annexation and there is no evidence that two or more of the conditions listed in Section 17.04.020 of the Municipal Code, cited above, have been met. The property being annexed is the only remaining property within this section that has not been annexed.
- A.2. The annexation complies with the Colorado State Statutes regarding annexation of lands and is within the City's Growth Management Area.

B. City Utilities/Services and Transportation

- 1. **Loveland Comprehensive Master Plan, Section 4.2**
 - a. **Annexation ANX1.A and B:** *Whether the annexation of land minimizes the length of vehicle trips generated by development of the land and whether the annexation minimizes the short and long term costs of providing community facilities and services for the benefit of the annexed area.*
- 2. **Loveland Municipal Code**
 - a. **Section 17.04.040:**
 - (i) *Whether certain public facilities and/or community services are necessary and may be required as a part of the development of any territory annexed to the City in order that*

the public needs may be served by such facilities and services. Such facilities include, but are not limited to, parks and recreation areas, schools, police and fire station sites, and electric, water, wastewater and storm drainage facilities. Such services include, but are not limited to, fire and police protection, provision of water, and wastewater services.

(ii) Whether the annexation and development pursuant to the uses permitted in the zone district will create any additional cost or burden on the existing residents of the City to provide such facilities and services in the area proposed for annexation.

(iii) The annexation complies with the water rights requirements set forth in Title 19 of the Loveland Municipal Code.

- b. Section 17.04.040:** *Whether all existing and proposed streets in the newly annexed property are, or will be, constructed in compliance with City street standards, unless the City determines that the existing streets will provide proper access during all seasons of the year to all lots and that curbs, gutters, sidewalks, bike lanes, and other structures in compliance with City standards are not necessary to protect public health, safety, and welfare.*
- c. Section 18.04.010:** *The zoning, as proposed, would: lessen congestion in the streets; secure safety from fire, panic, and other dangers; and promote health and general welfare.*

Transportation: Staff believes that this finding can be met, based on the following facts:

- Annexing and zoning property does not warrant compliance with the City's Adequate Community Facilities (ACF) ordinance. A condition is recommended to clearly ensure that all future development or land application within this proposed property shall be in compliance with the City of Loveland Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application.
- As identified in the City Municipal Code Title 16, a Traffic Impact Study will be required with all future development or other land use applications. The annexation will also be required to dedicate, free and clear, all applicable right-of-way to the City, at no cost to the City, at the time of development.
- Pending future proposed development within this property, of which review and approval by the City is required, the Transportation Engineering staff does not object to the proposed annexation and zoning.

Fire: Staff believes that this finding can be met, based on the following facts:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 2).
- The proposed annexation and any future development will not negatively impact fire protection for the subject property or surrounding properties.

Water/Wastewater: Staff believes that this finding can be met, based on the following facts:

- The subject annexation is situated within the City's current service area for both water and wastewater.
- The Department finds that the annexation and zoning is consistent with the Department's Water and Wastewater master plan by being consistent with the 2005 Comprehensive Master Plan.
- Public facilities are available to serve the development.

Power: Staff believes that this finding can be met, based on the following facts:

- 600 amp and 200 amp three phase underground power currently exists in an underground duct bank located along the north side of W. 29th Street. 200 amp three phase underground power is currently available in an underground vault located at the northeast corner of W. 29th Street and Hudson Drive and can be extended south to the proposed annexation area.
- The proposed annexation currently lies within Excel Energy Company certified territory. Upon completion of successful annexation to the City of Loveland, the City will provide electric service to any future development of the proposed annexation.
- The existing electric facilities are sufficient for the current use. The proposed development meets the criteria for level of service as outlined in the ACF ordinance.
- The existing uses as well as any future development requirements are current with the Power Division's existing infrastructure and system master plan.

Stormwater: Staff believes that this finding can be met, based on the following facts:

- With the annexation and future development, the Developer will engineer certain Stormwater facilities that will adequately collect, detain, and release Stormwater runoff in a manner that will eliminate off-site impacts.
- Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans.

C. Land Use

1. Loveland Comprehensive Master Plan, Section 4.7

- a. **Land Use Plan:** *Whether the zoning is consistent with the Loveland Comprehensive Master Plan Land Use Plan or a "major plan amendment" request is being processed concurrently with the annexation and GDP application.*

Planning: Staff believes that this finding can be met, based on the following facts:

- The Comprehensive Master Plan designates the site as Low Density Residential (LDR). The LDR category permits churches, parks, schools and civic uses as acceptable land uses.
- The proposed zoning of R1 is consistent with the zoning categories in the Comprehensive Master Plan. The R1 zone district permits churches as a use by right.

2. Loveland Municipal Code

a. **Section 18.04.010:**

- (i) *Whether the zoning will provide adequate light and air; prevent overcrowding of land; avoid undue concentration of population; and facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements.*
- (ii) *The character of the district and the particular uses permitted by right in the district will preserve the value of buildings and encourage the most appropriate use of land.*

Planning: Staff believes that this finding can be met, based on the following facts:

- 2.a.(i) The proposed R1 zoning is appropriate to accommodate the existing church while at the same time providing a land use pattern that is consistent with the surrounding area in terms of adequate light and air and the provision of necessary services.

- 2.a.(ii)** Upon annexation, future development/redevelopment of the church will be governed by all applicable City codes and standards in the R1 District. The church has been a fixture of this part of Loveland since the late 1970's, seen as an appropriate use of the land.

D. Environmental Impacts

1. Loveland Comprehensive Master Plan, Section 4.2

- a. Annexation ANX3.A:** *Whether the annexation will comply with the recommendations contained in the adopted Open Lands Plan and preserves open space or natural areas.*
- b. Annexation ANX3.B:** *Annexation will be allowed for the purpose of preserving or acquiring open space or natural areas.*
- c. Annexation ANX4.A and B:** *If the planning staff and/or the City have determined that significant negative impacts on the environment may occur from development allowed under the proposed zoning, an Environmental Impact Report, including a Wetlands Reconnaissance Report, has been prepared by a qualified specialist.*
- d. Annexation ANX4.B:** *Whether the annexation application includes a Phase I Environmental Report, prepared by a qualified specialist, ensuring that the land to be annexed does not contain hazardous or toxic substances that may pose a danger to the City or that reasonable mitigation measures can be taken in the event that such contamination exists.*
- e. Annexation ANX4.D:** *All development agreements must deal satisfactorily with any environmental impacts upon the property.*

Planning: Staff believes that this finding can be met, based on the following facts:

- D.1.a & b.** The Open Lands Plan does not identify any area of the site as a potential natural area.
- D.1.c** The site is naturally vegetated and has historically been a church use. No environmentally sensitive areas, as defined in the Municipal Code, were noted on the site.
- D.1.d** A Phase I Environmental Site Assessment (ESA) was performed by Corn & Associates in September 2012. The ESA concluded that there are no recognized environmental conditions existing on or nearby the site.

E. Miscellaneous

- 1. Loveland Municipal Code, Section 17.04.040.D:** *Whether the annexation is in compliance with School District requirements for dedication of school site, or payment of fees in lieu of the dedication.*

Planning: The annexation of this property does not constitute a land dedication or payment in lieu fees to the School District. The School District has no objection to the annexation.

- 2. Loveland Municipal Code, Section 17.04.040.E:** *Whether the annexation has demonstrated that the addition of land is in compliance with all pertinent intergovernmental agreement to which the City is a party.*

Planning: The annexation is in compliance with the intergovernmental agreement between the City of Loveland and Larimer County as referenced in Section 3.3 Annexation within the GMA as follows:

- Loveland will annex all property within the GMA that is eligible for annexation;
- Loveland shall annex the entire width of public roadways;
- Larimer County shall not accept applications for development of properties within the GMA without pursuing annexation to Loveland;
- An annexation agreement shall be prepared by Loveland;
- Loveland will not annex into a GMA, Cooperative Planning Area, or other comparable planning area of another municipality;
- The property is not located north of County Road 30; and
- The property being annexed is not in operation as a gravel extraction site

3. Loveland Municipal Code, Section 17.04.040.F: *Whether the annexation is in the best interest of the citizens of the City of Loveland.*

Planning: The annexation and existing development of the church is in the best interest of the citizens and will continue to provide its services to the community.

4. Loveland Municipal Code, Section 17.04.040.G: *Whether a cost/benefit analysis should be prepared in compliance with the Comprehensive Master Plan to measure and assess the fiscal impact of the proposed annexation.*

Planning: Because the property is already being served by the City through water, sewer, and emergency services, a cost/benefit analysis would not be necessary in evaluating the annexation.

5. Loveland Municipal Code, Section 17.04.040.H: *Whether all existing and proposed streets in the newly annexed property are constructed in compliance with all current City standards.*

Planning: All existing streets which front and are abutting this property have already been annexed into the City. The City does however require additional right-of-way to be dedicated along W. 29th Street and N. Wilson Avenue.

6. Loveland Municipal Code, Section 17.04.040.I: *No building permit or development plan shall be issued for the property annexed until a subdivision plat has been approved and recorded.*

Planning: With the exception to a potential columbarium/memorial walls to be erected on the property in the future, no building permit or development plan shall be issued until a subdivision plat has been approved and recorded. Reference to the columbarium/memorial walls is contained in the recommended conditions of approval.

7. Loveland Municipal Code, Section 17.04.040.J: *The annexation shall comply with the water rights requirements of Title 19.*

Planning: The annexation will comply with the water rights requirements of Title 19. A pre-annexation agreement signed by King of Glory in September of 1984 also stipulates that the Church agrees that it shall pay all fees assessed by the City in conjunction with annexation raw water fees.

- F. Mineral Extraction Colorado Revised Statute:** *The proposed location and the use of the land, and the conditions under which it will be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-3021 (1) as amended.*

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

- A geologic evaluation and mineral extraction assessment was prepared by Northern Colorado Geotech for the property. The assessment concluded that based on the review of geologic maps, published reports, satellite and aerial imagery, and the examination of the site, the potential for commercial mineral resources on the site is considered to have no economic quantities of mineral, aggregate or quarry rock.

Should there be a recommendation that Council find the property is eligible and that based on the factors in LMC 17.04.020 and .040, recommends annexation?

IX. RECOMMENDED CONDITIONS

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

A. CURRENT PLANNING

- i. The existing worship building has a height of sixty-five (65) feet. Upon annexation, this building will be considered legal non-conforming. Any future remodeling of the existing worship building shall not be allowed to increase height, unless a variance is permitted and approved pursuant to the City Municipal Code.
- ii. The existing building antennas located on the worship building shall be considered legal non-conforming. Additional building antennas including but not limited to panel antennas, wiring, ground cabinets, or equipment shelters shall not be permitted unless Special Review approval is issued for such uses in the R1 - Developing Low-Density Residential District. (Currently, the R1 zoning district permits wireless service facilities by special review only. If any future changes to the R1 zoning district are approved to prohibit wireless service facilities, the existing facilities could remain but no new facilities would be allowed.) No towers associated with a wireless service facility shall be permitted. Additional wireless service shall not be considered an expansion of use or a building addition with regards to paragraph A.iii below.
- iii. This property does not conform with the City of Loveland landscape standards including landscape bufferyards along both Wilson Avenue and 29th Street, street canopy trees spaced 30 to 40 feet on center along both Wilson Avenue and 29th Street, curb/gutter/sidewalk for the reconfigured right-of-way on 29th Street, internal parking lot landscaping/screening, and irrigation systems throughout all landscaped areas.

For purposes of this Section, the erection of columbarium/memorial walls in the general vicinity of the northwest corner of the site shall be permitted without providing these improvements. However, these improvements will be required in conjunction with any redevelopment/development of the property, change in use, expansion of use, building additions or on the fifth anniversary of recording this agreement, whichever comes first. Any development

application (including but not limited to a Site Development Plan, Special Review, or Building Permit) shall provide a phasing plan and cost estimate associated with the required improvements to the City for approval. The phasing plan shall incrementally detail what specific improvements would be made over time.

- iv. The Developer will be responsible for the construction necessary to bring the existing parking lot adjacent to W. 29th Street into compliance with the City of Loveland landscape standards to include canopy street trees, screening, and a detached sidewalk in conjunction with any redevelopment/development of the property, change in use, expansion of use, or building additions that require the need for developing the full right-of-way. Such required construction in the parking lot adjacent to W. 29th Street shall not be required in connection with the erection of columbarium/memorial walls described in paragraph A.iii above.

B. TRANSPORTATION

- i. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS) and the 2030 Transportation Plan and any updates to either in effect at the time of a site specific development, Minor Subdivision and/or a building permit application. Any and all variances from these standards and plans require specific written approval by the City Engineer.
- ii. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the timing of the dedications shall be as follows:
 - a. Right-of-way for 29th Street shall be dedicated prior to the recording of the annexation.
 - b. Right-of-way for Wilson Avenue shall be dedicated prior to the recording of the annexation.
- iii. The Developer agrees to acquire and dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a site specific development application, Minor Subdivision and/or a building permit application within this addition, the Developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire and dedicate sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.
- iv. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layouts, street alignments, access locations, turning movements, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a site specific development application, Minor Subdivision and/or a building permit application.
- v. The existing curb cut access to Wilson Avenue shall be removed and replaced with curb, gutter, and sidewalk per the satisfaction of the City in a time period not to exceed 12 months after the recording of the annexation. The owner shall apply for and receive a Right-of-Way Work Permit from the City prior to any construction activity within the City's public right-of-way.

Chapter 18.12**R1 DISTRICT-DEVELOPING LOW-DENSITY RESIDENTIAL DISTRICT****Sections:**

| | |
|------------------|--|
| 18.12.010 | Uses permitted by right. |
| 18.12.020 | Uses permitted by special review. |
| 18.12.030 | Lot area. |
| 18.12.040 | Lot width. |
| 18.12.050 | Front yard. |
| 18.12.060 | Rear yard. |
| 18.12.070 | Side yard. |
| 18.12.075 | Height limitations. |
| 18.12.080 | Off-street parking. |
| 18.12.090 | Special considerations. |

18.12.010 Uses permitted by right.

The following uses are permitted by right in a R1 district:

- A. One-family dwellings;
- B. Essential aboveground pad-mount transformers, electric and gas meters, telephone and electric junction and service locations, and underground public utility and public service installations and facilities for the furnishing of gas, electric, water, sewer, telephone and other utility services for the protection and welfare of the surrounding area; provided, business offices, repair, storage and production facilities are not included;
- C. Open land for the raising of crops, plants and flowers;
- D. Accessory buildings and uses;
- E. Public schools. (Ord. 4246 § 1 (part), 1997; Ord. 3702 § 1 (part), 1990; Ord. 1276 § 4, 1973; Ord. 1004 § 5.1, 1968)
- F. Place of worship or assembly. In addition to standard buffering requirements of the Site Development Performance Standards and Guidelines, parking areas and drive aisles shall be screened from adjacent residential uses and residentially-zoned land by a six-foot high opaque wall, fence, or landscaping which achieves a similar effect, unless such screening would serve no practical purpose, as determined by the Current Planning Manager. (Ord. 5207 § 6, 2007)

18.12.020 Uses permitted by special review.*

The following uses are permitted by special review in a R1 district:

- A. Preschool nurseries;
- B. Parks, recreation areas and golf courses;
- C. Cemeteries;
- D. Estate areas;
- E. Two-family dwellings;
- F. Private schools;
- G. Essential aboveground public utility and public service installations and facilities for the furnishing of gas, electric, water, sewer, telephone and other utility services for the protection and welfare of the surrounding area; provided, business offices, repair, storage and production facilities are not included;
- H. Child care centers licensed according to the statutes of the state and in conformity with the minimum rules and regulations for child care centers adopted in accordance with such

statutes; such use may be conducted in conjunction with the residential use of the property;

- I. Governmental or semipublic uses;
- J. Group care facilities;
- K. Housing for elderly;
- L. Receiving foster care homes for up to eight children licensed according to the statutes of the state;
- M. Accessory dwelling units;
- N. Personal wireless service facilities, as defined in § 18.55.020(G), in compliance with Chapter 18.55 of this title. (Ord. 5207 § 6, 2007; Ord. 4246 § 1 (part), 1997; Ord. 4239 § 1 (part), 1997; Ord. 4236 § 2, 1997; Ord. 3764 § 2 (part), 1991; Ord. 3702 § 1 (part), 1990; Ord. 3537 § 1 (part), 1988; Ord. 3282 § 1, 1986; Ord. 3210 § 2, 1985; Ord. 2021 § 7 (part), 1981; Ord. 1880 § 3, 1980; Ord. 1628 §§ 1 (part) and 2 (part), 1977; Ord. 1444 § 2 (part), 1975; Ord. 1414 § 2, 1975; Ord. 1391 § 2, 1974; Ord. 1390 § 2, 1974; Ord. 1276 §§ 5, 6, 1973; Ord. 1097 § 1, 1970; Ord. 1026 § 2, 1969; Ord. 1004 § 5.2, 1968)

*See Ch. 18.40 of this code.

18.12.030 Lot area.

The minimum area of a lot in the R1 district shall be seven thousand square feet as provided below:

- A. When a group of ten or more single-family dwellings are proposed for development as a unit, the minimum lot area may be varied in order to achieve flexibility and creativity in design. However, in no case shall the lot area be less than five thousand square feet, the average lot size for the unit be less than seven thousand square feet, and more than twenty percent of the lots be less than seven thousand square feet. When such development procedures are followed, the city-approved subdivision plat must be of record in the Larimer County clerk and recorder's office.
- B. The minimum area of the lot for a two-family dwelling shall be at least nine thousand square feet in the R1 district.
- C. The minimum lot area for a place of worship or assembly shall be three times the total floor area of the place of worship or assembly building. (Ord. 5207 § 6, 2007; Ord. 4246 § 1 (part), 1997; Ord. 1628 § 1 (part), 1977; Ord. 1004 § 5.3, 1968)

18.12.040 Lot width.

The minimum width of a lot in a R1 district shall be sixty-five feet, except that there shall be no minimum lot width requirement for cul-de-sac lots. Cul-de-sac lots shall be designed so that driveways on adjacent lots will either be contiguous or separated by a minimum of twenty-two feet as measured along the face of curb. (Ord. 4246 § 1 (part), 1997; Ord. 3467 § 2 (part), 1987; Ord. 3096 § 2, 1984; Ord. 2021 § 3, 1981; Ord. 1004 § 5.4, 1968)

18.12.050 Front yard.

The minimum front yard in a R1 district, being the minimum distance of any building from the front lot line, shall be twenty feet. (Ord. 4246 § 1 (part), 1997; Ord. 1628 § 1 (part), 1977; Ord. 1004 § 5.5, 1968)

18.12.060 Rear yard.

The minimum rear yard in a R1 district, being the minimum distance of any building from the rear lot line, shall be as follows:

Principal building, fifteen feet;
 Detached accessory building, five feet. (Ord. 4246 § 1 (part), 1997; Ord. 1004 § 5.6, 1968)

18.12.070 Side yard.

The minimum side yard in a R1 district, being the minimum distance of any building from each side lot line, shall be one foot for each three feet or fraction thereof of building height; except that no side yard shall be less than five feet for a one-family dwelling or two-family dwelling, nor less than twenty-five feet for any other permitted principal building. Variations to this requirement may be approved by the chief planner for groups of three or more single-family dwellings; however, the minimum spacing between two adjacent structures shall not be less than ten feet. On corner lots the side yard setback adjacent to the street shall be no less than fifteen feet. (Ord. 4246 § 1 (part), 1997; Ord. 3574 § 2, 1989; Ord. 1628 § 1 (part), 1977; Ord. 1276 § 7, 1973; Ord. 1004 § 5.7, 1968)

18.12.075 Height limitations.

Buildings and structures in this zone shall comply with Chapter 18.54 of this Code. (Ord. 4246 § 1 (part), 1997; Ord. 4106 § 5, 1995)

18.12.080 Off-street parking.

The minimum off-street parking in the R1 district shall be provided in Chapter 18.42. (Ord. 4246 § 1 (part), 1997; Ord. 1628 § 1 (part), 1977; Ord. 1395 § 1 (part), 1974; Ord. 1004 § 5.8, 1968)

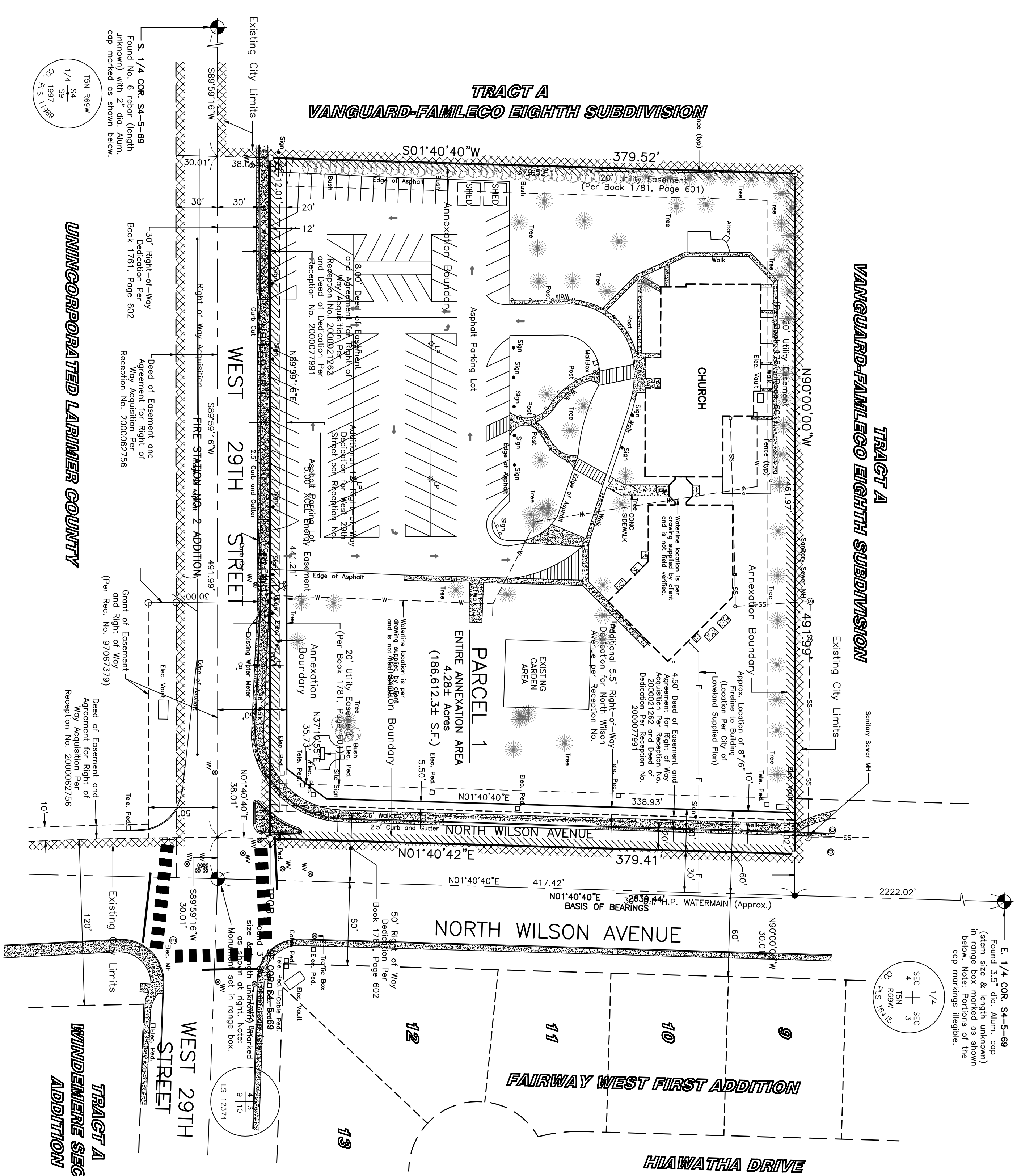
18.12.090 Special considerations.

The following special requirements shall apply for special review uses in the R1 district:

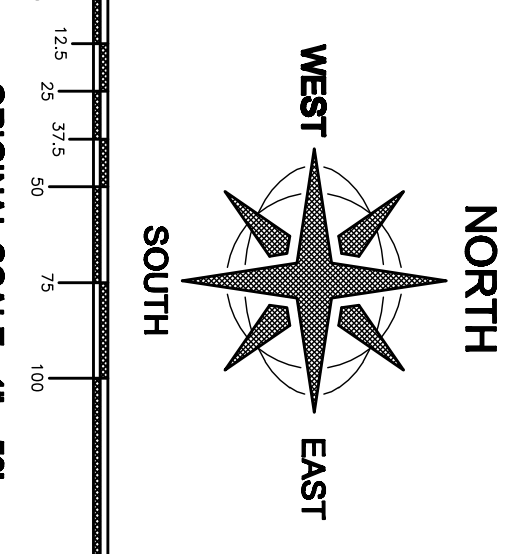
- A. Preschool Nurseries.
 - 1. At least fifty square feet of floor area is set aside for school purposes for each child; and,
 - 2. At least two hundred square feet of outdoor fenced play area is available for each child.
- B. Noncommercial Recreational Uses, including Swimming Pools, Community Buildings, Tennis Courts and Similar Uses as a Principal Use.
 - 1. Outside lighting must not be located in such a manner or be of such intensity to be distracting to adjacent residential areas or street traffic.
 - 2. All buildings and active play areas shall be located at least twenty-five feet from all lot lines.
- C. Cemeteries. The minimum area of any cemetery shall be at least twenty acres, and gravesites shall be located at least twenty-five feet from the boundaries of the cemetery. (Ord. 4246 § 1 (part), 1997; Ord. 2021 § 7 (part), 1981; Ord. 1628 § 2 (part), 1977)

SITE PLAN KING OF GLORY ADDITION

BEING AN ANNEXATION OF A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4 AND A PORTION OF THE NORTHEAST QUARTER OF SECTION 9, ALL IN TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO



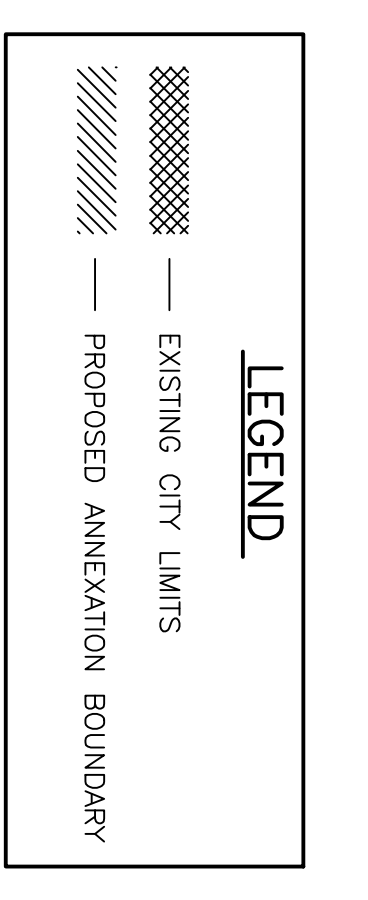
APPLICANT:
KING OF GLORY LUTHERAN CHURCH
2919 North Wilson Avenue
Loveland, Colorado 80538



STATEMENT OF LINEAR UNITS USED:
Linear Units Used for this Survey - U.S. Survey Feet
Date of Initial Preparation: May 1, 2012

BASIS OF BEARINGS STATEMENT:
Basis of Bearings for this Annexation Map is the bearings of North 01°40'40" East on the East line of the Southeast Quarter of Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado. Note: Monumentation of said line as shown on Map.

| ANNEXATION DATA TABLE | |
|---------------------------------|-----------------------|
| 1. Contiguity to City Limits: | 1,742,291 Linear Feet |
| 2. Minimum Contiguity Required: | 290,49 Linear Feet |
| 3. Total Annexation Boundary: | 1,742,291 Linear Feet |
| 4. Total Annexation Area: | 4.28± Acres |



GENERAL NOTES:

- This project is subject to an Annexation Agreement which has been recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.
- This project is subject to a Development Agreement which has been recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.
- When the property being annexed into the City of Loveland is currently located within the REA certified territory, this property is subject to a five percent (5%) surcharge on electrical energy as defined in Sections 15-2-201, 15-2-202, 15-2-203, and the City of Loveland Municipal Code 15.2-180. Any such surcharge will expire ten years after effective date of the annexation.
- FLOOD ZONE NOTE:** Per the Flood Insurance Rate Map (FIRM) Community Panel No. 08059C1186F, Panel 1186 of 1420 (Effective Date of December 19, 2005) as prepared by the Federal Emergency Management Agency (FEMA), the subject property is located in Flood Zone "X". As FEMA required flood zones do not appear to affect the subject property, it is always in one's best interest to consult with the City of Loveland, Colorado and/or Larimer County, Colorado to discuss the possibility of additional locally regulated flood hazard areas affecting the subject property.
- Conical Monumentation as shown on Map.
- This Annexation Map was prepared with the benefit of a Title Report as prepared by Land Title Guarantee Company (Order No. FCC2302088, Dated May 14, 2012). Only those easements and/or encroachments shown on the Title Report are shown on this Map, which are definable, are shown on this Map. No further easement and/or right of way research, other than shown on this Map, was requested by the client or performed by InterMill Land Surveying, Inc. for the preparation of this Annexation Map. The easements and encroachments shown on this Map are based on general information, and are to be used only in this context.

KING OF GLORY ADDITION - ENTIRE ANNEXATION BOUNDARY PROPERTY DESCRIPTION:

That portion of the Southeast Quarter of Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 4 as bearing North 01°40'40" East (assumed) and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 4, hence along the South line of the Southeast Quarter of said Section 4 South 89°59'16" West 30.01 feet, to a point on the East line of FIRE STATION NO. 2 ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said South line of the Southeast Quarter of said Section 4 and along said West line of FIREWAY WEST FIRST ADDITION and along said East line of FIRE STATION NO. 2 ADDITION North 01°40'40" East 38.01 feet to a point on the South line of said FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING; thence departing said East line of FIRE STATION NO. 2 ADDITION and continuing along said West line of FARWAY WEST FIRST ADDITION North 01°40'40" East 379.41 feet to the Southeast corner of VANGUARD-FAMLECO EIGHTH SUBDIVISION and the Southerly line of said VANGUARD-FAMLECO EIGHTH SUBDIVISION South 01°40'40" West 379.52 feet, more or less, to a point on the North line of said FIRE STATION NO. 2 ADDITION; thence departing said Easterly line of said Tract A, VANGUARD-FAMLECO EIGHTH SUBDIVISION and along said North line of said FIRE STATION NO. 2 ADDITION North 89°59'16" East 491.99 feet to a point on the West line of said FARWAY WEST FIRST ADDITION; said point also being a point on the East line of FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres, more or less, and is subject to all existing easements and/or rights of way of record.

SURVEYOR'S CERTIFICATE:

I, Robert George Perschille, a Registered Professional Land Surveyor in the State of Colorado, do hereby certify that I have personally surveyed and legally described herein and, to the extent described herein, that at least one-sixth (1/6) of the peripheral boundary of said parcel is contiguous to the boundary of the City of Loveland, Colorado. The Map was compiled using existing plats, deeds, legal descriptions, known information, other documents and limited field survey; this Annexation map should not be construed as a full boundary survey of the subject properties.

PREPARED BY AND ON BEHALF OF:

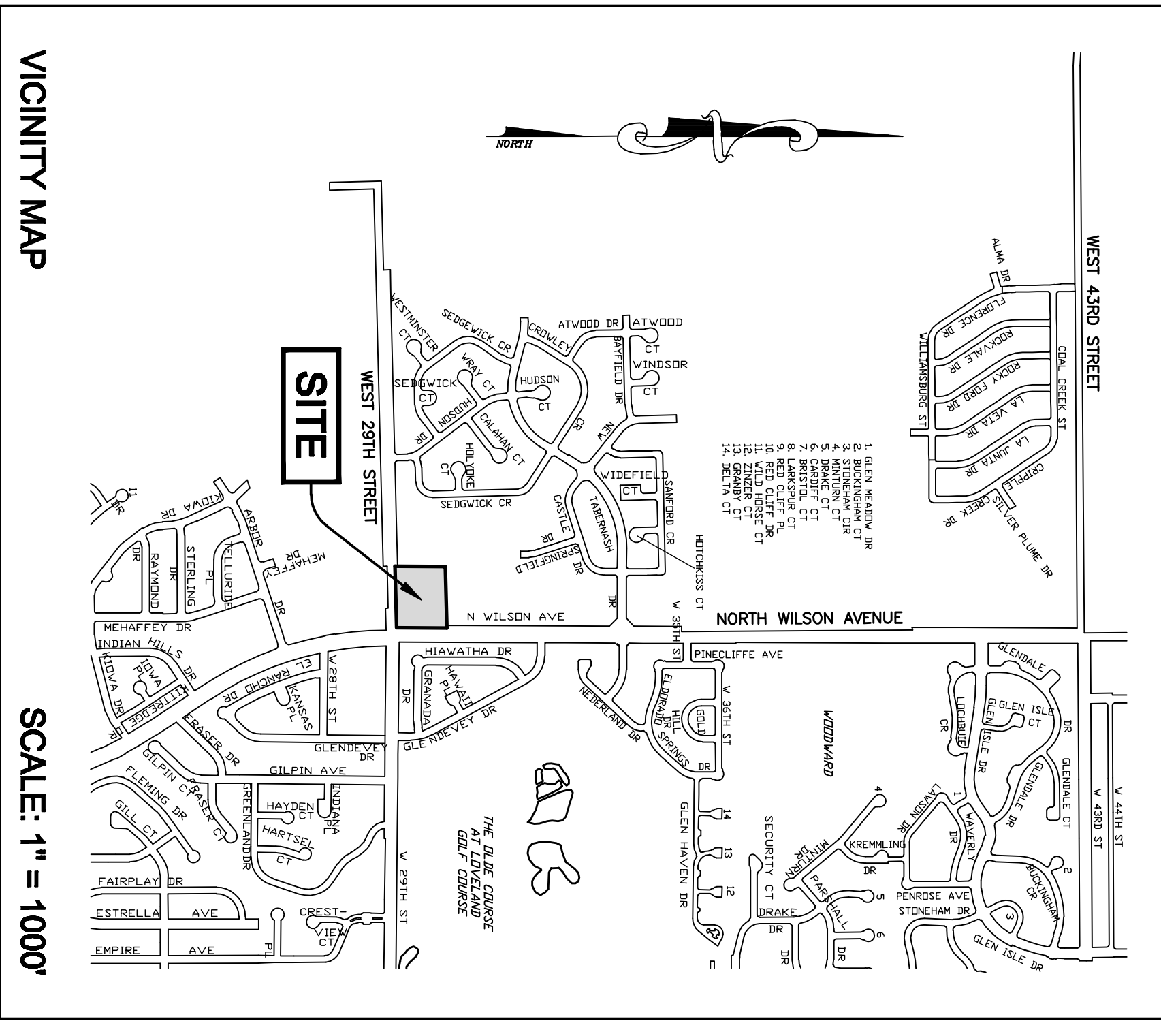
INTERMILL LAND SURVEYING, INC.
1301 NORTH CLEVELAND AVENUE
LOVELAND, COLORADO 80537
P: (970) 669-0516
F: (970) 635-9775
E: intermill@gwstiffice.net
Robert George Perschille
Colorado PLS 34174

STATE OF COLORADO)
COUNTY OF LARIMER) SS

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Robert George Perschille for and on behalf of InterMill Land Surveying, Inc.

Witness my hand and official seal,
My Commission expires _____

Nitany Public _____



VICINITY MAP

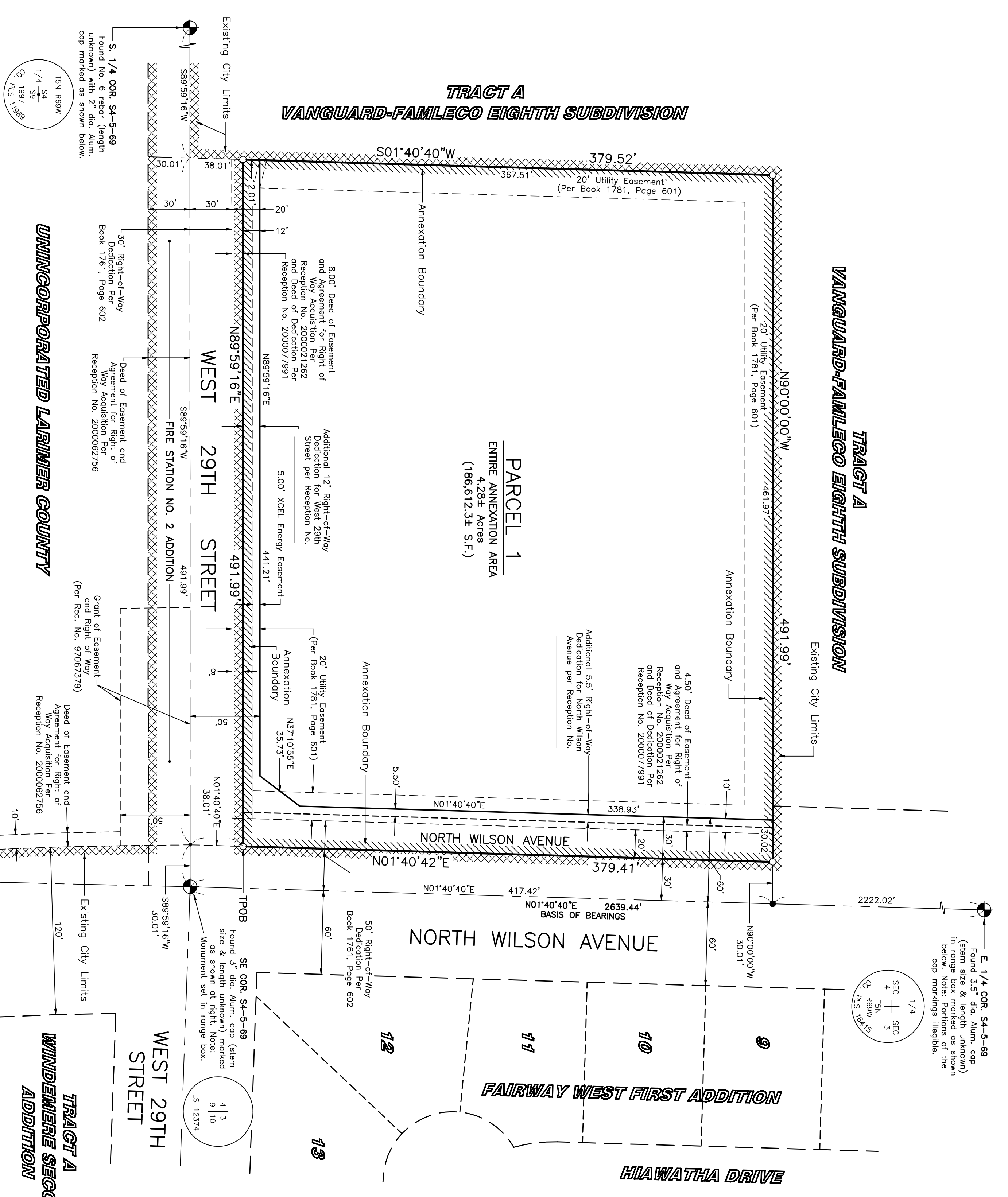
SCALE: 1" = 1000'

PLOTTED FOR INITIAL SUBMITTAL
DATE: 04-23-13 BY: RGP

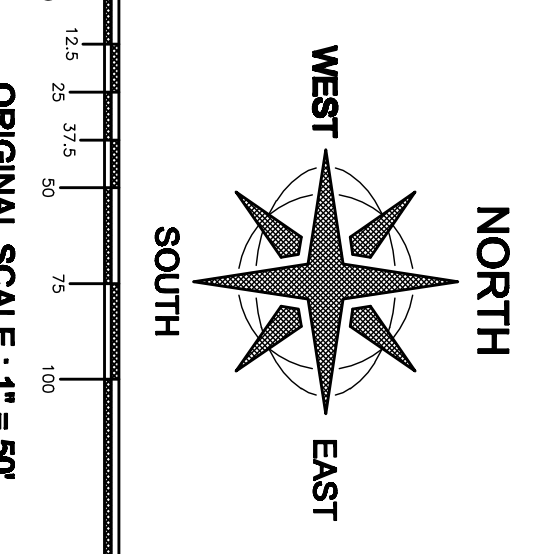
| | | | | |
|---|----------------------------|---|-------------------------------------|---|
| INTERMILL LAND SURVEYING, INC. 1301 NORTH CLEVELAND AVENUE LOVELAND, COLORADO 80537 BUS. (970)-669-0516 / FAX (970)-635-9775 | | REVISIONS: _____ _____ _____ 2. Address City Comments (W/WW) 1. Revise Annexation Boundary | BY: _____ _____ RGP RGP | DATE: _____ _____ 04-22-13 04-22-13 |
| TITLE: KING OF GLORY ADDITION A Portion of the SE1/4, Sec. 4-5-69 & A Portion of the NE1/4, Sec. 9-5-69, Larimer County Colorado | | CLIENT: KING OF GLORY LUTHERAN CHURCH | | |
| DRAWN BY: SJS/JEB CHECKED BY: SJS/JEB DATE: 02/01/2012 SCALE: 1" = 50' PROJECT NO.: P-03-5343 | SHEET 1 OF 1 | | | |

KING OF GLORY ADDITION

BEING AN ANNEXATION OF A PORTION OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO



APPLICANT:
KING OF GLORY LUTHERAN CHURCH
 2919 North Wilson Avenue
 Loveland, Colorado 80538

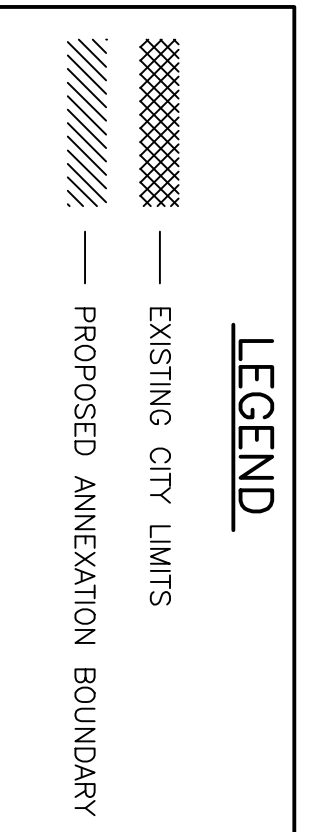


STATEMENT OF LINEAR UNITS USED:
 Linear Units Used for this survey - U.S. Survey Feet

BASIS OF BEARINGS STATEMENT:
 Basis of Bearings for this Annexation Map are based on an assumed bearing of North 01°40'40" East on the East line of the Southeast Quarter of Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado. Note: Monumentation of said line as shown on Map.

- GENERAL NOTES:**
- This project is subject to an Annexation Agreement which has been recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.
 - This project is subject to a Development Agreement which has been recorded in the Real Property records in the Office of the Larimer County Clerk and Recorder.
 - When the property being annexed into the City of Loveland is subject to a five percent (5%) surcharge on electrical energy, as defined in 40-915-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge will expire ten years after effective date of the annexation.
 - FLOOD ZONE NOTE:** Per the Flood Insurance Rate Map (FIRM) Community Panel No. 08069C1186F, Panel 1186 of 1420 (Effective Date of December 19, 2006) as prepared by the Federal Emergency Management Agency (FEMA) for this area, the subject property appears to lie in a Flood Zone 'X'. As FEMA regulated flood zones do not appear to affect the subject property, it is always in one's best interest to consult with the City of Loveland, Colorado and/or Larimer County, Colorado to discuss the possibility of a flood zone only regulated flood hazard areas affecting the subject property.
 - Control Monumentation as shown on Map.
 - This Annexation Map was prepared with the benefit of a Title Report as prepared by Land Title Guarantee Company (Order No. FCC25108088, Dated May 11, 2012). Only those easements and/or rights-of-ways affecting the land per the aforesaid Title Report, which are definable, are shown on this Map. No further easement and/or right of way research, other than shown on this Map, was conducted for the preparation of this Annexation Map. The easements and rights-of-ways which may be shown hereon may not be complete, and are based on general information, and are to be used only in this context.

| ANNEXATION DATA TABLE | |
|---------------------------------|----------------------|
| 1. Contiguity to City Limits: | 1,742.91 Linear Feet |
| 2. Minimum Contiguity Required: | 290.49 Linear Feet |
| 3. Total Annexation Boundary: | 1,742.91 Linear Feet |
| 4. Total Annexation Area: | 4.28± Acres |



MAYOR'S CERTIFICATE:
 This map is approved by the City Council of the City of Loveland, Larimer County, Colorado by Ordinance No. _____, passed on second reading on this _____ day of _____, 20____, for filing with the Clerk and Recorder of Larimer County.

By: _____ Mayor
 Attest: _____ City Clerk

KING OF GLORY ADDITION - ENTIRE ANNEXATION BOUNDARY PROPERTY DESCRIPTION:

That portion of the Southeast Quarter of Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:
 Considering the East line of the Southeast Quarter of said Section 4 as bearing North 01°40'40" East (assumed) and with all bearings contained herein relative thereto:
 Beginning at the Southeast corner of said Section 4; thence along the South line of the Southeast Quarter of said Section 4 South 89°59'16" West 30.01 feet, more or less, to a point on the West line of FIREWAY WEST FIRST ADDITION to the City of Loveland, County of Larimer, State of Colorado; said point also being a point on the East line of FIRE STATION NO. 2 ADDITION to the City of Loveland, County of Larimer, State of Colorado; thence departing said South line of the Southeast Quarter of said Section 4 and along said West line of FIREWAY WEST FIRST ADDITION and along said East line of FIRE STATION NO. 2 ADDITION North 01°40'40" East 38.01 feet to a point on the South line of said FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING; thence departing said East line of FIRE STATION NO. 2 ADDITION and continuing along said West line of FIREWAY WEST FIRST ADDITION North 01°40'40" East 379.41 feet to the Southeast corner of VANGUARD-FAMLEGO EIGHTH SUBDIVISION to the City of Loveland, County of Larimer, State of Colorado; thence departing said West line of FIREWAY WEST FIRST ADDITION and along the 3299' line of said VANGUARD-FAMLEGO EIGHTH SUBDIVISION, commencing at the Southeast corner of said Section 4, Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado, and ending at the North line of said FIRE STATION NO. 2 ADDITION; thence departing said Easement and along said North line of said FIRE STATION NO. 2 ADDITION North 89°59'16" East 491.99 feet to a point on the West line of said FIREWAY WEST FIRST ADDITION; said point also being a point on the East line of FIRE STATION NO. 2 ADDITION and the TRUE POINT OF BEGINNING.

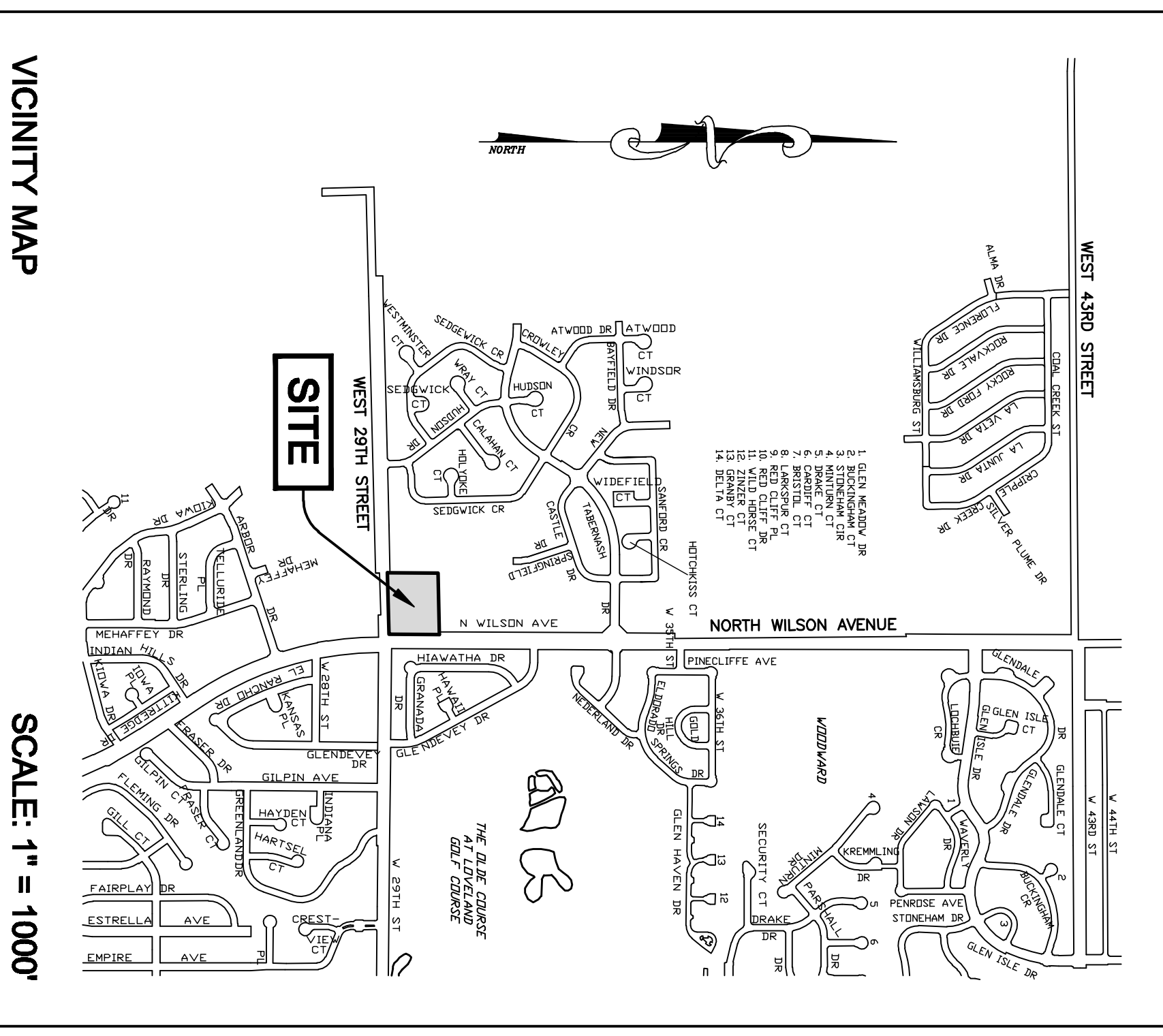
The above described parcel contains 4.28 acres, more or less, and is subject to all existing easements and/or rights of way of record.

SURETOR'S CERTIFICATE:
 I, Robert George Parschitte, a Registered Professional Land Surveyor in the State of Colorado, do hereby certify that the Annexation Map shown hereon is a reasonably accurate depiction of the parcel of land legally described hereon and, to the extent described herein, that at least one-sixth (1/6) of the peripheral boundary of said parcel is contiguous to the boundary of the City of Loveland, Colorado. The said parcel is shown on the attached plat, and the same is shown on the attached plat, and the same is shown on the attached plat. This Annexation Map should not be construed as a full boundary survey of the subject properties.

PREPARED BY AND ON BEHALF OF:
 INTERMILL LAND SURVEYING, INC.
 1301 North Cleveland Avenue
 Loveland, Colorado 80537
 P: (970) 669-0516
 F: (970) 635-9775
 E: intermill@quadsurvey.net
 Robert George Parschitte
 Colorado PLS 34174
 STATE OF COLORADO)
) SS
 COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Robert George Parschitte for and on behalf of Intermill Land Surveying, Inc.
 Witness my hand and official seal.
 My Commission expires _____

Notary Public _____



PLOTTED FOR RESUBMITTAL
 DATE: 04-23-13 BY: RGP

| REVISIONS: | BY: | DATE: |
|-------------------------------|-----|----------|
| 1. Revise Annexation Boundary | RGP | 04-22-13 |

INTERMILL LAND SURVEYING, INC.
 1301 NORTH CLEVELAND AVENUE LOVELAND, COLORADO 80537 BUS. (970)-669-0516 / FAX (970)-635-9775

TITLE: **KING OF GLORY ADDITION**

CLIENT: **KING OF GLORY LUTHERAN CHURCH**

A Portion of The SE1/4, Sec. 4-5-69 & A Portion of The NE1/4, Sec. 9-5-69, Larimer County Colorado

| | |
|--------------|------------|
| DRAWN BY: | SJS/EB |
| CHECKED BY: | |
| APPROVED BY: | |
| DATE: | 05/01/2012 |
| SCALE: | 1" = 50' |
| PROJECT NO.: | P-09-5943 |
| SHEET: | OF |
| 1 | 1 |

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
July 22, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on July 22, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Crescibene, Krenning, and Prior. Members absent: Commissioner Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

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

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Bob Paulsen, Current Planning Manager**, informed the Commission that there are items scheduled for the 08/12/13 Planning Commission meeting, including approval of the 7/22/13 meeting minutes, and a public hearing for the Giuliano PDP amendment.

COMMITTEE REPORTS

1. **Chair Meyers** gave an update on the last Title 18 committee meeting and shared that the committee reviewed the Oil and Gas amendment to be presented to the Commission at tonight's meeting. Other items that were discussed include a weed control ordinance, and the development review process. **Commissioner Molloy** added that there was good discussion regarding the goals of the Title 18 committee, which included a review of the committee's mission statement, and what accomplishments have been achieved in the previous years.

COMMISSIONER COMMENTS

1. **Commissioner Krenning** shared his plans to run for City Council, Ward I, in the upcoming November election. He apologized to the Commission for not notifying them of his plans earlier, and explained that the news was leaked out before he could do so. He stated that he feels that the Planning Commission is an apolitical body, and said that he planned to keep it apolitical in the future. He welcomed fellow Commissioners to approach him with any concerns should they arise during his bid for election.
2. **Commissioner Crescibene** expressed his gratitude for the work that city staff put into creating the oil and gas code amendment. He expressed that work being done by the Current Planning department has been done for the good of the community.
3. **Commissioner Dowding** stated that she is also considering a bid for City Council. She explained she wanted to do the best that she can for the community and the City of Loveland. She shared that if she did decide to pursue a City Council seat, she would avoid any conflict in Planning Commission decisions.

4. **Commissioner Crescibene** provided a brief ZBA update and explained there had only been one meeting since the last update. He explained the Zoning Board approved the reconstruction of a garage on E. 4th Street that replaced an old garage that was dilapidated. He continued that it was a cut and dry approval that allowed for a 2 foot setback to the applicant. **Mr. Paulsen** assured that materials from the meeting would be given to the Commissioners at the next Planning Commission meeting. He shared there is another ZBA meeting scheduled for 8/12/13, and results from that meeting would be shared after the appeal period expires.
5. **Chair Meyers** shared that both **Commissioners Krenning and Dowding** are dedicated public servants to the city, and didn't expect any problems, concerns, or issues, with their plans to run for City Council.

APPROVAL OF THE MINUTES

Chair Meyers asked for a motion to approve the minutes from the 07/08/13 Planning Commission meeting. **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Dowding**, the meeting minutes were approved five to two with **Commissioners Molloy and Prior** abstaining since they were absent from the 07/08/13 Planning Commission meeting.

CONSENT AGENDA

The consent agenda includes items for which no discussion is anticipated. However, any Commissioner, staff member or citizen may request removal of an item from the consent agenda for discussion. Items removed from the consent agenda will be heard at the beginning of the regular agenda.

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

1. Marianna Butte 25th

Applicant Mr. Jess Rodriguez has submitted a written request for a two-year extension of the Preliminary Plat and Preliminary Development Plan for the Mariana Butte 25th Subdivision (Mountain Gate). **Mr. Rodriguez** is the owner and potential developer of the 34-acre property generally located at the northwest corner of W. 1st Street and Namaqua Avenue. In February of 2012, the Preliminary Plat was approved by the city for 51 lots (46 paired single-family units and 5 detached single-family units). **Chair Meyers** questioned if there were any Commissioners who wished to move this item from the consent agenda to the regular agenda. **Mr. Krenning** made a motion to approve the item on the consent agenda. Upon a second from **Mr. Middleton** the consent agenda was unanimously approved.

REGULAR AGENDA

2. King of Glory

This is a public hearing concerning the annexation and zoning of a 4.28 acre parcel owned by the King of Glory Lutheran Church located at the northwest corner of N. Wilson Avenue and W. 29th Street. The property would be annexed and zoned to facilitate future development/redevelopment of the existing church facility. No development/redevelopment is being proposed in conjunction with the annexation. The hearing is to consider the following items:

- A legislative action for annexation of 4.28 acres; and
- A quasi-judicial action for zoning the property to R1-Developing Low Density Residential District.

Staff believes that all key issues have been resolved on city Codes and standards. The King of Glory Addition is a property that is becoming more and more surrounded by the city's municipal boundaries in northwest Loveland as a result of recent annexations that have included the Fire Station 2, and Mehaffey Park. The property is in the city's Growth Management Area (GMA), and is currently served by city water and sewer.

Mr. Molloy recused himself from this agenda item discussion and left the dais.

Troy Bliss, City Planner II, addressed the Commission and explained that the King of Glory Church is one of the more recognizable land marks outside of city limits and was built in the 1970's. If the annexation is approved, it would be designated as R1-LDR; Low Density Residential. It should be noted that churches are permitted by right in the R1-LDR zone. Previous annexation requests were never followed through to completion; however, there were agreements to allow for city water and city sewer. **Mr. Bliss** shared that King of Glory has always had the intent and desire to follow through with annexation. City staff has conducted a thorough review and also held a neighborhood meeting to address any possible citizen concerns. The most common feedback at the neighborhood meeting was the belief by members of the community that King of Glory already resided within city limits. To date, city staff has not received any negative feedback regarding this annexation request.

Mr. Bliss shared that certain elements are not in compliance with code, including the King of Glory building height. The worship building is currently 65 feet in height, which is well beyond the height restrictions of the R1 zoning code. Any future proposals to increase building height on either new or existing buildings would require the applicant to follow the variance process. There is also an existing wireless communication facility on the property. Any future expansion of the facility would require a special review. Finally, there are landscaping elements on the current site that are not in compliance with city standards, including a lack of landscape buffers, and interior parking lot landscaping. These issues would be addressed as conditions if the annexation is approved. There is no development/redevelopment being proposed with the annexation request, however there is the anticipation of erecting columbarium/memoria walls upon annexation. Staff is recommending approval of the annexation and zoning, with conditions.

Mr. Darell Zimbleman, representative of the King of Glory Church, thanked the Commission for the opportunity to address plans for annexation. He stated that the church members felt there was a great amount of growth in the area around the property, and one of the goals of the church is to be a greater resource for the community it resides in. King of Glory currently offers several neighborhood services, including a community garden which benefits Habitat for Humanity. **Mr. Zimbleman** stated the congregations desire to become part of the Loveland community.

Mr. Middleton thanked **Mr. Zimbleman** for his comments. He asked if he was aware of the nine conditions included in the annexation agreement. **Mr. Zimbleman** replied that the congregation was aware of the conditions, and had voted unanimously to move forward with the annexation request. **Chair Meyers** asked that the record show that the applicant accepts all conditions.

Chair Meyers opened the meeting to public comment. Given that there were no public comments, the public hearing was closed.

Mr. Middleton stated that he was in full support of the annexation agreement and indicated he would be voting in favor of its approval. He moved to make a motion to make the findings listed in section VIII of the Planning Commission staff report, dated July 22, 2012 and, based on those findings, recommend that City Council approve the King of Glory Addition, subject to conditions, as amended on the recorded, and zone the addition R1-Developing Low Density Residential.

Prior to the vote, **Mr. Krenning** questioned why R1 zoning was chosen. **Mr. Bliss** explained that R1 was chosen to align the zoning with the land use designation of the Comprehensive Plan. **Mr. Krenning** wondered what zoning would be most appropriate if King of Glory wished to exceed allowable height standards in future expansions. **Mr. Bliss** stated that commercial zoning does allow for greater height allowance, however even in commercial zones, 65 feet exceeds city height limits.

Chair Meyers asked for a second to the motion. Upon a second from **Ms. Dowding** the motion is passed unanimously.

3. Oil and Gas Development Code Amendment

This is a public hearing to consider an ordinance amending Chapter 18.77 and 18.78 of the city of Loveland Municipal Code.

Commissioner Massaro addressed his fellow Commissioners and stated that his wife has been involved with "Protect our Loveland" group, and asked if anyone felt this created a conflict of interest with him participating in the discussion. **Chair Meyers** responded that given the nature of the amendment, he felt there was not a conflict of interest. **Judy Schmidt, Deputy City Attorney**, concurred and explained that this amendment does not represent a personal interest and would not create a conflict of interest.

Greg George, Director of Development Services, addressed the Commission and stated that he had taken the proposed amendments to the Title 18 Committee and explained there was some confusion as to the difference between Chapters 18.77 and 18.78. He wanted to clarify

that Chapter 18.77 does one thing; it regulates oil and gas development as it occurs within the city limits. Setbacks have been established, and a two-step process has been created in order for developers to get a permit from the city. Chapter 18.77 establishes regulations on new oil and gas development. By contrast, Chapter 18.78 establishes regulation on new land development, including new residential subdivisions and industrial commercial development, when that development is within close proximity to an existing oil and gas facility. The purpose of the two chapters is entirely different as they regulate two different issues.

Mr. George went on to explain the amendments addressed technical, procedural amendments to Chapter 18.77, regulating the location and mitigation measures required for new oil and gas facilities. He asked the Commissioners to refer to the copy of the proposed ordinance amendments and explained he would share on which pages the various changes were made. Starting on page 6, **Mr. George** explained that a definition of a high occupancy building was included. The definition was moved from section 18.77.065 to the definition section of the code, as it was a more appropriate placement; however, the definition itself was unchanged.

Turning to page 7, **Mr. George** shared that the definition of an oil and gas facility in the existing code did not provide easy means of measuring or determining the edge of an oil and gas facility. For purposes of measuring a setback, a well-defined starting point must be identified. The expanded definition is consistent with the oil and gas commission definition. This allowed for a starting point to measure from. Depending on the configuration of where the equipment is located, the shape of the oil and gas facility may change; however, it does provide a mechanism for measurement. It differs on how the oil and gas commission measures the location of an oil and gas facility; the oil and gas commission measures from the center of the facility, or the center of the wellhead itself. **Mr. George** stated he believes the new definition improves upon the oil and gas commission definition.

Mr. George added that also on page 7, there is a provision in the setback in the overlay zoning part of the ordinance, which does not allow outdoor assembly areas within the restricted zone. It initially indicated that backyards of residential buildings would not be included, but was later removed because it was considered to be a redundant statement. Outdoor assembly areas are not allowed in the restricted areas. Any portion of a residential lot would not be allowed in a restricted zone. The definition of a setback, located on page 8, was removed because the definition of a setback is used for enhanced standards. It is located in a different section of the code for the baseline standards of a setback. It states that the operator only needs to comply with setbacks established by the oil and gas commission, which is how the baseline standards were preempted. The current definition can be found in 18.77.065 of the proposed amendment.

Mr. George continued, addressing pages 13 and 14. He explained that in the section addressing the Appeal of Director's Decision, procedural clarifications were made by **John Duval, City Attorney**, who wanted to make clear who has standing to appeal the decision of the director. Any appeal to the director's decision would need to be made through Larimer County District Court. He also clarified who would get notice of any decision made by the director.

Mr. George went on to address setback requirements for oil and gas development in sensitive areas, found on page 23, indicating that the proposed definition of setbacks includes methods for measuring both the beginning point as part of the oil and gas facility itself and which portion of a sensitive area that is measured to. **Mr. George** explained he felt it was easier to clarify the setback requirements by using a table rather than the narrative description located in the current ordinance. The setbacks for the enhanced standards have not changed but do contain better definitions for measurement requirements.

Mr. George then moved onto Chapter 18.78. He referred the Commission to a diagram which illustrated the overlay zones and how they work. The diagram showed an example of an oil and gas facility. It was communicated that if an oil and gas company goes through the baseline standards, it requires a Planning Commission hearing process. The setback is measured to the nearest property line as 200 feet to the closest well head. Under city's enhanced standards; it is measured from the edge of the oil and gas facility, 200 feet to what is referred to as the critical zone.

Mr. George explained the overlay zones, indicating that there are three zones represented in the diagram; the critical zone, the restricted zone, and the high occupancy building zone. The goal of 18.78 is to create overlay zones that change the uses allowed by property owners. As it stands today, all three of the proposed overlay zones are absolutely restricted as open space areas, also referred to as "no build areas", and a 1000 foot radius around the oil and gas facility would create a 72 acre no build zone. As **Mr. George** explained, this area makes it very difficult to work within an urban setting during efforts to develop urban uses. To remedy the restriction, **Development Services** determined appropriate uses for these zones could include heavy industrial and certain types of industrial uses, which would be compatible with an oil and gas facility site, particularly after it's under production. It should be noted, **Mr. George** indicated that a permit can be issued by the oil and gas commission as well as the city, allowing permission to reenter the oil and gas facility; it could create additional heavy industrial activity. In Chapter 18.78, there are listed uses that would be allowed in the restricted zone that could be compatible to an oil and gas facility, but would require a Special Review. Special Review is the process used to determine if the use is compatible with the oil and gas facility and other uses in the vicinity. City reserves the right to deny the application if it is determined the use is not compatible at a site. Additional limitations for the uses listed in the proposed amendment states that no building or parking lot would be permitted within the restricted zone. High occupancy buildings, such as a hospital or library, would still be required to be outside of the 1000 foot radius.

Mr. Duval addressed the commission and explained that city staff discovered two changes that needed be made on page 34 to the definitions. It needed to be clarified that "critical zone" shall mean all land and water surface area less than 200 feet from and oil and gas facility, and "high occupancy building zone" shall mean all land and water surface area less than 1000 feet from an oil and gas facility. "Restricted zone" shall mean all land and water surface 500 feet or less from an oil and gas facility.

Commissioner Krenning questioned **Mr. Duval** as to why city staff did not use the "Rule of Seven" approved by the Supreme Court, meant for use in ease of calendaring. He asked if any consideration was given to the use this metric. **Mr. Duval** responded that it was not considered and felt that reasonable timelines were included which would work well internally for the City of Loveland.

Commissioner Massaro asked for clarification about the “restricted zone”. He stated that the proposed amendment would allow for uses such as an airport or helicopter port in the restricted zone, however he questioned how that could happen if a building or parking lot are not permitted. **Mr. George** responded that it could be used as a runway with open space, but stressed such a use would require Special Review approval. The goal, as **Mr. George** explained, is to allow as many buildings as appropriate to establish reasonable uses in the overlay zones. **Mr. Massaro** restated his concern about the wording in the ordinance in relation to the restricted zone. He asked if there was an existing building within the ‘restricted zone”, could an oil and gas well be placed within the proposed overlay zone. **Mr. George** clarified that existing setback requirements as they apply today would be enforced for existing developments and open space areas.

Commissioner Dowding stated she had concerns regarding the 18.77.060 section of the proposed amendment. She questioned if 18.78 complied with COG regulations. **Mr. George** stated that 18.78 does not regulate oil and gas development and, therefore, does not interfere with COG regulations.

Commissioner Dowding pointed out that on page one; under the sixth “Whereas”, it states that the city will not enact anything that is in “operational conflict” with state law. **Mr. Duval** explained that the “Whereas” clause regarding operational conflict is a legal clause the court has used when a city regulation is in conflict with a state regulation in terms of the location and permitting of oil and gas facilities. However, Chapter 18.78 is not a regulation imposed on the oil and gas operators; rather, Chapter 18.78 is a regulation that is imposed on developers that outlines the standard that will need to be met when they submit plans for subdivision or PUD’s, for example. **Commissioner Dowding** suggested that putting the word “existing” in the title would help clarify its intent. **Mr. Duval** agreed to the suggestion and said he would take it under consideration. **Commissioner Dowding** asked why city staff went to great trouble in 18.77 to create the beautiful table which made it very clear to understand, but in 18.78 it is all verbiage but no table. **Mr. Duval** agreed to take that recommendation under consideration as well. **Ms. Schmidt** suggested that using the phrase “permitted oil and gas facilities” for better clarification.

Commissioner Crescibene asked about 18.77, specifically page 20 of the proposed amendment, referring to chemical spills, water supplies, and hauling. He said that nowhere in 18.77 does it refer to the disclosure of what the chemicals being used by oil and gas operators are, nor does it refer to water testing requirements. **Mr. George** pointed out that on page 15, under paragraph I, COG requires that all operators shall provide the Loveland Fire Rescue Authority, in hard copy or electronic format, the operator’s chemical disclosure form. It was also pointed out that there is a provision for COG to test water baseline in accordance with oil and gas regulations. **Mr. George** made it clear that if the City of Loveland attempted to strengthen these provisions they would be preempted. He also stated that it was unlikely that city would create its own water sampling criteria or revisit how the COG regulations are working. The goal was to create an ordinance that would allow reasonable land uses on property in the vicinity of an existing oil and gas facility.

Mr. Crescibene indicated that he believes that the baseline standards should be addressed and explained, and that is one of the more pressing issues surrounding oil and gas development. He would like full disclosure of what chemicals are being used in the process of hydraulic

fracturing. **Mr. Duval** explained that when creating the enhanced standards, they avoided including strict requirements because city staff felt it increased the likelihood of oil and gas developers participating in the process. Otherwise they might elect using the baseline standards and landowners would be left without options to develop property with existing oil and gas wells. **Mr. Crescibene** added that if he owned a well within 1000 feet of a fracking distribution point, he would have the water tested very frequently. **Mr. Duval** reiterated that city staff has not gotten direction from City Council to pursue those concerns.

Commissioner Middleton stated that he felt the topic of discussion related to oil and gas development has been a mess, and has been since day one. He commended city staff for their efforts on the proposed amendments, but echoed concerns regarding oil and gas development. He questioned why a disinterested third party could not do air and water quality testing at fracking sites, at the expense of oil and gas developers. **Mr. George** responded that city staff has been given a statement of direction from City Council regarding the oil and gas ordinance, but if in the future city staff was directed by City Council to further explore air and water quality standards, they would be happy to do so.

Mr. Krenning interjected that he felt the purpose of the meeting was to discuss the minor adjustments to the existing ordinance. The policy debate that is ongoing surrounding oil and gas development should be left to the City Council. **Mr. Middleton** disagreed and stated that the Commission is being asked to approve an ordinance. **Chair Meyers** pointed out that the ordinance is already approved and the Commission is only being asked to make redline changes.

Commissioner Molloy asked what the permit requirements were for capped wells in the vicinity of housing developments. **Mr. George** explained that a permit could be granted by the oil and gas commission, however, if the oil developer goes through the city's enhanced standards and the proposed location of the well does not comply with the enhanced standards for setbacks, they would not get the permit because certain setbacks are absolute. The operator would have to go through the Planning Commission review process where the COGCC setback rules apply.

Mr. Molloy stated he had concerns about the variances and Director's decisions. He used Greeley as an example, and explained that they recently made the decision to allow oil and gas developments in neighborhoods and felt that decision was a travesty. He wanted to make a suggestion that when it came to a Director's decision, written notification should be not only sent within the notification area, but also to individuals who attend neighborhood meetings and provide in writing their desire to be notified. **Mr. Krenning** expressed doubt that participation in a neighborhood meeting would grant a non-city resident standing in any Director decision appeal, and felt it would be a burden to city staff to do so. **Mr. Molloy** clarified the burden would fall to the applicant and not city staff. **Mr. Duval** responded that as the ordinance is written today, only people within the written notification area, which is currently any resident within 2200 feet, would be notified of decisions. **Chair Meyers** commented he felt such a requirement would create a process nightmare. **Mr. Duval** clarified that "parties of interest" who wish to appeal a director decision are only those who are included in the written notification area. He pointed out that Council Members and Planning Commissioners are also able to appeal decisions.

Mr. George stated his desire for the Commission to recommend approval of the proposed ordinance amendment to City Council. He stated that the Commission had the option, if it felt inclined to do so, to pass a motion with majority approval, to make comments to the Council about difficulties with the existing ordinance.

Chair Meyers opened up the meeting to Public Hearing and invited members of the audience to make comments. He asked that comments be kept to the issue at hand, which is recommendation of approval of the proposed ordinances.

Ms. Kim Orr, PO Box 2045, Loveland CO, addressed the commission and asked if it would be possible that in the ordinances for the developers, a requirement could be included for them to test water and air quality for contamination in existing well sites prior to further development.

Ms. Sue Mullins, 4785 Hahn's Peak Dr. #203, Loveland, CO wanted to share with the Commission what she considered to be their charge. After listening to the discussion, she said she appreciated **Mr. Molloy's** comments. She feels anyone who lives in the City of Loveland should have standing in this issue. She believes the Commission takes its charge seriously. She believes the Commission is responsible for the health and welfare of city citizens. She commented that having only appeal powers to the Larimer County District Court was a very high burden to place on concerned citizens. She wanted to share that she has listened to concerned citizens of Loveland and wanted to pass that concern on to the Commission. She asked the Commission to remember who they represent.

Ms. Carla Massaro, 4250 Tarryall Ct, Loveland, CO, stated she wanted to reiterate her appreciation for all the Commissioners hard work and concern that they have displayed for the citizens of Loveland. She doesn't feel that the City Council has the same concern. She would like to believe experience in the field should carry more weight than just opinion. **Chair Meyers** asked if **Ms. Massaro** could please redirect the discussion to focus on the two amendments to the current ordinance. **Ms. Massaro** stressed the importance of listening to professional opinions and applauded the Commission for their concern regarding air and water quality at fracking sites and thanked them for their hard work. **Chair Meyers** closed the Public Hearing.

Mr. George addressed concerns raised by citizens and explained that the purpose of the proposed amendments was to lessen the burden of property owners within the vicinity of oil and gas facilities by increasing available opportunities for development. He stated the city did not feel it was reasonable to require land developers to conduct air and water quality test prior to development activities.

In response to concerns regarding citizen appeal rights only at the Larimer County District Court, **Mr. Duval** responded that this is a process that's been in place for a long time and also applies to any quasi-judicial City Council decisions.

Chair Meyers continued the discussion regarding who should have standing in neighborhood meetings. **Mr. Krenning** replied that he didn't support the concept of granting citizens standing who aren't directly impacted by oil and gas development. He continued that he felt that it was important to keep the focus of the meeting on the proposed amendments. He stated

that he has provided close attention on the issue of fracking because it is controversial, serious, and a hot topic item. **Mr. Krenning** noted that he recently read an article published in the Denver Post regarding a study done by the Department of Energy along with a group of private scientists. **Mr. Krenning** stated that the study concluded that there has been zero ground water contamination due to oil well drilling and fracking. He stated that he is open to any scientific data that would prove otherwise, but to date he has not seen any information that supports fracking contaminates ground water. He reiterated the importance of focusing on the proposed amendments and did not want the Commission to be bogged down in another discussion regarding the controversy surrounding fracking. He made a motion to recommend that City Council adopt the proposed amendments to Chapter 18.77 and 18.78 of the Loveland municipal code. Upon a second by **Ms. Dowding** the discussion continued.

Mr. Molloy stated that he felt the Planning Commissions has a responsibility to ensure that projects being developed within the city not have any negative consequences to the city or its citizens. He reiterated his suggestion to expand the requirement to notify citizens of a Director's decision not only within the current notification area, but also to individuals who attend neighborhood meetings. He pointed out that heavily industrialized projects could impact more than just the citizens in the written notification area.

Mr. Massaro commented that he disagreed with the statements made suggesting ground water has not been contaminated by fracking. He stated that on the COGCC website that there are over 200 incidents in Weld County alone of documented ground water contamination from the oil and gas industry. He pointed out that contaminated ground water is very difficult to clean-up. **Mr. Massaro** continued that in the entire State of Colorado there is a spill per day, and 43% of those spills contaminate ground water. In regards to expanding the mailing list, he agreed that the notification area be as wide as possible, however, he felt it would create a burden by allowing out of area citizens to be notified and wanted to take more time to consider the issue.


Commissioner Prior agreed with **Mr. Molloy** regarding citizen notification but felt that Director decisions should be limited to citizens within city limits, but only in cases when the impact would be city wide. He stated that he has a background in water engineering, and agreed that there is no proven evidence of water contamination from fracking. He explained that the data provided by the COGCC does not point to evidence of contaminated ground water and felt the confusion regarding the data should be resolved at a later time.

Ms. Dowding commented that the Commission originally addressed the issue of notification by doubling the mail notice area to 2,200 feet at a prior meeting. She concluded that the issue has been sufficiently addressed. She suggested that if the issue needed further discussion it should be hashed out at a Title 18 Committee meeting.

Commission Middleton asked for a vote on the motion before the Commission. The motion passed 7-1 with **Commissioner Middleton** voting nay.

ADJOURNMENT

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

Approved by: 
Buddy Meyers, Planning Commission Chairman


Kimber Kreutzer, Planning Commission Secretary

**ANNEXATION AGREEMENT
PERTAINING TO THE
KING OF GLORY ADDITION
TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

THIS ANNEXATION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2013, by and between King of Glory Lutheran Church, (the "Developer"); and the CITY OF LOVELAND, COLORADO, a home rule municipality (the "City").

RECITALS

WHEREAS, the Developer owns +/- 4.28 acres, more or less, of real property located in Larimer County, Colorado, more particularly described in Exhibit A attached hereto, but not including any existing public streets and highways which may be included in said description, which description, by this reference, is incorporated herein and designated as "the Property";

WHEREAS, the Developer is requesting that the City annex and zone said Property to allow for the coordinated development of the Property to the benefit of the parties, including the City; and

WHEREAS, the City is unable to annex the Property under the terms of this Agreement without the consent of the Developer.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Consent to annexation. Developer has petitioned for the annexation of the Property described in the attached Exhibit A. The Developer hereby consents to the annexation of the Property subject to the terms of the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the City Council of the annexation, the parties agree that the binding effect of this Agreement and the effectiveness of the annexation and zoning of the Property in accordance with the Developer's application is expressly conditioned upon such approval by the City Council and the execution and delivery of this Agreement by all parties thereto.

2. Terms of annexation.

A. CURRENT PLANNING

- i. The existing worship building has a height of sixty-five (65) feet. Upon annexation, this building will be considered legal non-conforming. Any future remodeling of the existing worship building shall not be allowed to increase height, unless a variance is permitted and approved pursuant to the City Municipal Code.
- ii. The existing building antennas located on the worship building shall be considered legal non-conforming. Additional building antennas including but not limited to panel antennas, wiring, ground cabinets, or equipment shelters shall not be permitted unless Special Review approval is issued for such uses in the R1 - Developing Low-Density Residential District. (Currently, the R1 zoning district permits wireless service facilities by special review only. If any future changes to the R1 zoning district are approved to prohibit wireless service facilities, the existing facilities could remain but no new facilities would be allowed.) No towers associated with a wireless service facility shall be permitted. Additional wireless service shall not be considered an expansion of use or a building addition with regards to paragraph A.iii below.
- iii. This property does not conform with the City of Loveland landscape standards including landscape bufferyards along both Wilson Avenue and 29th Street, street canopy trees spaced 30 to 40 feet on center along both Wilson Avenue and 29th Street, curb/gutter/sidewalk for the reconfigured right-of-way on 29th Street, internal parking lot landscaping/screening, and irrigation systems throughout all landscaped areas.

For purposes of this Section, the erection of columbarium/memorial walls in the general vicinity of the northwest corner of the site shall be permitted without providing these improvements. However, these improvements will be required in conjunction with any redevelopment/development of the property, change in use, expansion of use, building additions or on the fifth anniversary of recording this agreement, whichever comes first. Any development application (including but not limited to a Site Development Plan, Special Review, or Building Permit) shall provide a phasing plan and cost estimate associated with the required improvements to the City for approval. The phasing plan shall incrementally detail what specific improvements would be made over time.

- iv. The Developer will be responsible for the construction necessary to bring the existing parking lot adjacent to W. 29th Street into compliance with the City of Loveland landscape standards to include canopy street trees, screening, and a detached sidewalk in conjunction with any redevelopment/development of the property, change in use, expansion of use, or building additions that require the need for developing the full right-of-way. Such required construction in the

parking lot adjacent to W. 29th Street shall not be required in connection with the erection of columbarium/memorial walls described in paragraph A.iii above.

B. TRANSPORTATION

- i. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS) and the 2030 Transportation Plan and any updates to either in effect at the time of a site specific development, Minor Subdivision and/or a building permit application. Any and all variances from these standards and plans require specific written approval by the City Engineer.
- ii. The owner shall dedicate to the City, at no cost to the City, right-of-way for all street facilities adjacent to, or within, this addition that are shown on the adopted Transportation Plan. Unless otherwise approved by the City Engineer, the timing of the dedications shall be as follows:
 - a. Right-of-way for 29th Street shall be dedicated prior to the recording of the annexation.
 - b. Right-of-way for Wilson Avenue shall be dedicated prior to the recording of the annexation.
- iii. The Developer agrees to acquire and dedicate, at no cost to the City, any off-site right-of-way necessary for mitigation improvements. Prior to the approval of a site specific development application, Minor Subdivision and/or a building permit application within this addition, the Developer shall submit documentation satisfactory to the City, establishing the Developer's unrestricted ability to acquire and dedicate sufficient public right-of-way for the construction and maintenance of any required street improvements to both adjacent and off-site streets.
- iv. Notwithstanding any conceptual information presented in the Annexation/Zoning submittal; street layouts, street alignments, access locations, turning movements, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for a site specific development application, Minor Subdivision and/or a building permit application.
- v. The existing curb cut access to Wilson Avenue shall be removed and replaced with curb, gutter, and sidewalk per the satisfaction of the City in a time period not to exceed 12 months after the recording of the annexation. The owner shall apply for and receive a Right-of-Way Work Permit from the City prior to any construction activity within the City's public right-of-way.

GENERAL PROVISIONS

3. Waiver of Damages. In the future, the Developer may be granted vested property rights associated with the approval of a site specific development plan within the Property. In the event that such vested property rights are granted, and the City applies an initiated or referred measure to the property which would (a) change any

term of this Agreement, (b) impose a moratorium on development within the Property, or otherwise materially delay the development of the Property, or (c) limit the number of building or utility permits to which the Developer would otherwise be entitled, the Developer agrees to waive any right to damages against the City to which Developer may otherwise be entitled under the Vested Rights Statute.

4. Incorporation. The terms of this Agreement shall be deemed to be incorporated into the Developer's Petition for annexation of the Property.
5. Integration and Amendment. This Agreement represents the entire Agreement between the parties with respect to the Property and supersedes all prior written or oral agreements or understandings with regard to the obligations of the parties with regard to the Property. If conflicts between the Annexation Conditions listed in the Staff Report for City Council on _____, and the terms and conditions of this Annexation Agreement occur, this Annexation Agreement shall prevail. This Agreement may only be amended by written agreement signed by the Developer and the City. Only the City Council, as a representative of the City, shall have authority to amend this Agreement.
6. Remedies. In the event that a party breaches its obligations under this Agreement, the injured party shall be entitled only to equitable relief, including specific performance, and such other equitable remedies as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to recover costs and reasonable attorneys' fees.
7. Effective Date. This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City does not annex the Property, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the Property, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation of the Property.
8. Binding Effect and Recordation. The promises made in this Agreement by the Developer shall be deemed to have been made by any corporation or other business affiliated with Developer that acquires ownership or possession of all or any portion of the Property. The parties agree to execute a memorandum of this Agreement that the City shall record with the Clerk and Recorder for Larimer County, Colorado. It is the intent of the parties that their respective rights and obligations set forth in this Agreement shall constitute equitable servitudes that run with the Property and shall benefit and burden any successors to the parties. The Final Annexation Map for the Property shall be recorded by the Developer within sixty (60) days of final adoption of the ordinance annexing the Property, such Map shall contain a note that the Property is subject to this Agreement. The Developer agrees to all promises made by the Developer, which shall constitute equitable servitudes that run with the land.

9. Notices. Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, or by mailing same by certified, return receipt requested mail, to the party for whom it is intended. Notices to any of the parties shall be addressed as follows:

To City: City Clerk
City of Loveland
500 E. Third Street
Loveland, CO 80537

To Developer: King of Glory Lutheran Church
Attn: Administrative Council President
2919 N. Wilson Avenue
Loveland, CO 80538

A party may at any time designate a different person or address for the purposes of receiving notice by so informing the other party in writing. Notice by certified, return receipt requested mail shall be deemed effective as of the date it is deposited in the United States mail.

10. Waiver. No waiver by the City or Developer of any term of this Agreement shall be deemed to be or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
11. Applicable Law/Severability. This Agreement shall be construed in accordance with the laws of the State of Colorado. The parties to this Agreement recognize that there are legal restraints imposed upon the City by the constitution, statutes and laws of the State of Colorado, and that, subject to such restraints, the parties intend to carry out the terms and conditions of this Agreement. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement. Provided, however, if any obligation of this Agreement is declared invalid, the party deprived of the benefit thereof, shall be entitled to an equitable adjustment in its corresponding obligations and/or benefits and, in that event, the parties agree to negotiate in good faith to accomplish such equitable adjustment.
12. Paragraph or Section Headings. Paragraph or Section headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

THE CITY OF LOVELAND, COLORADO

By: _____
William Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO SUBSTANCE:

Greg George, Development Services Director

APPROVED AS TO FORM:

Assistant City Attorney

DEVELOPER: King of Glory Lutheran Church

By: Darell Zimbelman
Darell Zimbelman

STATE OF Colorado)
)ss
County of Larimer)

The foregoing Agreement was executed before me this 3rd day of Oct, 2013 by

King of Glory Lutheran Church
(Developer)

WITNESS my hand and official seal.

My commission expires 7/10/2017.

SEAL

KIMBERLY J. KREUTZER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134042835
MY COMMISSION EXPIRES JULY 10, 2017

Kimberly Kreutzer
Notary Public

EXHIBIT A
(legal description)

PROPERTY DESCRIPTION – KING OF GLORY ADDITION

That portion of the Southeast Quarter of Section 4 and the Northeast Quarter of Section 9, all in Township 5 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado being more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 4 as assumed to bear North $01^{\circ}40'40''$ East and with all bearings contained herein relative thereto:

Beginning at the Southeast corner of said Section 4; thence along the South line of said Southeast Quarter South $89^{\circ}59'16''$ West 30.01 feet to a point on the West line of Fairway West First Addition, to the City of Loveland, Colorado, said point being the TRUE POINT OF BEGINNING; thence along said West line of Fairway West First Addition North $01^{\circ}40'40''$ East 417.43 feet to the Southeast corner of Vanguard-Famleco Eighth Subdivision, to the City of Loveland, Colorado; thence along the Southerly line of said Vanguard-Famleco Eighth Subdivision and the Southerly line of Tract A, Vanguard-Famleco Eighth Subdivision North $90^{\circ}00'00''$ West 491.99 feet; thence along the Easterly line of said Tract A and the Southerly prolongation of said Easterly line South $01^{\circ}40'40''$ West 447.54 feet to a point on the South line of that certain parcel of land recorded at Reception Number 2000062756, records of Larimer County; thence along the South line of said Reception Number 2000062756 North $89^{\circ}59'16''$ East 323.26 feet to a point on the West line of that certain parcel of land recorded at Reception Number 97067379, records of Larimer County; thence along the Westerly and Southerly lines of said Reception Number 97067379 South $00^{\circ}43'53''$ East 20.00 feet and again North $89^{\circ}59'16''$ East 170.00 feet to a point on the Westerly line of Windemere Second Addition, to the City of Loveland, Colorado; thence along the Westerly line of said Windemere Second Addition and the East line of said Reception Number 97067379 North $00^{\circ}43'53''$ West 50.00 feet to a point on the South line of the Southeast Quarter of said Section 4 and the TRUE POINT OF BEGINNING.

The above described parcel contains 4.28 acres, more or less, and is subject to all existing easements and/or rights of way of record.

King of Glory Addition



Annexation of 4.28 acres
Zoning: R1 – Developing Low Density Residential
Existing Church Facility

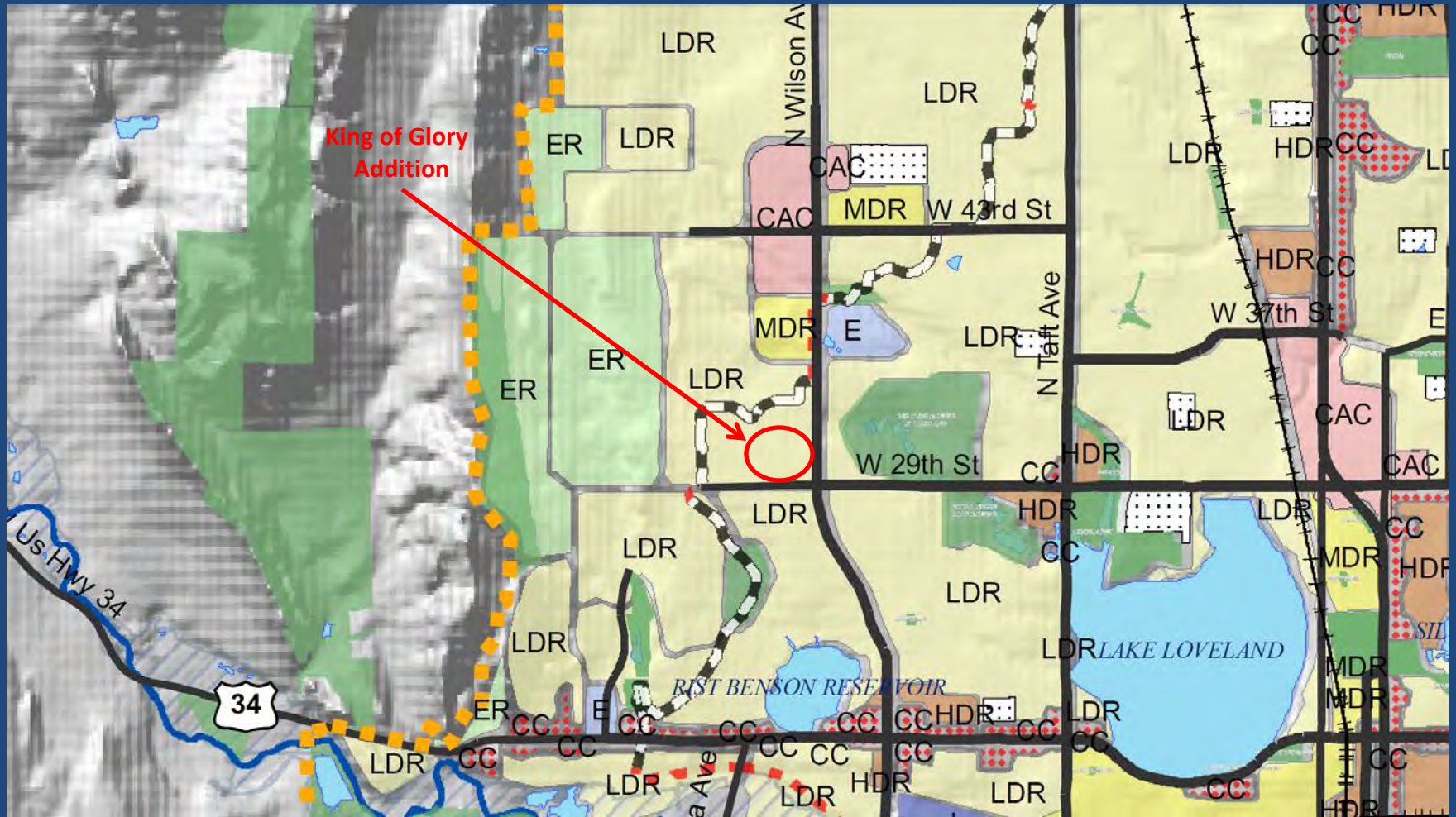
King of Glory Addition



Annexation of 4.28 acres
Zoning: R1 – Developing Low Density Residential
Existing Church Facility



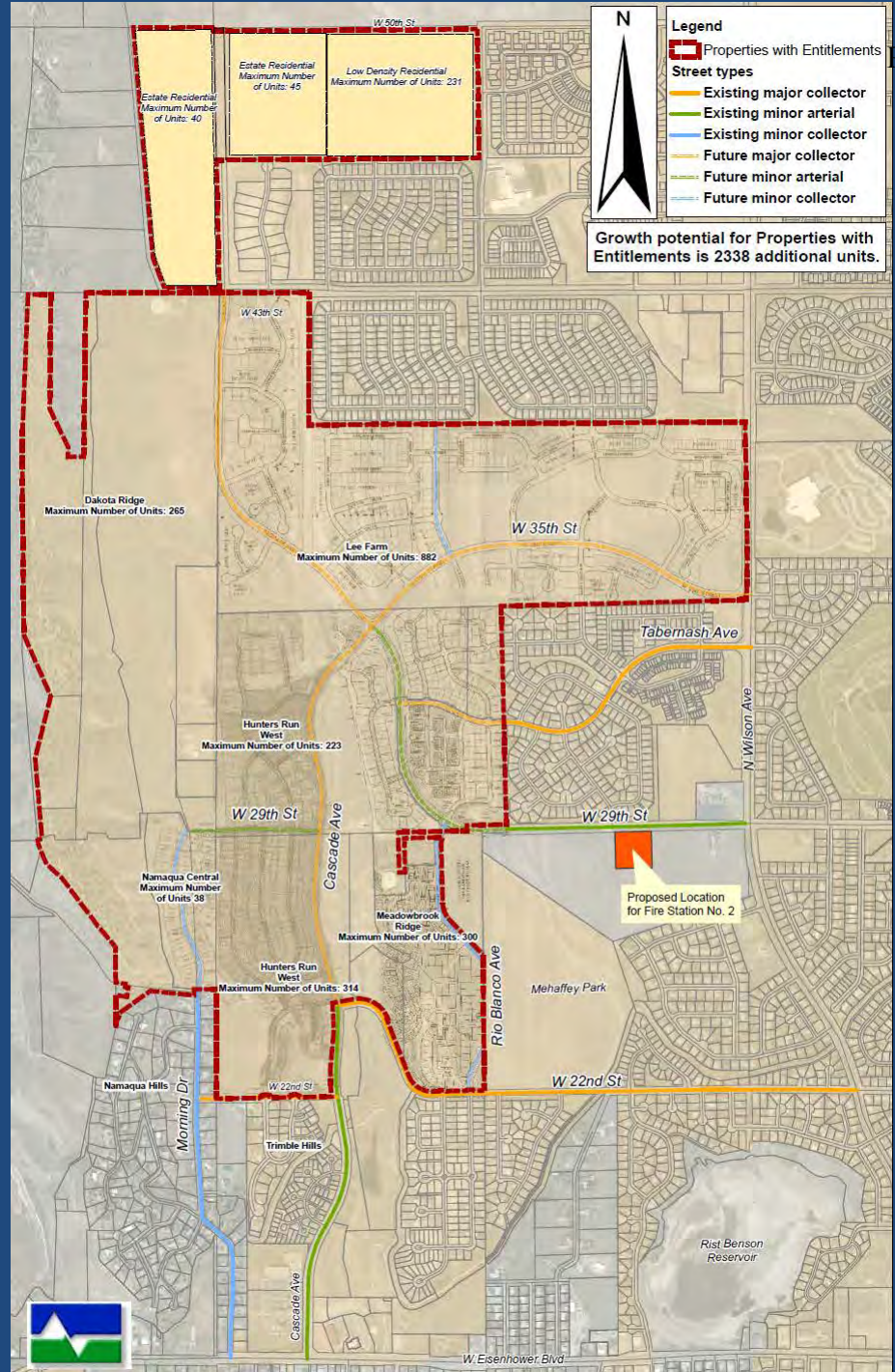
King of Glory Addition



Comprehensive Plan Land Use Designation: LDR – Low Density Residential



Future development map of northwest Loveland





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

AGENDA ITEM: 4
MEETING DATE: 11/5/2013
TO: City Council
FROM: Greg George, Director of Development Services
PRESENTER: Troy Bliss

TITLE:

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

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance second reading.

OPTIONS:

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

SUMMARY:

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

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The right-of-way to be vacated includes a remnant portion of Truman Avenue that is no longer in use as a public street. The right-of-way contains underground public utilities; therefore a utility easement will be established to accommodate those utilities. The utility easement will be established through a separate administrative action. The purpose for vacating this portion of Truman Avenue is so that the area can be utilized as part of their respective properties.

The ordinance was adopted unanimously on first reading by City Council on October 15, 2013.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

1. Ordinance
2. Complete first reading packet from October 15, 2013 can be accessed at :
<http://www.cityofloveland.org/index.aspx?page=20&recordid=49813>

FIRST READING: October 15, 2013

SECOND READING: November 5, 2013

ORDINANCE NO. ____

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

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

WHEREAS, it is necessary that the portion of right of way to be vacated be preserved as a public utility easement; and

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

WHEREAS, to assure ongoing provision of public and private utility services, and as permitted by Loveland Municipal Code Section 16.36.060, this ordinance is conditioned up receipt of the fully executed public utility easement described above, which shall be recorded concurrently with this ordinance; and

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

WHEREAS, the City Council finds and determines that the portion of the right of way to be vacated is no longer necessary for the public use and convenience, subject to the condition that the public utility easement described above be received by the City; and

WHEREAS, the City Council further finds and determines that the application filed with the Current Planning Division Center was signed by the owners of more than 50% of property abutting the right of way to be vacated.

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

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

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

Two parcels of land lying in the Northeast Quarter of Section 15, Township 5 North, Range 69 West of the Sixth Principal Meridian, City of Loveland, Larimer County Colorado;

The First parcel being a that portion of Truman Street as shown on Final Plat of St. John Addition as recorded January 1, 1956 in Book 6 at Page 118 as Instrument Number 713087, in the records of said Larimer County, not previously Vacated by City of Loveland Ordinance number 575 as recorded in Book 1039 at page 731 in the records of said Larimer County, more particularly described as follows;

Considering the Eastern most boundary line of said St. John Addition as Bearing South 90°00'00" West, according to the Final Plat of St. John Addition;
Commencing at the Northeast corner of St. John Addition to the City of Loveland, thence South 90°00'00" West 37.54 feet to a point on the Southerly right-of-way of West 12th Street; thence South 89°41' West 60 feet, thence South 00°00'00 West 585.90 feet to the Point of Beginning; thence continuing South 00°00'00 West 85.00 feet, to the beginning of a tangent curve to the right; thence along the arc of said curve to the right, having a central angle of 90°00'00" and a radius of 20.00 feet, an arc distance of 31.42 feet; thence departing said curve along a non-tangent line North 90°00'00" East 51.95 feet; thence South 86°00'00" East 28.12 feet; thence North 00°00'00" East 106.95 feet more or less; to a point on the Southerly Boundary line of that portion of Truman Avenue as Vacated by City of Loveland Ordinance 575; thence along said Southerly boundary line North 90°00'00" West 60.00 feet to the Point of Beginning, containing 6,413 square feet more or less.

The second parcel being described as a portion of West Hilltop Drive lying adjacent to the Southwest Corner of Block One as shown on the Final Plat of Hill Top Addition to the City of Loveland, Colorado according to the Final Plat as recorded January 1, 1955 in Book 6 at Page 107 as Instrument number 703803, in the records of said Larimer County, being more Particularly Described by Metes and Bounds as follows;

Considering the Western most Boundary line as Bearing South 90°00'00" East according to the recorded Final Plat of said Hill Top Addition;
Commencing at the Northeast corner of St. John Addition to the City of Loveland, thence South 90°00'00" West 37.54 feet to a point on the Southerly right-of-way of West 12th Street; thence South 00°00'00 West along the Western most boundary line of said Hill Top Addition, a distance of 674.51 feet to the Point of Beginning; thence South 00°00'00" West along the Westerly Boundary line of said Hill Top Addition, a distance of 18.65 feet, thence South 86°00'00" East a distance of 18.65 feet to a point on a non-tangent curve; The Northwesterly along the arc of said non-tangent curve, the center of which bears North 04°00'00" East, and having a central angle of 86°00'00 and a radius of 20.00 feet, an arc distance of 30.02 feet, the chord of said curve bears North 43°00'00" West a distance of 27.28 feet, to the point of Beginning, containing 0.73 square feet more or less.

said parcel of land contains 6,417 sq. ft., more or less (+-), and may be subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

Section 3. To assure ongoing provision of public and private utilities, the foregoing vacation is subject to the express condition that the vacated portion of the public right of way shall be preserved as a public utility easement, which condition shall be deemed satisfied upon receipt by the City of a fully executed public utility easement, in a form acceptable to the City, for the land described above, from the owners of all real property adjoining the portion of the right of way to be vacated.

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

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

Signed this ____ day of _____, 2013.

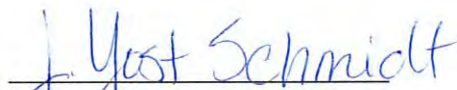
ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
 DEVELOPMENT SERVICES DEPARTMENT
 Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
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AGENDA ITEM: 5
MEETING DATE: 11/5/2013
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Brian Burson, Current Planning Division

TITLE:

An Ordinance on Second Reading Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for Certain Property Located in the Big Thompson Farms Addition, City of Loveland, Larimer County, Colorado

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following actions:

“Move to make the findings in Section VII of the Planning Commission staff report dated September 9, 2013, and based on those findings, adopt on second reading an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in the Big Thompson Farms Addition, City of Loveland, Larimer County, Colorado.”

OPTIONS:

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

SUMMARY:

This is a quasi-judicial action by the City Council. This ordinance on second reading will rezone the easterly portion of Tract A of the Big Thompson Farms Addition, consisting of 15.26 acres, from R1, Developing Low-Density Residential District to DR, Developing Resources District. The property is located between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River corridor. On October 15, 2013, City Council unanimously approved a resolution amending the Comprehensive Plan Land Use Map (from a land use classification of Low Density Residential to Development Reserve) and unanimously adopted the rezoning ordinance on first reading.

BUDGET IMPACT:

Positive

- Negative
 Neutral or negligible

BACKGROUND:

The Tracts A and B of the Big Thompson Farms Addition are owned by the Fancher family and are adjacent to land in unincorporated Larimer County on which active gravel extraction has been underway for many years. A recent Mineral Extraction Report provided by the applicant indicates that the gravel resources underlying the easterly portion of Tract A and all of Tract B are now considered economically viable. The Comprehensive Plan Amendment and rezoning would allow the owner to seek approval from the City and State of Colorado for gravel extraction on the easterly portion of Tract A and all of Tract B. Tract B is already zoned DR, requiring no rezoning to allow application for gravel extraction. The procedures for obtaining the permits necessary to conduct gravel extraction activities require a special review with the City. Public notice and participation by property owners in the vicinity is part of the special review process. The decision on the special review permit is made by staff at the administrative level, but also provides opportunity for appeal to the Planning Commission and City Council.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Staff Memorandum dated October 15, 2013

FIRST READING: October 15, 2013

SECOND READING: November 5, 2013

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR A PORTION OF TRACT A OF THE BIG THOMPSON FARMS ADDITION TO THE CITY OF LOVELAND, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

WHEREAS, the “**Property**” (as defined below) is the easterly portion Tract A of the Big Thompson Farms Addition to the City of Loveland, Larimer County, Colorado and is currently zoned R-1 - Developing Low Density Residential District; and

WHEREAS, the Property owner has filed an application to rezone the Property from R-1 – Developing Low Density Residential District (“**R-1**”) to “DR- Developing Resource District (“**DR**”) as set forth in this Ordinance (“**Rezoning Ordinance**”) and to amend the plat of the Property to adjust the boundary line between the easterly portion of Tracts A and B of the Big Thompson Farms Addition (the “**Amended Plat**”), which Amended Plat is subject to an administrative approval process and will only be approved if Council adopts this Rezoning Ordinance; and

WHEREAS, City Council has approved a Resolution amending the City of Loveland 2005 Comprehensive Plan (the “Resolution”) to change the designation of the Property from “Low-Density Residential” to “Development Reserve” to be consistent with and permit the rezoning of the Property and desires to approve the rezoning of the Property as set forth in this Ordinance.

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

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

Legal description of a parcel of land (the “**Property**”) being a portion of Tract A, Big Thompson Farms Addition, located in the Southeast Quarter of Section 16,

Township 5 North, Range 69 West of the 6th P.M., City of Loveland, Larimer County, Colorado being more particularly described as follows:

Beginning at the Southwest corner of said Tract A, thence along the West line of said Tract A, North 04°18'26" East 810.11 feet to the Northwest corner of said Tract A; thence along the North line of said Tract A, South 89°18'13" East 470.99 feet to the True Point of Beginning; thence continuing along the North line of said Tract A, South 89°18'13" East 1041.65 feet; thence departing said North line South 41°59'12" East 88.73 feet; thence South 47°18'07" East 570.00 feet; thence South 42°41'53" West 210.00 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 71°53'00" and a radius of 230.00 feet; thence Southwesterly along the arc of said curve 288.56 feet to the end of said curve; thence tangent from said curve North 65°25'07" West 300.00 feet; thence South 24°34'53" West 225.00 feet; thence South 03°38'24" West 59.22 feet thence North 42°27'25" West 1,100.03 feet to the True Point of Beginning.

which is now included within the boundaries designated "**R1-DEVELOPING LOW DENSITY RESIDENTIAL**" shall be removed therefrom and included within the boundaries of the district designated as follows:

"DR – DEVELOPING RESOURCE"

The Property contains 15.260 acres, more or less, and is subject to all easements and rights-of-way now on record or existing.

Section 2. That the Property shall be subject to all applicable zoning regulations for the City of Loveland.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

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

Section 6. That the City Clerk is hereby directed to record this Rezoning Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

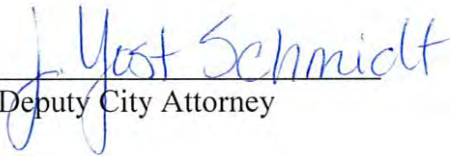
Signed this ____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney



**DEVELOPMENT SERVICES
Current Planning**

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MEMORANDUM

TO: City Council
FROM: Brian Burson, Senior City Planner
DATE: October 15, 2013
SUBJECT: Big Thompson Farms Addition - Comprehensive Plan Amendment and Rezoning

I. EXHIBITS

- A. Planning Commission staff report dated September 9, 2013, including:
 - 1. Applicant's Comp Plan Amendment Assessment Report
 - 2. Applicant's Rezoning Assessment Report
 - 3. Legal description for Rezoning
 - 4. Copy of the zoning code for the DR-Developing Resource District
 - 5. Comprehensive Plan Amendment exhibit
 - 6. Rezoning map
 - 7. Big Thompson Farms Addition plat (for information purposes only)
 - 8. Big Thompson Farms 1st Subdivision plat (for information purposes only - vacated in 1996)
- B. Planning Commission minutes dated September 9, 2013
- C. Staff Power Point presentation

II. EXECUTIVE SUMMARY

A. Project Description

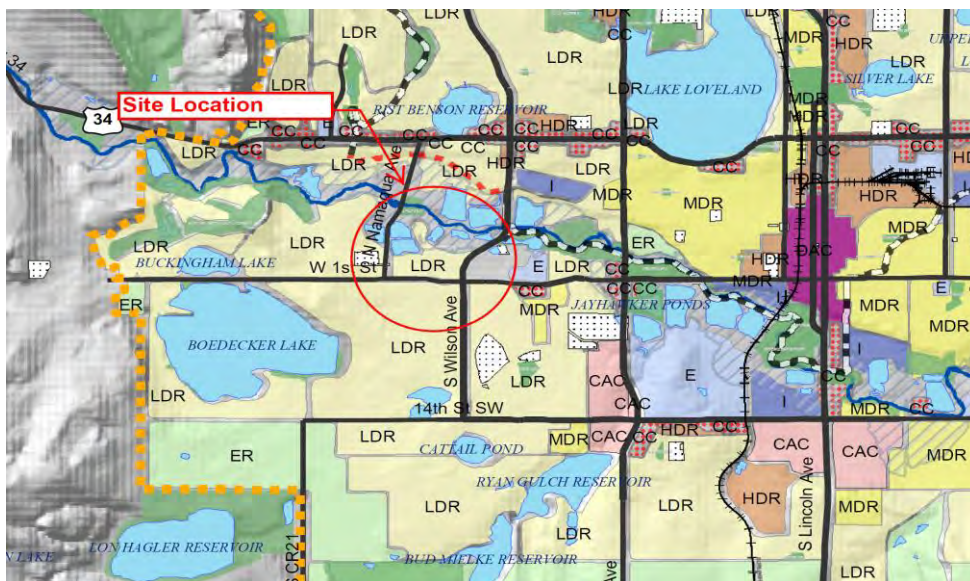
The City Council public hearing is for consideration of a parcel-specific Comprehensive Plan Amendment and Rezoning for Tracts A and B of the Big Thompson Farms Addition. The property is

owned by the Fancher family and is located between North Wilson Avenue and North Namaqua Avenue, and north of West First Street. The property has been used for agricultural purposes, and is adjacent to areas in the Big Thompson River corridor that have historically been used for gravel extraction.

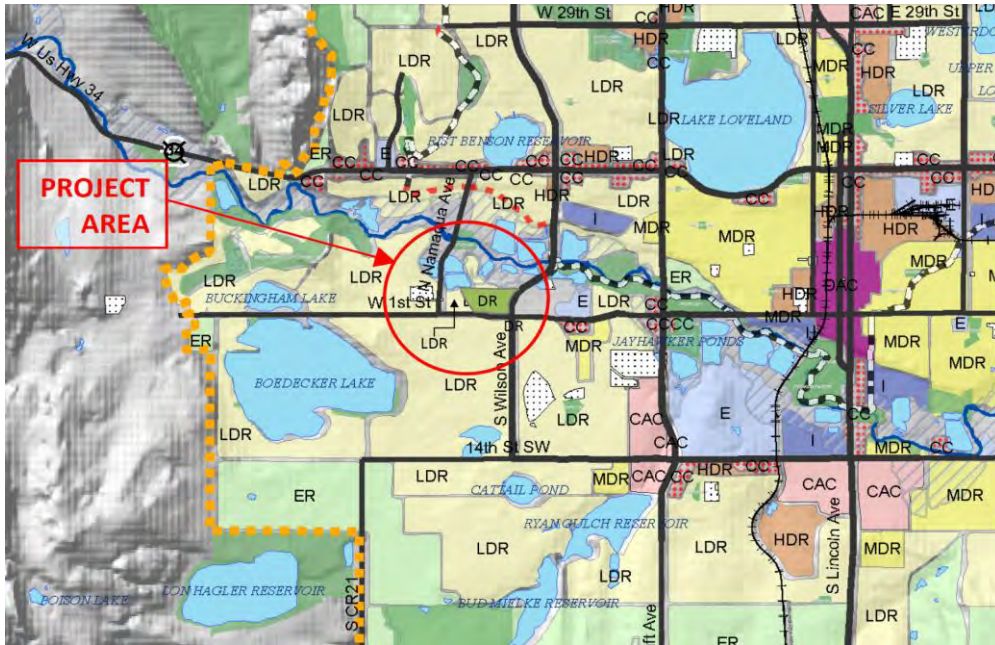


The current Comprehensive Plan land use category for the entire property is for Low-Density Residential (LDR). The application proposes to amend the land use category to Development Reserve (DR) for Tract B and the easterly portion of Tract A, but allow the westerly portion of Tract A to remain LDR. This would result in a change to the Comprehensive Plan designation for 32.78 acres.

Existing Comprehensive Plan designation:

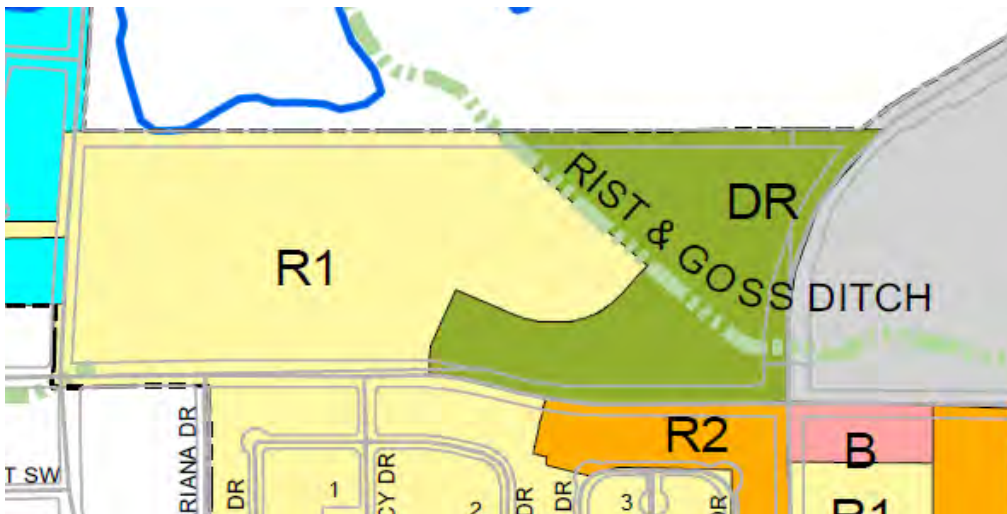


Proposed Comprehensive Plan designation:

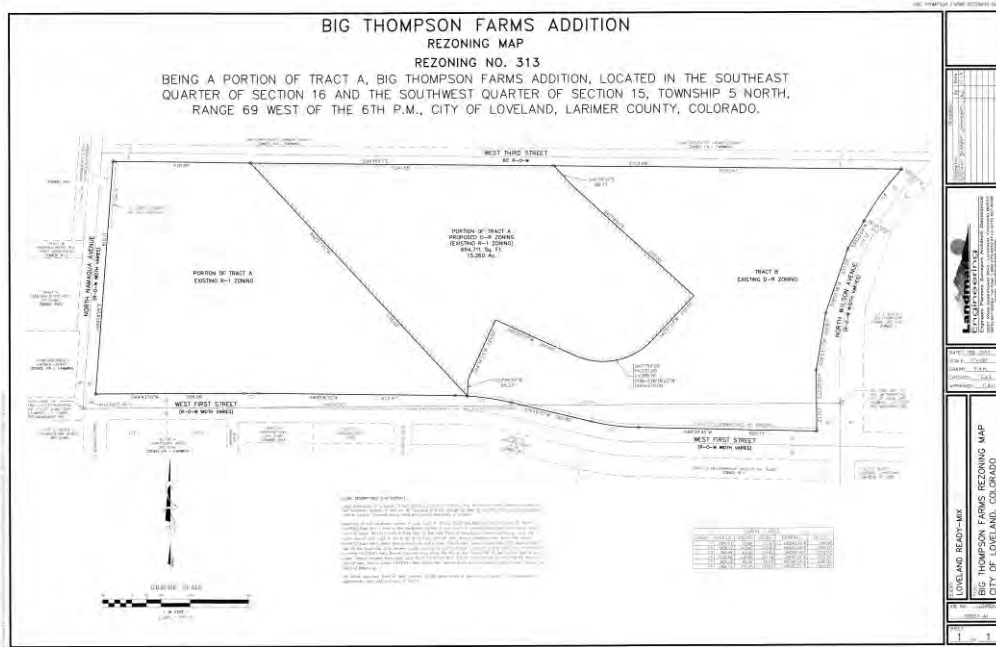


The current zoning of the property is R1-Developing Low-Density Residential for Tract A and DR-Developing Resource for Tract B. The application proposes to rezone the easterly portion of Tract A to DR-Developing Resource. This would result in a changing of zoning for 15.26 acres.

Existing zoning:

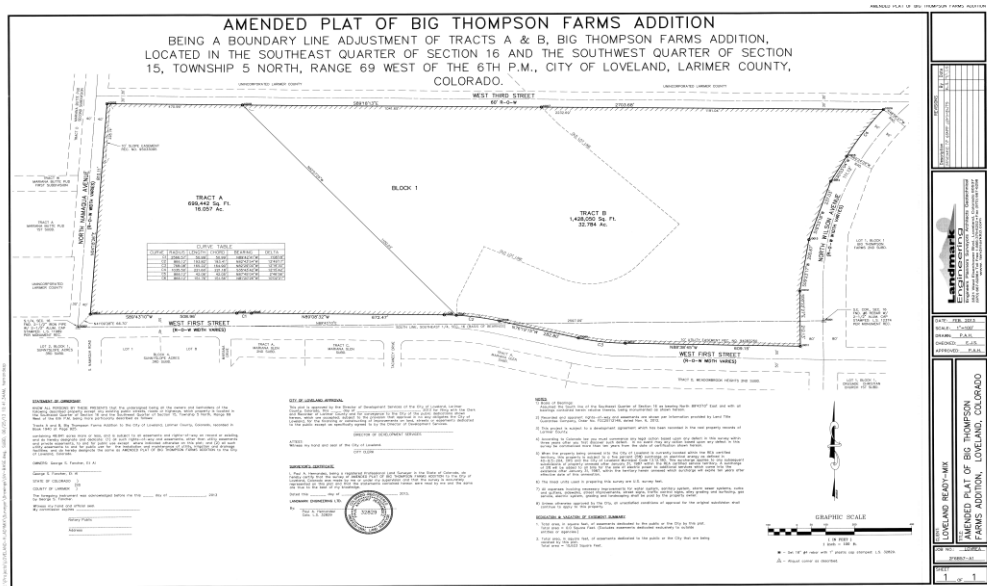


Rezoning map:



The City is also reviewing an amended plat for the property which would move and realign the shared lot line between Tracts A and B to the west to incorporate all of the DR zoned area into a larger version of Tract B. This review is administrative, requiring no Planning Commission or City Council action. If the Comprehensive Plan amendment and rezoning are approved, the City will take an administrative action to approve the amended plat.

Proposed Amended Plat:



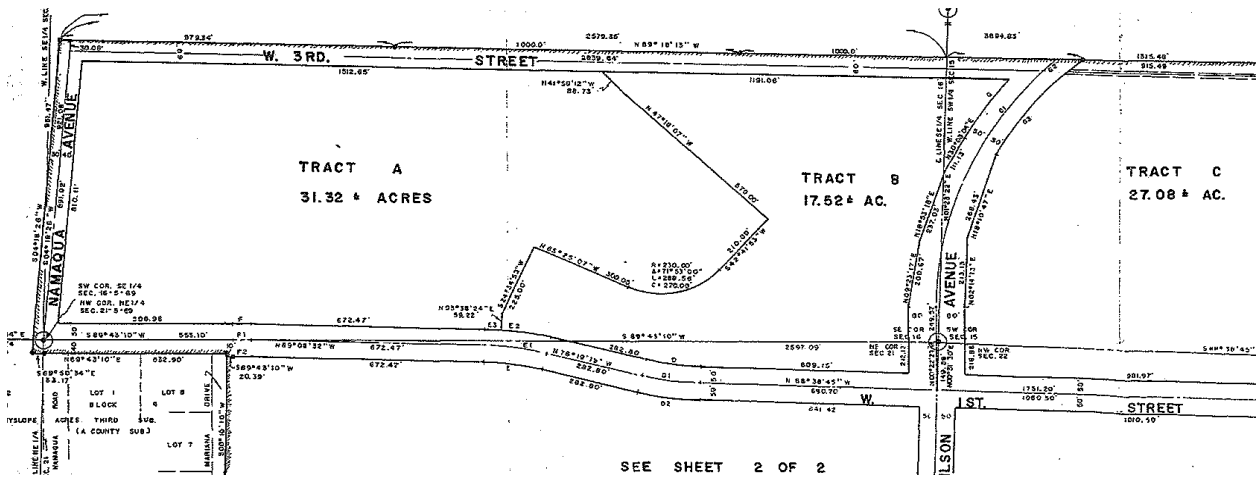
Recent sub-surface explorations for Tracts A and B have shown that there are gravel resources underlying Tract B and the easterly portion of Tract A. At the time of annexation and initial zoning, a determination was made that these gravel resources were not commercially viable, as defined by state statute and the Municipal Code. However, with changes in technology and the market, they have now been determined to be commercially viable, and the owner requests a change of zoning that would allow them to seek approval from the City and the state for extraction of these commercial minerals. The only zone district that allows extraction of commercial minerals is the DR-Developing Resource District, as a Use-by-Special Review.

The Comprehensive Plan and Municipal Code require that property be zoned or rezoned in a manner that is consistent with the general land use categories shown on the Future Land Use Map, in Sub-section 4.7 of the Comprehensive Plan. Therefore, before the property can be rezoned to DR-Developing Resource, the land use category in the Comprehensive Plan must first be revised to DR-Development Reserve. If approved, the applications would make Tract B and the easterly portion of Tract A as unavailable for urban land uses such as homes or businesses, and limit the uses to those allowed only by special review in the DR zone, such as gravel extraction.

B. Background

Big Thompson Farms Addition was annexed in 1979. Tract A was zoned R1, Tract B and all other portions of the addition were initially zoned DR. The zoning of these Tracts has remained as originally zoned.

Property as annexed:



At the time of annexation, the Applicant was required to document to the City that there were no commercial mineral deposits underlying the site. The condition of the annexation, found in the petition, and adopted by the approving ordinance, was as follows:

"(11.)(c.) That a mineral extraction report be filed and that the City Council determine that there are no commercial deposits on the site."

This was, and still is, the normal practice for the City, and in keeping with the purposes of CRS 35-1-305 (1) and (2), and sub-section 18.52.040 of the Municipal Code. Staff has not been able to locate the referenced mineral extraction report in City files. However, since the annexation went forward for approval and recording, it implies that the report was filed and showed what was required by the condition. The Comp Plan and Rezoning applications have been reviewed by staff under this assumption.

In common City terminology, commercial minerals are most often referred to as "economically viable minerals", and the evaluation for commercial mineral deposits is referred to as a "Mineral Extraction Report". The purpose of such a report is to document whether commercial minerals, as defined in state statute, underlie the site. If such minerals underlie the site, the City may not zone the property in a manner that interferes with the extraction of the minerals before development occurs. This prohibition is stated in the Municipal Code in Section 18.52.040, as follows:

18.52.040 Commercial mineral deposit.

".....For the purpose of this title, there are or may be established and designated on the zoning district map, commercial mineral deposits, as defined by CRS 1963 Section 92-36-2, as amended. A master plan for the extraction of such deposits may be adopted by the city council. No real property shall be used, or permanent structures placed thereon, which shall permanently preclude the extraction of such mineral deposits by an extractor in violation of the provisions of CRS 1963 Section 92-36-2, as amended. (Ord. 1628 § 1 (part), 1977; Ord. 1004 § 15.4, 1968)

The definition of Commercial Minerals from state statute is as follows:

"Natural mineral deposit of limestone used for construction purposes, coal, sand, gravel and quarry aggregate for which extraction by an extractor is, or will be, commercially feasible and regarding which it can be demonstrated by geological, mineralogical or other scientific data that such deposit has a significant or strategic value to the area, state or nation."

The City' measure of whether they are, "...of value to the area, state, or nation", is whether the deposits are economically viable. However, the measure of what is economically viable is subject to the influence of market forces at the time of each evaluation, and this can change over time. With changing technology and market, deposits that were not economically viable in 1979 may become viable later on, thereby becoming a "commercial mineral deposit".

The City routinely handles this matter by requiring that a Mineral Extraction Report be submitted for every annexation and zoning, and for every rezoning of land that is zoned DR-Developing Resource. Before any permanent structures are constructed/installed on the land that would interfere with extraction of commercial minerals, those minerals are to be extracted. With good practices for

reclamation and restoration of extraction sites, the land can be left in a condition that will allow subsequent land uses and improvements that fulfill other needs of the community.

C. Key Issues

All of the issues and concerns expressed by the neighborhood and Planning Commission are related to any future application that may be submitted to the City for gravel extraction. The City does not have, nor do we anticipate imminent submittal of, an application for gravel extraction. Once an application is submitted for City review, staff believes that all issues can be adequately addressed as part of the special review process, as well as the state process. Staff believes that there are no unresolved key issues related to the Comprehensive Plan amendment or rezoning applications.

D. Planning Commission Recommendation

The Planning Commission conducted a public hearing for these applications on September 9, 2013. At the hearing, citizens expressed concerns regarding visual impacts, noise, dust, reclamation, security, safety, and other land uses that might occur in association with gravel extraction. These issues focus primarily on future gravel extraction operations, and no specific testimony was given pertaining to the Comprehensive Plan amendment or the rezoning. The Planning Commission expressed concerns pertaining to adequate reclamation, visual screening, safety and security for children, and the process for allowing a gravel extraction approval. Having heard all testimony and all information provided by the Applicant, staff and the public, the Planning Commission unanimously recommended approval of both applications. (See **Exhibit B** of the staff memorandum)

E. Subsequent to Planning Commission

There have been no new issues identified by staff since the Planning Commission hearing, and there have been no further inquiries or contacts from the Applicant, neighborhood or general public.

III. RECOMMENDED CONDITIONS

Conditions of approval are not appropriate for a Comprehensive Plan amendment or rezoning. There are no recommended conditions of approval from either staff or the Planning Commission.



Development Services Current Planning

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Planning Commission Staff Report September 9, 2013

Agenda #: Regular Agenda - 2
Title: Big Thompson Farms Addition
Applicant: George S. Fancher, et. al.
Request: Comprehensive Plan Amendment and Rezoning
Location: between North Wilson Avenue and North Namaqua Avenue, and between West First Street and the Big Thompson River
Existing Zoning: R1 - Developing Low Density Residential District
Proposed Zoning: DR - Developing Resource District
Staff Planner: Brian Burson

Staff Recommendation:
 Subject to additional evidence presented at the public hearing, City staff recommends the following motions:

Recommended Motions:

"Move to make the findings listed in Section VI. of this report dated September 9, 2013; and, based on those findings, recommend that the Future Land Use Plan, incorporated into Section 4.0 of the 2005 City of Loveland Comprehensive Plan, be amended for Tracts A and B of Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR)."

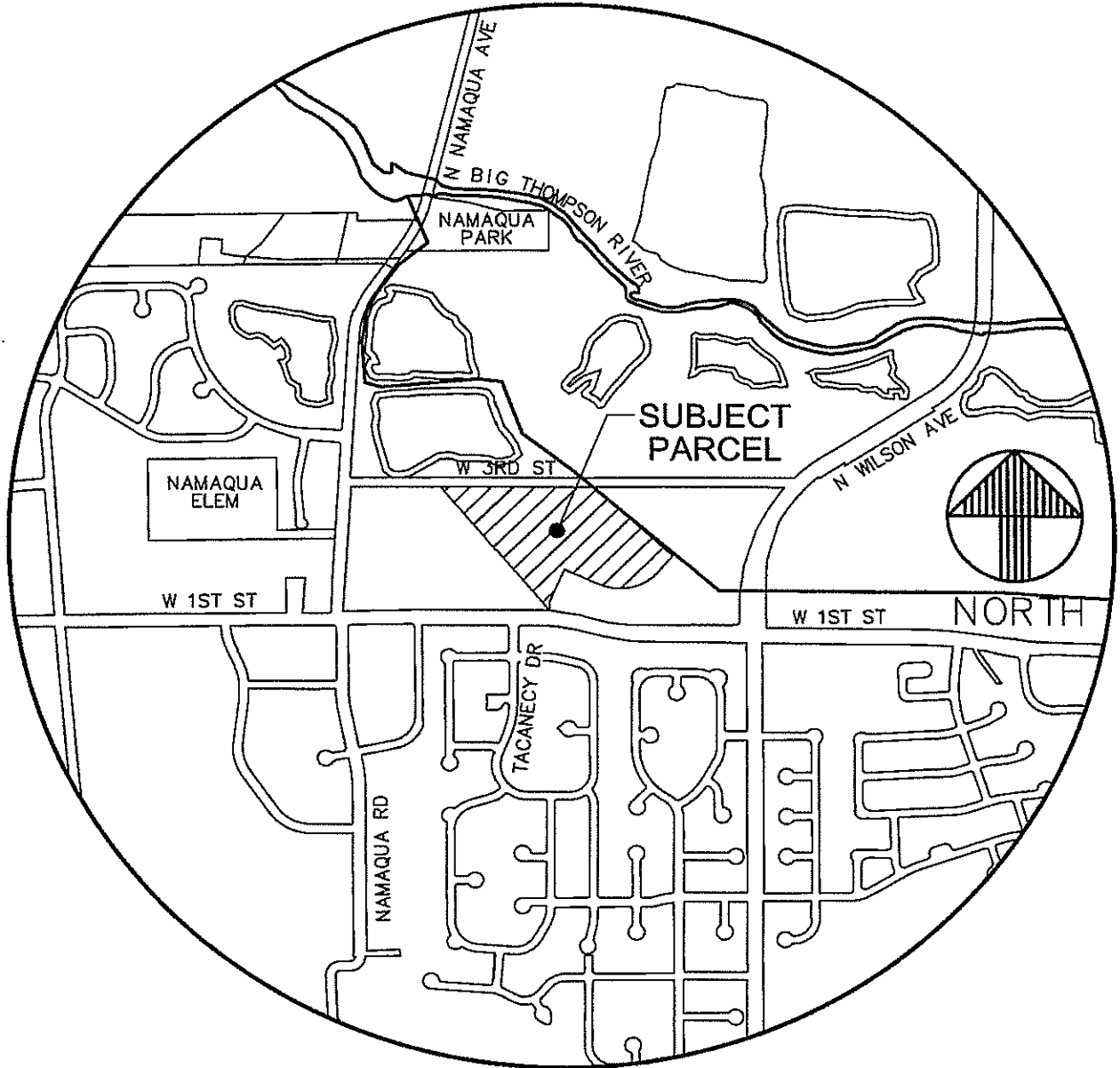
"Move to make the findings listed in Section VII. of this report dated September 9, 2013; and, based on those findings, recommend approval of the rezoning of the land described in Attachment # 4 of this report from R1-Developing Low Density Residential District to DR-Developing Resource District."

Summary of Analysis:

This is a public hearing to consider a parcel-specific Comprehensive Plan amendment to amend the recommended land use category of property within the Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR), followed by a rezoning from R1-Developing Low Density Residential District to DR-Developing Resource District.

Staff supports the requested Comprehensive Plan amendment and rezoning because information has been submitted to demonstrate that there are Commercial Minerals underlying the site. CRS 35-1-305 (1) and (2), as well as Sub-section 18.52.040 of the Municipal Code stipulate that the City may not zone any property in a manner that interferes with the extraction of a commercial mineral deposit. At the time of annexation and initial zoning, a report was provided to the City indicating that there were no commercial mineral resources underlying the site. However, with changes in the market, the existing mineral resources have now been determined as economically viable.

I. VICINITY MAP:



VICINITY MAP
1" = 1000'

II. SUMMARY:

A. Process:

This is a public hearing to consider the following:

1. An amendment to the Land Use Plan Map in the 2005 Comprehensive Plan for Tracts A and B of Big Thompson Farms Addition, consisting of 48.84 acres. The amendment would revise the recommended land use category for these tracts from Low-Density Residential (LDR) to Development Reserve (DR).
2. A subsequent rezoning of a portion of Tract A of Big Thompson Farms Addition, consisting of 15.26 acres, from R1 - Developing Low-Density Residential District to DR-Developing Resource District. (See **Attachment #3** for complete legal description of rezoning.)

Planning Commission's action on the Comprehensive Plan Amendment is legislative, meaning, their consideration and recommendation is to be made on the basis of broad and general policy as well as any information deemed appropriate and applicable. Planning Commission's action on the rezoning is quasi-judicial, meaning that their consideration and recommendation is to be made on the basis of adopted policies, codes and standards as they apply to this property, and the specific information submitted by the Applicant and/or presented at the hearing. Planning Commission must evaluate whether the applications meet the appropriate criteria/findings for each application and forward their recommendations to the City Council for a subsequent public hearing and final decision, currently scheduled for October 15, 2013. The appropriate criteria/findings, along with staff analysis, are provided below in Sections VI. and VII. of this staff report.

B. Purpose:

The purpose of the applications is to rezone the easterly portion of Tract A of the Big Thompson Farm Addition from R-1 Established Low Density Residential, to DR-Developing Resources. This would prepare the land for potential land uses that are allowed in the DR zone district. There are no uses allowed by right in the DR zone, but a number of uses are allowed by special review. (See **Attachment #4**). The Comprehensive Plan currently recommends that the land be developed for Low-Density Residential uses, which is consistent with the current zoning of Tract A. Since any rezoning should be consistent with the recommendation of the 2005 Comprehensive Plan, as amended, the Plan must be amended before the rezoning can be approved.

The City currently has no applications for any of the uses allowed in the DR zone, and we are not anticipating imminent submittal of any such application. Future applications may be submitted if the Comprehensive Plan amendment and rezoning are approved.

C. Background:

Big Thompson Farms Addition was annexed in 1979. (See **Attachment #7**) Tract A was zoned R1, and all other portions of the addition were initially zoned DR. Later in 1979, the Big Thompson Farms 1st Subdivision was approved, platting a residential subdivision from Tract A, in keeping with its zoning of R1. In 1996, the City vacated the plat of Big Thompson Farms 1st Subdivision as an obsolete subdivision, but did not alter the zoning of Tract A. (See **Attachment # 8**) Over time, other tracts within the addition were rezoned and platted for subdivisions to the east, southeast and south, including the City Service Center at the northeast corner of W. 1st Street and N. Wilson Avenue. However, the zoning of Tracts A and B have remained unchanged.

At time of annexation, the applicant was required to document to the City that there were no economically viable minerals under the site. This is normal practice for the City, and in keeping with the purposes of CRS 35-1-305 (1) and (2), and sub-section 18.52.040 of the Municipal Code. In City terminology, the evaluation for commercial mineral deposits is referred to as a Mineral Extraction Report. The purpose of the report is to document whether or not there are commercial minerals (as defined in state statute) underlying the site. If such minerals are underlying the site, the City may not zone the property in a manner that interferes with the extraction of the minerals before development occurs. However, the definition of commercial minerals is subject to the influence of market forces at the time of evaluation, and this can change over time. Deposits that were not economically viable in 1979 may become viable with changing market conditions. The condition of the annexation, found in the petition, and adopted by the approval ordinance, was as follows:

"(11).(c.) That a mineral extraction report be filed and that the City Council determine that there are no commercial deposits on the site."

Staff has not been able to locate the referenced mineral extraction report in City files. However, since the annexation went forward for approval and recording, it implies that the report was filed and showed what was required by the condition. The Comp Plan and Rezoning applications have been reviewed by staff under this assumption.

The City is also reviewing a Boundary Line Adjustment plat in conjunction with these two applications. If the rezoning is approved, the common lot line between Tracts A and B will be shifted to the west to match the new zoning line.

D. Key Issues:

As indicated above, both state statute and Municipal Code stipulate that the City may not zone property in a manner that interferes with the extraction of commercial minerals before development occurs. State statute designates the extraction of commercial mineral deposits as a "matter of state-wide concern"; therefore local zoning can regulate such extraction, but not unduly interfere. Commercial minerals such as gravel and sand are an essential material required for many products necessary for the health, safety and welfare of citizens and for urban development, such as concrete, mortar, and asphalt. They can make an important contribution to the local and regional economy. It is important that the opportunity to extract and use these materials before approval of any development that would unduly interfere with their extraction.

The DR zone district allows extraction of minerals as a Use-by-Special Review. No other zone allows such extraction. The DR zone allows a number of other uses by special review, but all others are expressly limited to prohibit any permanent structures that would interfere with the extraction of commercial minerals. Up to this time, Tracts A and B of the Big Thompson Farms Addition have remained as open land, used primarily for agricultural purposes. There are no permanent structures that could interfere with the potential of future extraction of commercial minerals.

As indicated in the record for the annexation, the City requires the potential of commercial minerals to be initially identified at time of annexation and zoning. However, as resources in the market fluctuate, the determination as to economic viability can also fluctuate. This may present an issue which has not been dealt with before by the City.

At the neighborhood meeting, the Applicant volunteered that it is their hope to expand the existing gravel mining use into the rezoned area, provided approvals can be obtained from local and state authorities. Questions and concerns were expressed, and answered by either the applicant and/or staff regarding the following matters:

- Would DR zoning allow higher density or non-residential uses to be designated in the future?

Response: Future land use designations cannot be determined at this time, or as part of this application.

- How much of the overall site can be mined?
- How much heavy equipment would be used?
- How soon would mining start?
- How long would gravel mining operations take place?
- What would the daily hours of operation be?

Response: These issues can will only be known and evaluated as part of any future application for uses allowed by special review in the DR zone. If gravel/sand mining were proposed, the application (s) would have to be reviewed and approved by both the City and the State Mined Land Bureau, through formal review processes that allow neighborhood awareness and involvement.

- Will oil and gas be drilled on the site?

Response: The applicant does not believe there are any gas or oil reserves underlying the site.

III. ATTACHMENTS:

1. Applicant's Comp Plan Amendment Assessment Report
2. Applicant's Rezoning Assessment Report
3. Legal description for Rezoning
4. Copy of the zoning code for the DR-Developing Resource District

5. Comprehensive Plan Amendment exhibit
6. Rezoning map
7. Big Thompson Farms Addition plat (for information purposes only)
8. Big Thompson Farms 1st Subdivision plat (for information purposes only - vacated in 1996)

IV. SITE DATA:

| | |
|--|--|
| ACREAGE OF SITE (GROSS ACRES)..... | 48.84 ACRES |
| ACREAGE TO BE REZONED (GROSS ACRES)..... | 15.26 ACRES |
| EXISTING COMP PLAN DESIGNATION | LOW-DENSITY RESIDENTIAL (LDR) |
| PROPOSED COMP PLAN DESIGNATION..... | DEVELOPMENT RESERVE (DR) |
| EXISTING ZONING | R1- DEVELOPING LOW-DENSITY RESIDENTIAL |
| PROPOSED ZONING..... | DR-DEVELOPING RESOURCE |
| EXISTING USE..... | VACANT/AG |
| PROPOSED USE..... | NO CHANGE |
| NUMBER OF DWELLING UNITS PROPOSED | NA |
| GROSS DENSITY (DU/A) | NA |
| NET DENSITY (DU/A) | NA |
| EXISTING ADJACENT ZONING AND USE - NORTH | LARIMER COUNTY FA- FARMING; GRAVEL MINING |
| EXISTING ADJACENT ZONING AND USE - EAST | I- DEVELOPING INDUSTRIAL; CITY SERVICE CENTER/EMS STATION |
| EXISTING ADJACENT ZONING AND USE - SOUTH..... | R1 AND R2; SINGLE FAMILY & TWO FAMILY DWELLINGS |
| EXISTING ADJACENT ZONING AND USE - WEST | R1; VACANT/AG |
| UTILITY SERVICE PROVIDER - SEWER..... | CITY OF LOVELAND |
| UTILITY SERVICE PROVIDER - ELECTRIC..... | CITY OF LOVELAND |
| UTILITY SERVICE PROVIDER - WATER..... | CITY OF LOVELAND |

V. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION:

- A. Notification:** An affidavit was received from Landmark Engineering certifying that notice of the hearing was mailed to all owners of property within 900 feet of the site, and that notices were posted in prominent locations on the perimeter of the project site at least 15 days prior to the date of the Planning Commission hearing. A notice was also published in the Reporter Herald on August 24, 2013. In addition, Current Planning staff mailed written notice of the Comprehensive Plan Amendment to the surrounding communities of Berthoud, Johnstown, Windsor, and Fort Collins, as well as to Larimer County. All notices stated that a public hearing would be held by the Planning Commission on September 9, 2013 at 6:30 pm.
- B. Neighborhood Response:** A noticed neighborhood meeting was held at 6:30 pm on August 22, 2013 in the Gertrude Scott Meeting Room of the Loveland Public Library. Twenty-seven persons attended the meeting, along with City staff and the applicants' representatives. The concerns and question expressed by the neighborhood at the meeting included the following:

- Would DR zoning allow higher density or non-residential uses to be designated in the future?
- How much of the overall site can be mined?
- How much heavy equipment would be used?
- How soon would mining start?
- How long would gravel mining operations take place?
- What would the daily hours of operation be?
- Will oil and gas be drilled on the site?

Responses were given to each of these matters, as described above in **Section II.D.** of this report. The neighborhood expressed appreciation that the Applicant was transparent about the potential future use of gravel/sand mining. The meeting was adjourned at approximately 7:10 pm

VI. FINDINGS AND ANALYSIS - COMPREHENSIVE PLAN AMENDMENT

***Finding 1.** Does the amendment implement or further, or is it otherwise consistent with, one or more of the philosophies, goals, polices and strategies of the Comprehensive Plan, as amended.*

Current Planning: There are no policies in the Comprehensive Plan about the Development Reserve land use category. There are no policies concerning revising initial land use categories "down" to the Development Reserve. Staff believes this finding does not apply to this application.

***Finding 2.** Will the amendment interfere with the existing, emerging, proposed or future land use patterns and/or densities/intensities of the surrounding neighborhood as depicted on the Land Use Plan Map as contained within the 2005 Comprehensive Plan, as amended?*

Current Planning: The land use category of Development Reserve is assigned to land which is designated for eventual urban development, but for which development is not likely to occur within 15-20 years. (In this context, urban development may be described as development of uses that are typical of cities and towns, including the uses that are allowed in all of the zoning districts of the City except the DR zone.) The Plan does not prohibit determining the recommended land use and/or allowing actual development of the land sooner than 15-20 years. Under Development Reserve, no urban development of the land could take place until a subsequent Comprehensive Plan amendment and rezoning were to be approved. At that time, a determination would be made to assure that such future proposed land uses would not interfere with existing, emerging, or proposed land use patterns and/or densities. Staff believes this finding can be met.

***Finding 3.** Will the amendment interfere with, prevent or implement the provision of any of the area's existing planned, or previously committed services or proposals for community facilities, or other specific public or private actions contemplated within the 2005 Comprehensive Plan, as amended?*

Current Planning: Designating the land as Development Reserve indicates that urban development is not likely to occur prior to 15-20 years into the future. No urban development of the land could take place until a subsequent Comprehensive Plan amendment and rezoning were to be approved, at which time impact to, and provision of, community services will be evaluated. If any non-urban use of the land were proposed, the impact to, and provision of, community services would be determined as part of the required approval process with the City. Staff believes this finding can be met.

***Finding 4.** Will the amendment interfere with, prevent, or implement the provision of any of the area's existing or planned transportation system services as contemplated by the 2030 Transportation Plan, as amended?*

Current Planning: Designating the land as Development Reserve indicates that urban development is not likely to occur prior to 15-20 years into the future. No urban development of the land could take place until a subsequent Comprehensive Plan amendment and rezoning were to be approved, at which time impact to, and provision of, transportation systems will be evaluated. If any non-urban use of the land were proposed, the impact to, and provision of, the transportation system will be determined as part of the required approval process with the City. Staff believes this finding can be met.

VII. FINDINGS AND ANALYSIS – REZONING

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

Current Planning: There are no uses by right in the DR zone. There is a legal assumption that legal conforming uses in place at time of annexation may continue, unless agreement otherwise is reached with the City. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses requiring City approval are proposed. None of the purposes set forth in Section 18.04.010 of the zoning code address continuation of legal non-conforming agricultural land uses following annexation. Staff believes this finding does not apply to this application.

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

Current Planning: There are no uses by right in the DR zone. There is a legal assumption that legal conforming uses in place at time of annexation may continue, unless agreement otherwise is reached with the City. The impacts of continuing agricultural uses should be evaluated by the City as part of the annexation process. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses that require City approval are proposed. Rezoning the property to DR will not affect that right. Staff believes this finding does not apply to this application.

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

Current Planning: There are no uses by right in the DR zone. There is a legal assumption that legal conforming uses in place at time of annexation may continue, unless agreement otherwise is reached with the City. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses that require City approval are proposed. Rezoning the property to DR will not affect that right.

PW-Transportation: All future development or land application within this proposed property shall be in compliance with the City of Loveland Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application.

Therefore, pending future proposed development within this property, of which review and approval by the City is required, the Transportation Engineering Staff does not object to the proposed rezoning.

Fire: The site can comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 3). The proposed rezoning will not negatively impact fire protection for the subject development or surrounding properties. Staff believes that this finding can be met.

Water/Wastewater: This development is situated within the City's current service area for both water and wastewater. The proposed rezoning will not negatively impact City water and wastewater facilities

PW-Stormwater: Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in impacts on City infrastructure and services that are consistent with current infrastructure and service master plans. Staff believes that this finding can be met.

Finding 4. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district being requested would result in development that is consistent with relevant policies contained in Section 4.0 of the 2005 Loveland Comprehensive Plan, as amended.*

Current Planning: There are no uses by right in the DR zone. The legal conforming uses in place at time of annexation can continue unless agreement is reached otherwise with the City. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses requiring City approval are proposed. There are no policies in the Comprehensive Plan concerning the continuation of legal, conforming agricultural land uses.

The limited uses that are allowed by special review (see **Attachment # 4**) include a strict limitation to prevent any permanent structures that would interfere with the extraction of commercial minerals on the site. Staff believes this finding does not apply to this application.

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

Current Planning: There are no uses by right in the DR zone. However, there is a legal assumption that legal uses in place at time of annexation can continue unless agreement is reached with the City to end them. The only uses of this property since annexation have been those related to agriculture. These uses may continue until such time other uses requiring City approval are proposed.

The limited uses that are allowed by special review (see **Attachment # 4**) include a strict limitation to prevent any permanent structures that would interfere with the extraction of commercial minerals on the site. Staff believes this finding does not apply to this application.

***Finding 6. Colorado Revised Statute 34-1-305 and Municipal Code Section 18.52.040.** The proposed location and the use of the land, and the conditions under which it would be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-302 (1), as amended. Owners of all severed mineral estates have been notified of the public hearing at least 30 days prior to the hearing date.*

Current Planning: Rezoning the land to DR -Developing Resources is the best choice to open the potential for future extraction of commercial minerals. No other City zoning would normally allow this. Staff believes this finding can be met.

VIII. RECOMMENDED CONDITIONS:

There are no staff recommended conditions for these applications.

Justification For Requested Comprehensive Master Plan Amendment: (State the rationale for the requested amendment in terms of addressing a public need or interest; a change in community or neighborhood character; or a mistake or oversight in the Comprehensive Master Plan.

The 48 acre site currently has approximately 31 acres zoned R1-Residential, and approximately 17 acres zoned DR-Developing Resource. The site falls entirely within a Low Density Residential (LDR) Land Use Designation. The Comprehensive Master Plan Amendment is being proposed in conjunction with a rezoning effort for a portion of the current R1 zoned property to DR. The description of the DR zoning district is inconsistent with the uses intended in the Low Density Residential Land Use Designation, thus the need to amend the Comprehensive Master Plan.

The project site is currently undeveloped, with the primarily land use being agriculture related irrigated crop growth and grazing. After further analysis of the site characteristics, it became apparent that a larger portion of the site would remain undeveloped, thus making it more suited for a DR zoning designation. It is likely that the proposed DR zoned portion of the site will remain undeveloped and ultimately used as open space for the remaining R1 zoned portion of the site.

In an effort to align the proposed zoning and the land uses, a Comprehensive Plan Amendment is requested.

Determination of Plan consistency: (See attached Guidelines for Determining Plan Consistency)

(NOTE: The 2005 Comprehensive Plan was used to evaluate this request for a Comprehensive Plan Amendment, not the 1994 Plan which is referred to in each of the discussion points below.)

- A. Does the amendment request implement, or further one or more of the philosophies, goals, policies and strategies of the 1994 Comprehensive Master Plan? Explain.

The subject property is comprised of Tracts A and B of the Big Thompson Farms Addition. All 48.841 acres of Tracts A and B are designated LDR-Low Density Residential. Within this LDR Land Use Designation, 31.317 acres were historically zoned R-1 Low Density Residential, and 17.524 acres zoned DR-Developing Resource. This amendment proposes to realign the Comprehensive Land Use Plan Map so that the total of 32.784 acres proposed to be zoned DR Developing Resource will be designated DR Development Reserve, while the remaining 16.057 acres zoned R-1 will retain the LDR Low Density Residential Land Use Designation.

The property is located on the north side of 1st Street, between Namaqua Avenue and Wilson Avenue. When the Comprehensive Plan Map was originally crafted in 1999 and the Land Use Designation LDR was assigned to this property it was already zoned R-1 Low Density Residential and DR Developing Resource; with the R1 portion platted for residential development. The Plat was later abandoned. Both the 32.784 acre and 16.057 acre parcels are currently used for agricultural purposes – irrigated corn and cattle grazing.

The Land Use category DR Development Reserve “includes lands designated for future urban development. Development of these lands would likely occur beyond 15-20 years, however, the market may drive development of a portion these lands sooner. The delivery of urban level services shall be determined by the functional master plans for public infrastructure.”

The Comprehensive Land Use Plan Map is” intended to serve as a guide for future land use patterns within Loveland’s GMA and is advisory in nature. The land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels to achieve the intent of the Comprehensive Master Plan.” It is not intended to be zoning. Inclusion of the original 17.524 acres of DR zoned property in the current LDR Land Use Designation is not in direct conflict with any of the philosophies, goals, policies or strategies of the 2005 Comprehensive Plan.

However, by amending the Comprehensive Land Use Plan Map to categorize the 32.784 acres (which are proposed to be zoned DR) from LDR Low Density Residential to DR Developing Reserve this implements the following Goals and Objectives of the 2005 Comprehensive Plan:

Goal 9.1 – Review and periodically update the Land Use Plan.

Objective 9.1.1 – Update and amend the Land Use Plan as appropriate.

Objective 9.1.2 - Seek additional Land Use opportunities related to Land Use.

Goal 9.2 – Provide a general pattern for the location, distribution and character of the future land uses within Loveland's GMA.

Objective 9.2.1 – Emphasize flexibility within the Land Use Plan while building on the existing land use pattern.

This amendment seeks to update the Comprehensive Land Use Plan Map so it aligns with the rezoning and boundary line adjustments, in keeping with the above Goals and Objectives.

- B. Will the amendment request interfere with the existing, emerging, proposed or future land use patterns and/or densities/intensities of the surrounding neighborhood as depicted on the Land Use Plan Map and as contained within the 1994 Comprehensive Master Plan? Explain

Surrounding and adjacent Land Use Designations demonstrate a variety of land uses and include LDR Low Density Residential to the north, south, and west. The City's Service Center is located directly to the east and is designated E Employment. Adjacent to the north, the Loveland Ready Mix Concrete, Inc. concrete plant and property is located in Larimer County in the Flood Plain. This is an 'infill' property, with the surrounding Land Use patterns clearly developed. The DR Development Reserve does not interfere with those existing, emerging or proposed future land use patterns.

- C. Will the amendment request interfere with, or prevent, the provision of any of the area's (neighborhood's) existing, planned, or previously committed services? Explain.

There is an existing sewer line with corresponding easement that crosses the property. It will not be affected. All water, power, and gas lines serving surrounding facilities and homes are located either in the street or in easements along the right of way. As the surrounding land areas are currently developed, it is not anticipated any existing, planned, or previously committed services will be impacted by this amendment.

- D. Will the amendment request interfere with, or prevent, the provision of any of the area's (neighborhood's) existing or planned transportation system services as contemplated by the 2030 Transportation Plan? Explain.

This property is located on the north west corner of Wilson Avenue and 1st Street. The 2035 Transportation Plan map shows the following Roadway Designations: Wilson Avenue, Major Arterial; 1st Street west of Wilson, Minor Arterial; 1st Street east of Wilson, Major Arterial; Namaqua Avenue/County Road 19E, Major Collector.

The following Transportation Goals and Objectives are provided in the 2005 Comprehensive Plan:

Goal 10B.3 – Maintain the overall ease of travel as the City grows while meeting or exceeding the level-of-service expectations.

Objective 10B.3.1 – Provide a street network necessary or desirable to meet the future needs of the Community.

Objective 10B.3.2 – Evaluate the established street levels-of-service to make sure they meet the needs of the community.

The first 2035 Transportation Plan Goal is to "recognize the important relationship between land use and transportation and develop appropriate policies that promote a long-term sustainable transportation system." The existing Land Use category, LDR-Low Density Residential, aligns with R1 and PUD zoning and other complimentary uses such as churches and parks. There is no inherit increase in vehicle trips by changing

32.784 acres from LDR-Low Density Residential to DR-Development Reserve, and therefore no evidence the amendment will exceed the established levels-of-service expectations or prevent the existing transportation system services to operate as planned.

- E. Does the amendment request implement, or further, any specific proposals for community facilities, including transportation facilities, or other specific public or private actions contemplated and contained within the 1994 *Comprehensive Master Plan*? Explain.

The following Community Facilities are listed in the 2005 Comprehensive Plan: General Government Facilities, Water, Power, Waste Water, Storm Water, and Communications Technology. There are no known proposals for community facilities or other public or private projects related to this property.

There are no inherit increases in facility needs with the proposed change from LDR Low Density Residential to DR Development Reserve, and therefore no evidence the amendment will affect the established levels-of-service expectations for the current Facilities Master Plan, Master Drainage Plan, or the Telecommunications Plan, the Community Water Facilities, Power Facilities, or Wastewater Facilities.

Tracts A & B, Big Thompson Farms Addition
REZONE ASSESSMENT
REV - JUNE 2013

Project Description

The subject property is a 48.841 acre portion of the Big Thompson Farms Addition, that currently has 31.317 acres zoned R-1 Low Density Residential, and 17.524 acres zoned DR Developing Resource. This project proposes to rezone 15.260 acres from R-1 Low Density Residential to DR Developing Resource, bringing the overall acreage for the R-1 zoning district to 16.057 acres and the DR zoning district to 32.784 acres. The property being rezoned is adjacent to the existing DR zoned parcel.

The property is located on the north side of 1st Street, between Namaqua Avenue and Wilson Avenue. Undeveloped right-of-way for 3rd Street is located on the north side of the property.

The 48.8 acre overall property is currently used for agricultural purposes - irrigated corn, and cattle and horse grazing. The DR zone district does not outline any permitted uses, thus the existing agricultural uses are proposed to remain, and be will used as the basis for this Rezone Assessment until such time alternative uses are submitted, reviewed and approved by the City.

Rezone Assessment:

- (i) The purposes set forth in Section 18.04.010 outline the conditions under which zoning should be established such that the most appropriate uses for that parcel are able to be developed. By rezoning a portion of R-1 zoning to DR, this project seeks to increase opportunities to appropriately develop a larger portion of land within the framework of the Zoning Code. While the current agricultural uses are anticipated to remain for the time being, at such time alternate uses (uses by Special Review) are proposed, the appropriate City codes, guidelines and requirements will be evaluated.
- (ii) The adjacent properties demonstrate a variety of land uses. Residential uses are found to the west and south, industrial zoned property (in the form of the City Service Center) is located to the east, and Larimer County FA zoned property (in the form of the Loveland Ready-Mix Concrete Plant) is located to the north.

Any new development that ultimately occurs on the property will need to comply with City Codes, go through the proper City review processes, and mitigate any perceived negative impacts that might be brought about due to incompatible uses.

- (iii) Impacts to the existing City infrastructure and service lines is expected to be minimal. At this time, no new development on the property is proposed, thus no vehicle trips to and from the site onto Namaqua Avenue, Wilson Avenue or 1st Street will be generated. Additionally, no new buildings are anticipated, which will not place any stresses on utility services (water, sewer and power).
- (iv) Section 4 of the Loveland Comprehensive Master Plan speaks to the land uses outlined for development within the City. Currently, this property is located within the Low Density Residential Land Use Designation of the Comprehensive Master Plan, which suggests a focus on

residential development. While this project is proposing to expand the existing DR zone on the site by 15 acres, it is in no way seeking to eliminate the remaining R-1 zoned property, which would remain to be a consistent type of development as compared to the Comprehensive Master Plan designation.

- (v) Any future development on this property would be designed such that the public health, safety and welfare of the development and adjacent properties is not impacted in a detrimental way. This will be achieved by creating development that meets the intent of the Code, or is presented in such a way that any adverse impacts can be mitigated and/or buffered.

**Legal Description
Zoning D-R District**

Legal description of a parcel of land being a portion of Tract A, Big Thompson Farms Addition, located in the Southeast Quarter of Section 16, Township 5 North, Range 69 West of the 6th P.M., City of Loveland, Larimer County, Colorado being more particularly described as follows:

Beginning at the Southwest corner of said Tract A, thence along the West line of said Tract A, North 04°18'26" East 810.11 feet to the Northwest corner of said Tract A; thence along the North line of said Tract A, South 89°18'13" East 470.99 feet to the True Point of Beginning; thence continuing along the North line of said Tract A, South 89°18'13" East 1041.65 feet; thence departing said North line South 41°59'12" East 88.73 feet; thence South 47°18'07" East 570.00 feet; thence South 42°41'53" West 210.00 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 71°53'00" and a radius of 230.00 feet; thence Southwesterly along the arc of said curve 288.56 feet to the end of said curve; thence tangent from said curve North 65°25'07" West 300.00 feet; thence South 24°34'53" West 225.00 feet; thence South 03°38'24" West 59.22 feet thence North 42°27'25" West 1,100.03 feet to the True Point of Beginning.

The above described Tract of land contains 15.260 acres more or less and is subject to all easements, agreements, and rights-of-way of record.

Chapter 18.38

DR DISTRICT-DEVELOPING RESOURCE DISTRICT

Sections:

- 18.38.010** Uses permitted by right.
18.38.020 Uses permitted by special review.

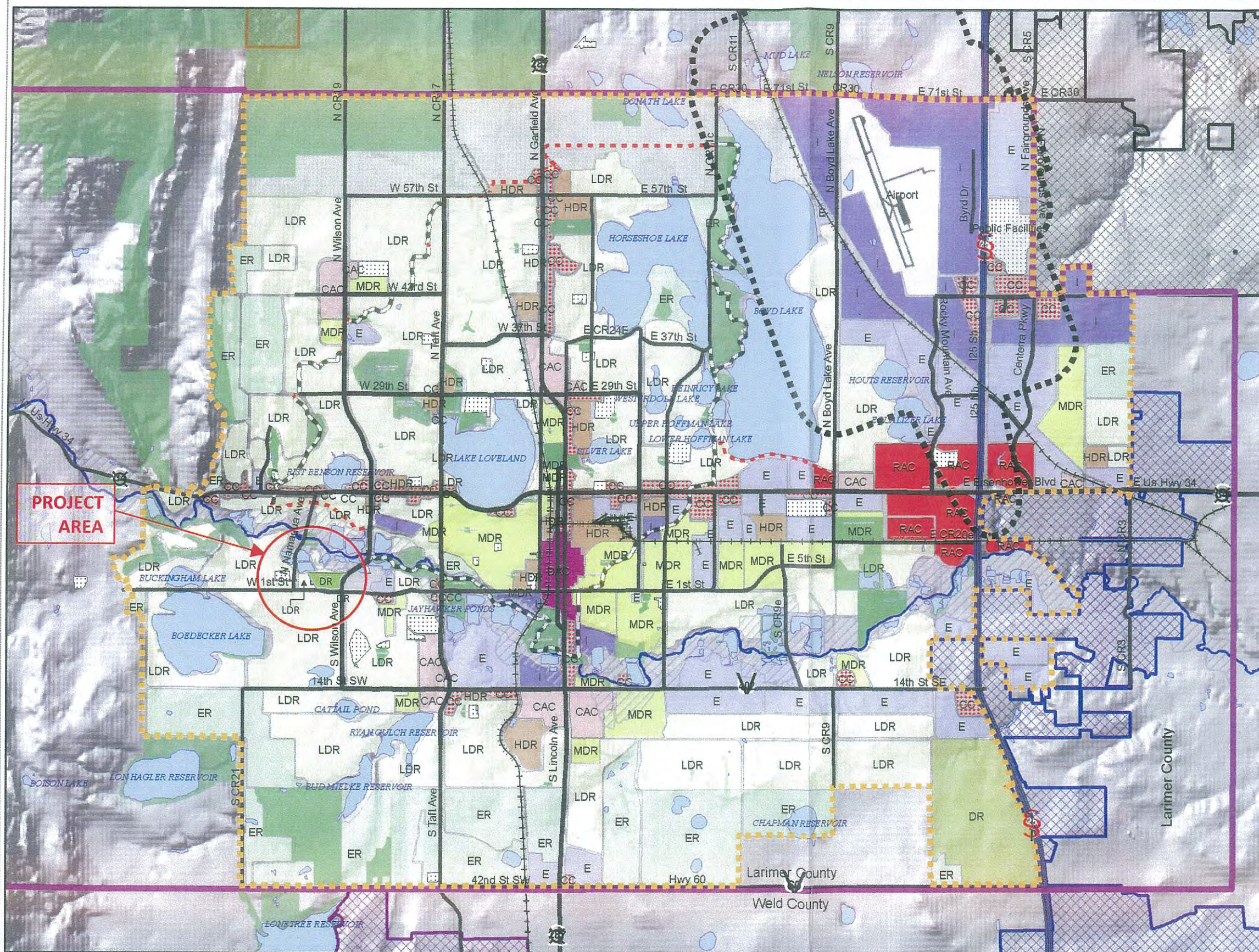
18.38.010 Uses permitted by right.

There are no uses permitted by right in a DR district. (Ord. 1392 § 1 (part), 1974; Ord. 1004 § 24.1)

18.38.020 Uses permitted by special review.

The following uses are permitted by special review in a DR district:

- A. Farm and garden uses only for the raising of crops; provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- B. Stands for the sale of agricultural products produced on the premises; provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- C. Greenhouses, turf and sod farms, and nurseries; provided, sales are limited to products produced on the premises; and further provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- D. Garden supply centers operated in conjunction with a nursery or greenhouse; provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- E. The extraction of limestone used for construction purposes, coal, sand, gravel and quarry aggregate; provided, all mining, extracting and quarrying is in conformance with any master plan for extraction adopted by the city; and further provided, dust, fumes, odors, smoke, vapor, noise and vibration shall be confined within the property boundary lines;
- F. Essential public utility and public service installations and facilities for the protection and welfare of the surrounding areas; provided, business offices or repair facilities are not included; and further provided, no permanent structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- G. Publicly owned parks, recreation areas, golf courses and storm water detention facilities, provided no structures are erected thereon that permanently preclude the extraction of commercial mineral deposits by an extractor from the land subject to said use;
- H. Oil, gas and other hydrocarbon well drilling and production;
- I. Personal wireless service facilities, as defined in § 18.55.020(G), in compliance with Chapter 18.55 of this title. (Ord. 4236 § 12, 1997; Ord. 3720 § 1, 1991; Ord. 2034 § 1, 1982; Ord. 1392 § 1 (part), 1974; Ord. 1004 § 24.2, 1968)



Land Use Categories

Residential Mixed-Use

- ER - Estate Residential
- LDR - Low Density Residential
- MDR - Medium Density Residential
- HDR - High Density Residential

Activity Center Mixed-Use

- RAC - Regional Activity Center
- DAC - Downtown Activity Center
- CAC - Community Activity Centers
- CC - Corridor Commercial
- E - Employment

Other Categories

- I - Industrial
- 100-Year Floodplain (FEMA)
- 100-Year Floodway (FEMA) (see note 3)
- Public Schools, Hospital, Public Facilities
- DR - Development Reserve
- Parks, Open Lands, Conservation Easements, Golf Courses and Cemeteries
- Fort Collins/Loveland Corridor Area Land Use generally north of 57th Street is guided by the document, "Plan for the Region Between Fort Collins and Loveland"

Windsor City Limits
 Johnstown City Limits
 Berthoud City Limits
 Fort Collins City Limits
 Lakes and Ponds
 GMA - Growth Management Area
 CIA - Community Influence Area
 For westerly boundary of the CIA - refer to the Planning Boundaries Map
 Major Streets
 Big Thompson River
 Fort Collins/Loveland Airport Influence Area (see note 2)

(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development is subject to City standards for protection of environmentally sensitive areas, and other performance guidelines.

(2) For details regarding appropriate land uses within the Airport Influence Area refer to section 4.6, "Airport and Surrounding Areas" of the Comprehensive Master Plan.

(3) The 100-year Floodway is displayed only within City Limits, awaiting further data.

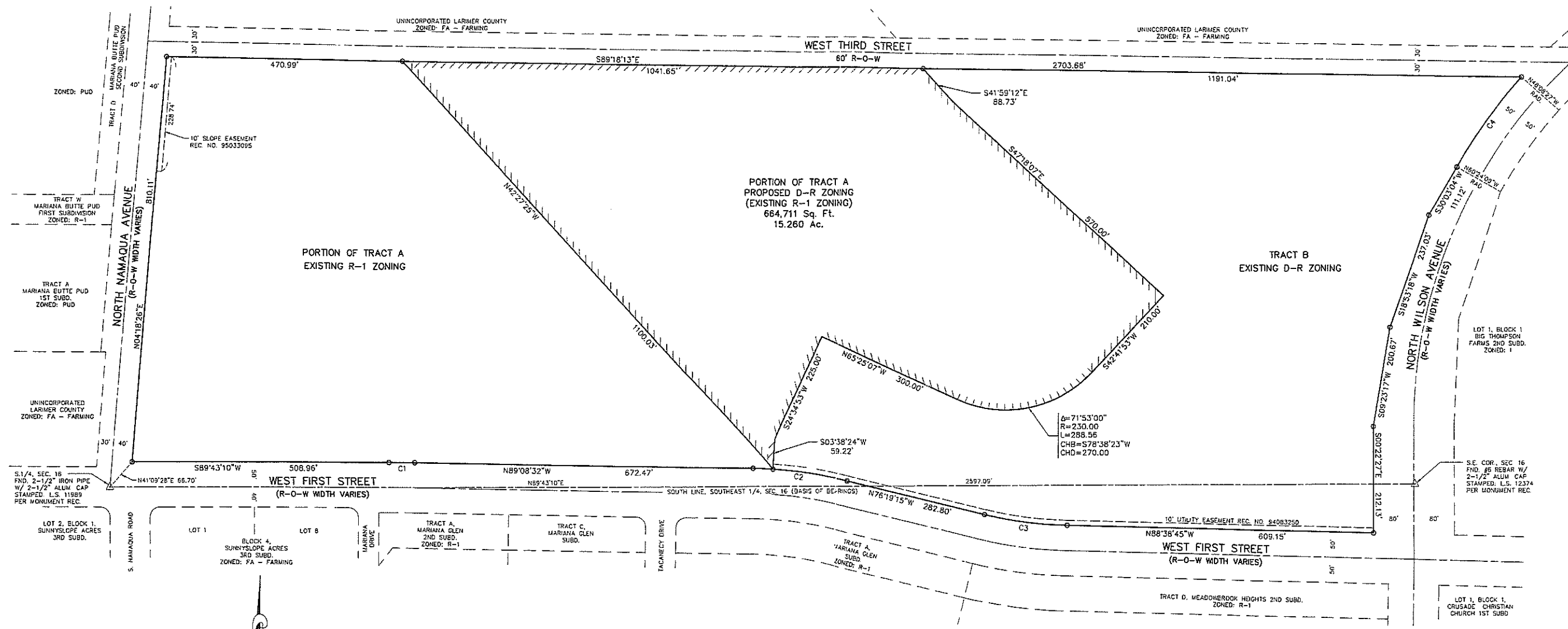
City of Loveland
 LOGIC System

0 0.5 1 2 Miles

**CITY OF LOVELAND
FUTURE LAND USE PLAN**

BIG THOMPSON FARMS ADDITION REZONING MAP REZONING NO. 313

BEING A PORTION OF TRACT A, BIG THOMPSON FARMS ADDITION, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 16 AND THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., CITY OF LOVELAND, LARIMER COUNTY, COLORADO.

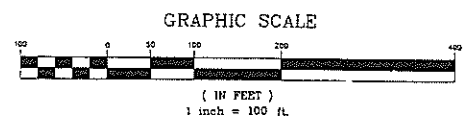


PORTION OF TRACT A
PROPOSED D-R ZONING
(EXISTING R-1 ZONING)
664,711 Sq. Ft.
15.260 Ac.

Δ=71°53'00"
R=230.00
L=288.56
CHB=578°38'23"W
CHD=270.00

LEGAL DESCRIPTION: D-R DISTRICT
Legal description of a parcel of land being a portion of Tract A, Big Thompson Farms Addition, located in the Southeast Quarter of Section 16, Township 5 North, Range 69 West of the 6th P.M., City of Loveland, Larimer County, Colorado being more particularly described as follows:
Beginning at the Southwest corner of said Tract A, thence along the West line of said Tract A, North 04°18'26" East 810.11 feet to the Northwest corner of said Tract A, thence along the North line of said Tract A, South 89°18'13" East 470.99 feet to the True Point of Beginning; thence continuing along the North line of said Tract A, South 89°18'13" East 1041.65 feet, thence departing said North line South 41°58'12" East 88.73 feet; thence South 47°18'07" East 570.00 feet; thence South 42°41'53" West 210.00 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 71°53'00" and a radius of 230.00 feet; thence Southwesterly along the arc of said curve 288.56 feet to the end of said curve; thence tangent from said curve North 65°25'07" West 300.00 feet; thence South 24°34'53" West 225.00 feet; thence South 03°38'24" West 59.22 feet thence North 42°27'25" West 1,100.03 feet to the True Point of Beginning.
The above described Tract of land contains 15.260 acres more or less and is subject to all easements, agreements, and rights-of-way of record.

| CURVE TABLE | | | | | |
|-------------|----------|---------|---------|-------------|-----------|
| CURVE | RADIUS | LENGTH | CHORD | BEARING | DELTA |
| C1 | 2566.57' | 50.99' | 50.95' | N89°42'41"W | 1°08'18" |
| C2 | 866.12' | 193.87' | 193.41' | N82°43'54"W | 12°49'17" |
| C3 | 768.08' | 185.22' | 184.90' | S82°29'00"E | 12°18'30" |
| C4 | 1038.50' | 221.60' | 221.18' | S33°43'42"W | 12°18'30" |
| C5 | 866.12' | 42.06' | 42.05' | N87°45'05"W | 2°48'56" |
| C6 | 866.12' | 151.76' | 151.56' | N81°20'26"W | 10°02'21" |



| REVISIONS | Date | By |
|-----------|------|----|
| | | |
| | | |
| | | |

Landmark Engineering
Engineers, Planners, Surveyors, Architects, Geotechnical
3621 West Eisenhower Blvd., Loveland, Colorado, 80537
(970) 687-6288 • Toll Free 1-866-370-0252 • Fax (970) 687-0286
www.landmarkintl.com

DATE: FEB. 2013
SCALE: 1"=100'
DRAWN: P.A.H.
CHECKED: E.J.S.
APPROVED: P.A.H.

CLIENT: LOVELAND READY-MIX
TITLE: BIG THOMPSON FARMS REZONING MAP
CITY OF LOVELAND, COLORADO
JOB NO.: LOVREA
2F6857-A1
SHEET 1 OF 1

Attachment 6

F:\Projects\LOVELAND-READYMIX\Drawings\SV-BASE.dwg, REZONE, 04/09/13 10:32:01AM, harrismulazp

This document is an instrument of professional service of Landmark Engineering, Ltd. (L.E.L.), a professional corporation. It is the property of L.E.L. and shall not be used, copied, reproduced, or otherwise disseminated by any person without the written consent of L.E.L. Any unauthorized use, modification, alteration, or reuse of this document by anyone is strictly prohibited.

BIG THOMPSON FARMS ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

KNOW ALL MEN BY THESE PRESENTS that the undersigned, being all the owners and holders of the following described property, except any existing public streets, roads or highways, located in Sections 15, 16, 21 and 22, Township 5 North, Range 69 West of the Sixth Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

All that portion of Sections 15, 16, 21 and 22, Township 5 North, Range 69 West of the Sixth Principal Meridian, Larimer County, Colorado, more particularly described as follows:
 Considering the West line of said Section 22 and the East line of said Section 21 as bearing North 01°31'30" East and with all bearings contained herein relative thereto:
 Beginning at the Southeast corner of the Southwest Quarter of said Section 15; thence along the East line of said Southwest Quarter North 09°50'32" East 857.72 feet; thence leaving said East line North 59°00'00" West 141.00 feet; thence North 57°30'00" West 152.50 feet; thence North 76°20'00" West 140.00 feet; thence North 44°50'00" West 100.00 feet; thence North 16°20'00" West 173.50 feet; thence North 04°00'00" West 520.00 feet; thence South 83°56'41" West 366.90 feet to the centerline of the Mariano Exchange Ditch; thence along said centerline South 15°16'56" East 565.38 feet; thence leaving said centerline North 89°18'13" West 131.48 feet to the West line of said Southwest Quarter of Section 15 and the East line of the Southeast Quarter of said Section 16; thence continuing North 50°18'13" West 257.31 feet to the West right-of-way line of County Road 29E; thence along said West line and its southerly prolongation South 04°11'00" West 951.47 feet to the South right-of-way line of West 1st Street; thence along said East line South 69°50'34" East 33.17 feet to the East line of the Northeast Quarter of said Section 21; thence continuing along said South right-of-way line of West 1st Street North 89°45'10" East 532.90 feet to the East line of said Sunnyslope Acres Third Subdivision; thence along said East line and its southerly prolongation South 00°10'10" West 2154.55 feet; thence leaving said East line and its southerly prolongation South 89°40'10" West 147.35 feet; thence South 09°28'50" East 327.96 feet; thence South 85°03'50" East 492.00 feet; thence South 61°56'50" East 299.50 feet; thence South 46°57'50" East 492.46 feet; thence South 52°58'50" East 586.00 feet; thence South 78°47'50" East 55.00 feet; thence South 34°51'10" West 187.30 feet; thence South 58°44'10" West 349.74 feet; thence South 01°59'30" East 113.39 feet to the centerline of the Mariano Exchange Ditch; thence along said centerline the following two (2) courses and distances: South 60°00'00" East 278.53 feet; South 82°46'58" East 208.47 feet to the West line of the Ponds Addition to the City of Loveland, County of Larimer, State of Colorado; thence continuing along said centerline of the Mariano Exchange Ditch and along the North line of said Ponds Addition the following five (5) courses and distances: North 87°29'15" East 75.35 feet; North 74°27'00" East 70.71 feet; North 82°35'00" East 156.00 feet; North 75°30'45" East 129.99 feet; North 87°00'00" East 67.06 feet to the southerly prolongation of the West line of Sweetbriar Addition to the City of Loveland, County of Larimer, State of Colorado; thence along said southerly prolongation and said West line North 00°31'30" East 3218.03 feet to the North line of said Sweetbriar Addition; thence along said North line South 88°38'45" East 100.00 feet to the East right-of-way line of Wilson Avenue; thence along said right-of-way line North 00°31'30" East 464.00 feet to the South right-of-way line of West 1st Street; thence along said South right-of-way line South 88°38'45" East 792.06 feet; thence leaving said South right-of-way line South 02°03'19" East 1236.08 feet; thence North 88°38'45" West 330.71 feet to the East line of said Sweetbriar Addition; thence along said East line South 00°31'30" West 750.29 feet to the North line of Tract 4, Loch Lon 13th Addition to the City of Loveland, County of Larimer, State of Colorado; thence along said North line North 29°47'50" East 49.99 feet; thence continuing along said North line of Tract 4 and the North line of Somerset Park Addition to the City of Loveland, County of Larimer, State of Colorado; North 60°39'50" East 748.06 feet; thence continuing along said North line of Somerset Park Addition the following six (6) courses and distances: South 80°33'10" East 530.18 feet; North 60°36'50" East 321.59 feet; South 06°56'40" East 234.00 feet; North 72°05'50" East 4.19 feet; North 28°21'00" East 66.30 feet; North 42°25'00" East 91.16 feet; thence leaving said North line of the First Subdivision of Somerset Park Addition and along the approximate centerline of the Mariano Exchange Ditch the following seven (7) courses and distances: North 44°44'13" East 65.25 feet; North 23°30'00" East 27.78 feet; North 14°24'00" West 35.51 feet; North 38°34'10" West 404.07 feet; North 34°22'00" West 165.12 feet; North 36°37'10" West 475.10 feet; North 74°53'40" West 66.41 feet to the South right-of-way line of West 1st Street; thence along said right-of-way line the following eleven (11) courses and distances: South 03°37'15" East 27.16 feet; North 34°06'17" West 74.56 feet; South 82°36'17" East 306.60 feet to the beginning of a tangent curve concave to the Northeast having a central angle of 01°16'24" and a radius of 1940.00 feet; thence South easterly along the arc of said curve 43.11 feet to the end of said curve; thence non-tangent from said curve South 80°04'33" West 20.42 feet to the beginning of a curve concave to the Northeast having a central angle of 08°39'42" and a radius of 1960.00 feet; thence South easterly along the arc of said curve 125.32 feet to the end of said curve; thence tangent from said curve South 87°36'17" East 366.19 feet; thence North 00°40'42" East 20.01 feet; thence South 87°36'17" East 254.88 feet to the beginning of a tangent curve concave to the Northwest having a central angle of 05°06'00" and a radius of 1482.05 feet; thence North easterly along the arc of said curve 130.99 feet to the mid of said curve; thence tangent from said curve North 87°15'47" East 45.15 feet to the East line of the Northwest Quarter of said Section 22 and the West line of Thompson Valley Estates First Addition to the City of Loveland, County of Larimer, State of Colorado; thence leaving said South right-of-way line and along said East line of the North 1st Quarter and said West line of Thompson Valley Estates First Addition North 00°56'25" East 226.64 feet to the Point of Beginning.

do hereby subdivide the same into lots, blocks, recreation areas, passageways, streets, future streets, utility and other easements as shown on this map; and do hereby designate and dedicate all such recreation areas, parks, passageways, streets, future streets and easements, other than utility easements, to and for public use, all such utility easements to and for public use for the installation and maintenance of utility, irrigation and drainage facilities; and do hereby designate the same as BIG THOMPSON FARMS ADDITION to the City of Loveland, County of Larimer, State of Colorado.

All expenses involving necessary improvements for a water system, sanitary sewer system, storm sewer system, curb and gutters, sidewalks, street improvements, street signs, traffic control signs, alley grading and surfacing, gas service, electric service, grading and landscaping shall be paid by George A. Fancher and Harold O. Kester.

MARIANNA FARMS, INC., A COLORADO CORPORATION
 Cecil Swanda, President, Owner
 STATE OF COLORADO,)
) ss.
 COUNTY OF LARIMER,)
 The foregoing instrument was acknowledged before me this ___ day of _____ 1978, by Cecil Swanda as President and William L. Bray as Secretary of Marianna Farms, Inc., a Colorado Corporation.
 Witness my hand and official seal.
 My commission expires _____
 Notary Public

WILLIAM L. BRAY, OWNER
 STATE OF COLORADO,)
) ss.
 COUNTY OF LARIMER,)
 The foregoing instrument was acknowledged before me this ___ day of _____ 1978, by William L. Bray as Secretary of Marianna Farms, Inc., a Colorado Corporation.
 Witness my hand and official seal.
 My commission expires _____
 Notary Public

GEORGE A. FANCHER, OWNER
 STATE OF COLORADO,)
) ss.
 COUNTY OF LARIMER,)
 The foregoing instrument was acknowledged before me this ___ day of _____ 1978, by George A. Fancher and Harold O. Kester.
 Witness my hand and official seal.
 My commission expires _____
 Notary Public

FRANK P. HOFFINGTON, JR., OWNER
 STATE OF COLORADO,)
) ss.
 COUNTY OF LARIMER,)
 The foregoing instrument was acknowledged before me this ___ day of _____ 1978, by Frank P. Hoffington, Jr.
 Witness my hand and official seal.
 My commission expires _____
 Notary Public

WILLIAM L. BRAY, OWNER
 STATE OF COLORADO,)
) ss.
 COUNTY OF CAMPBELL,)
 The foregoing instrument was acknowledged before me this ___ day of _____ 1978, by William L. Bray as Secretary of Marianna Farms, Inc., a Colorado Corporation.
 Witness my hand and official seal.
 My commission expires _____
 Notary Public

CURVE TABLE

| CURVE | DELTA | RADIUS | LENGTH | CHORD |
|-------|-----------|----------|---------|---------|
| A | 09°05'43" | 1299.44' | 115.56' | 115.52' |
| A-1 | 09°05'43" | 1349.44' | 170.00' | 119.97' |
| B | 04°59'02" | 1413.67' | 122.97' | 122.93' |
| B-1 | 04°59'02" | 1463.67' | 127.32' | 127.28' |
| C | 00°24'21" | 1859.85' | 13.17' | 13.17' |
| C-1 | 05°31'09" | 1859.85' | 182.40' | 182.33' |
| C-2 | 06°01'30" | 1509.95' | 206.83' | 200.74' |
| C-3 | 06°01'30" | 1959.85' | 206.09' | 205.00' |
| D | 12°19'30" | 768.08' | 165.22' | 164.90' |
| D-1 | 12°19'30" | 818.08' | 175.98' | 175.64' |
| D-2 | 12°19'30" | 858.08' | 186.73' | 186.37' |
| E | 12°49'17" | 766.12' | 171.44' | 171.03' |
| E-1 | 12°49'17" | 816.12' | 182.63' | 182.25' |
| E-2 | 10°02'21" | 866.12' | 151.76' | 151.56' |
| E-3 | 02°46'15" | 866.12' | 42.05' | 42.05' |
| F | 01°08'18" | 2566.57' | 51.00' | 50.96' |
| F-1 | 01°08'18" | 2516.57' | 50.00' | 50.00' |
| F-2 | 01°08'18" | 2466.57' | 49.00' | 49.00' |
| G | 12°15'42" | 1035.50' | 221.60' | 221.18' |
| G-1 | 17°19'20" | 905.50' | 297.95' | 296.81' |
| G-2 | 02°14'58" | 985.50' | 44.42' | 44.42' |
| G-3 | 23°32'17" | 935.50' | 384.32' | 381.62' |

JOHN E. LARK, OWNER
 STATE OF COLORADO,)
) ss.
 COUNTY OF LARIMER,)
 The foregoing instrument was acknowledged before me this ___ day of _____ 1978, by John E. Lark and Solveig E. Lark.
 Witness my hand and official seal.
 My commission expires _____
 Notary Public

EDWARD A. LARK, OWNER
 STATE OF CALIFORNIA,)
) ss.
 COUNTY OF _____)
 The foregoing instrument was acknowledged before me this ___ day of _____ 1978, by Edward A. Lark and Joan L. Lark.
 Witness my hand and official seal.
 My commission expires _____
 Notary Public

SURVEYOR'S CERTIFICATE
 I, Donald Frederick, being first duly sworn on his oath, deposes and says: That he is a duly licensed surveyor under the laws of the State of Colorado; that the survey of BIG THOMPSON FARMS ADDITION to the City of Loveland, County of Larimer, State of Colorado, was made by him or under his supervision; that the survey is accurately represented on this map; and that the statements contained thereon were read by him and the same are true of his own knowledge.
 KRUBACK ENGINEERING - SURVEYING, INC.
 BY: Donald Frederick, CO L.S. # 11999

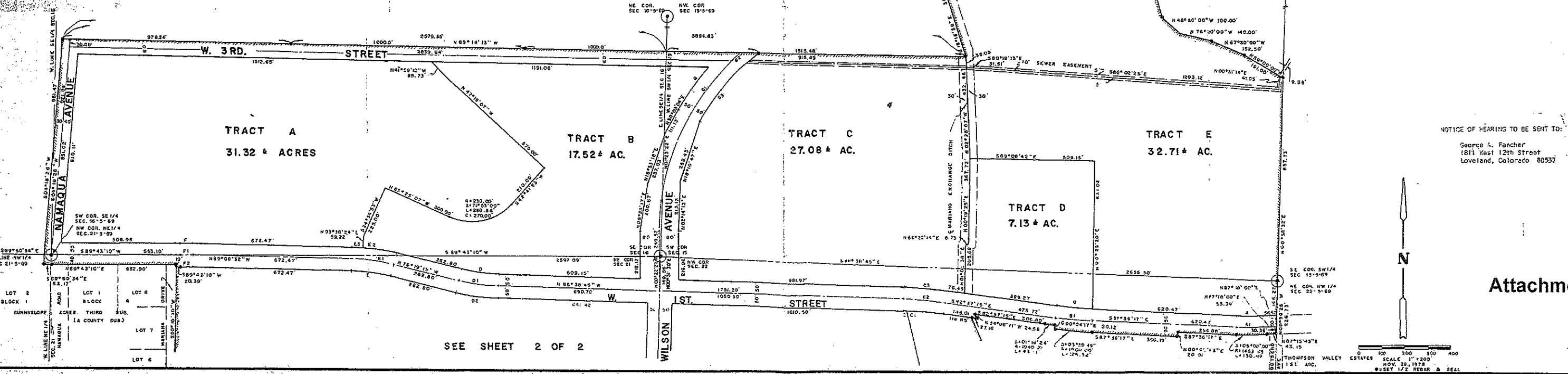
STATE OF COLORADO,)
) ss.
 COUNTY OF LARIMER,)
 The foregoing instrument was acknowledged before me this ___ day of _____ 1978, by Donald Frederick.
 Witness my hand and official seal.
 My commission expires _____
 Notary Public

APPROVED this ___ day of _____ 1978, by the City Engineer of the City of Loveland, Colorado.
 CITY ENGINEER

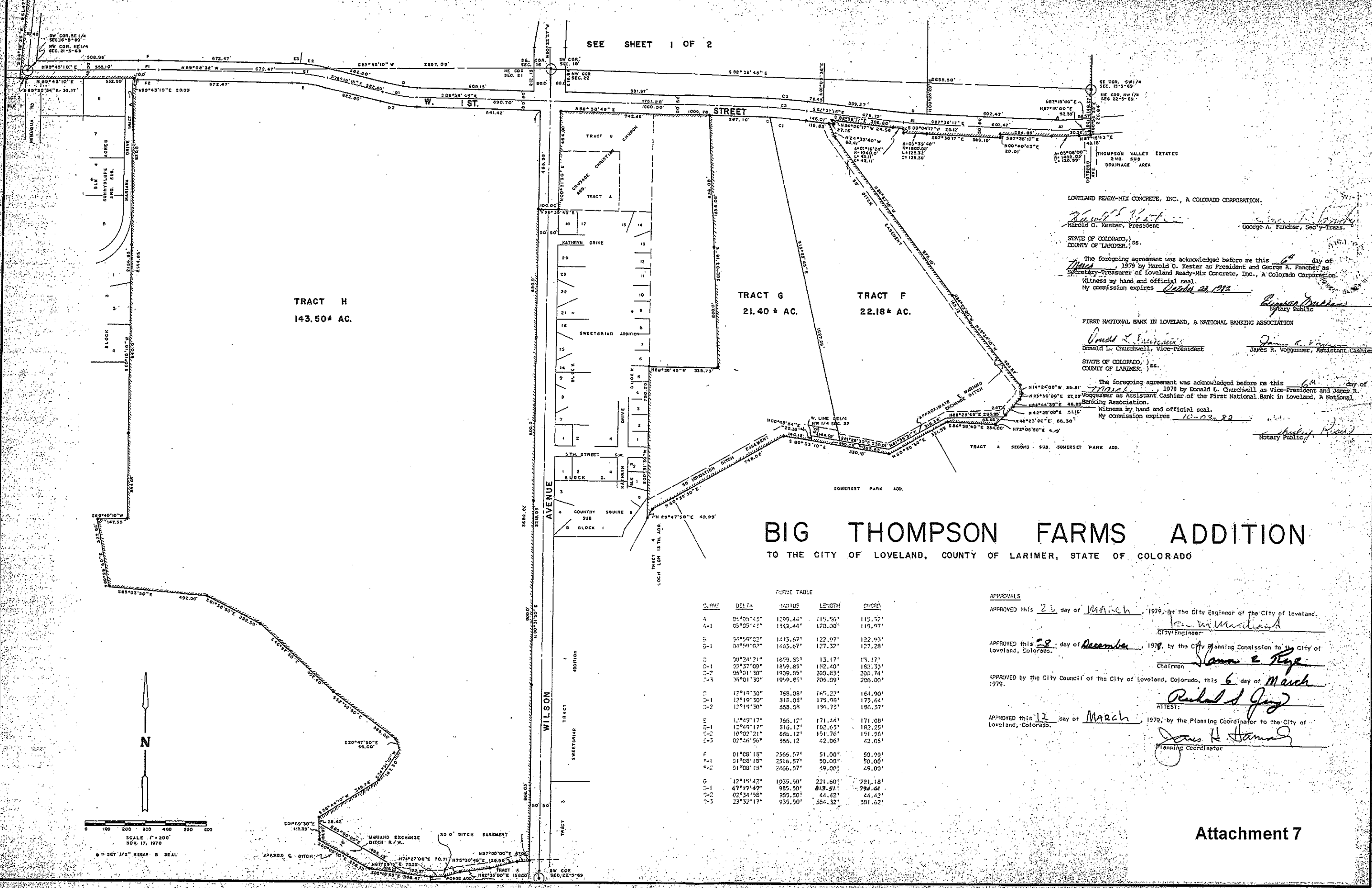
APPROVED this ___ day of _____ 1978, by the City Planning Commission to the City of Loveland, Colorado.
 CHAIRMAN

APPROVED by the City Council of the City of Loveland, Colorado, this ___ day of _____ 1978.
 ATTEST:

APPROVED this ___ day of _____ 1978, by the Planning Coordinator of the City of Loveland, Colorado.
 PLANNING COORDINATOR



SEE SHEET 1 OF 2



LOVELAND READY-MIX CONCRETE, INC., A COLORADO CORPORATION.
 Harold O. Kestor, President
 George A. Fancher, Sec'y-Treas.
 STATE OF COLORADO,
 COUNTY OF LARIMER, ss.

The foregoing agreement was acknowledged before me this 6th day of March, 1979 by Harold O. Kestor as President and George A. Fancher as Secretary-Treasurer of Loveland Ready-Mix Concrete, Inc., a Colorado Corporation.
 Witness my hand and official seal.
 My commission expires October 23, 1982.

FIRST NATIONAL BANK IN LOVELAND, A NATIONAL BANKING ASSOCIATION
 Donald L. Churchwell, Vice-President
 James R. Voggeser, Assistant Cashier
 STATE OF COLORADO, ss.
 COUNTY OF LARIMER, ss.

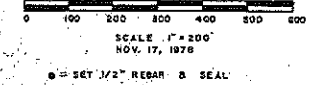
The foregoing agreement was acknowledged before me this 6th day of March, 1979 by Donald L. Churchwell as Vice-President and James R. Voggeser as Assistant Cashier of the First National Bank in Loveland, a National Banking Association.
 Witness my hand and official seal.
 My commission expires 10-23-82.

BIG THOMPSON FARMS ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

| CURVE | DELTA | RADIUS | LENGTH | CHORD |
|-------|-----------|----------|---------|---------|
| A | 05°05'43" | 1799.44' | 115.56' | 115.52' |
| A-1 | 05°05'43" | 1343.44' | 170.30' | 119.97' |
| B | 34°59'02" | 1413.67' | 122.07' | 122.93' |
| B-1 | 34°59'02" | 1483.67' | 127.32' | 127.28' |
| C | 20°24'21" | 1859.55' | 13.17' | 13.17' |
| C-1 | 25°37'09" | 1859.55' | 182.40' | 182.33' |
| C-2 | 26°01'50" | 1909.85' | 200.83' | 200.74' |
| C-3 | 34°01'39" | 1909.85' | 206.09' | 206.00' |
| D | 12°19'30" | 768.08' | 165.22' | 164.90' |
| D-1 | 12°19'30" | 818.08' | 175.98' | 175.64' |
| D-2 | 12°19'30" | 868.08' | 186.73' | 186.37' |
| E | 1°49'17" | 766.12' | 171.44' | 171.08' |
| E-1 | 12°49'17" | 816.12' | 182.63' | 182.25' |
| E-2 | 10°02'21" | 866.12' | 151.76' | 151.56' |
| E-3 | 02°46'56" | 366.12' | 42.06' | 42.05' |
| F | 01°08'13" | 2566.17' | 51.00' | 50.99' |
| F-1 | 31°08'13" | 2516.57' | 50.00' | 50.00' |
| F-2 | 01°08'13" | 2466.57' | 49.00' | 49.00' |
| G | 12°15'42" | 1035.90' | 221.60' | 221.18' |
| G-1 | 47°17'47" | 995.50' | 813.51' | 794.61' |
| G-2 | 02°34'58" | 995.50' | 44.42' | 44.42' |
| G-3 | 23°32'17" | 935.50' | 384.32' | 381.62' |

APPROVALS
 APPROVED this 23 day of MARCH, 1979, by the City Engineer of the City of Loveland.
 City Engineer
 APPROVED this 28 day of December, 1978, by the City Planning Commission to the City of Loveland, Colorado.
 Chairman
 APPROVED by the City Council of the City of Loveland, Colorado, this 6 day of March, 1979.
 ATTEST:
 APPROVED this 12 day of MARCH, 1979, by the Planning Coordinator to the City of Loveland, Colorado.
 Planning Coordinator



Attachment 7

* This subdivision now OBSOLETE pursuant to city of Loveland City Council action on 7-16-96, ORD. 4189

* BIG THOMPSON FARMS FIRST SUBDIVISION *

BEING A RESUBDIVISION OF TRACT A BIG THOMPSON FARMS ADDITION TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

APPROVED this 14 day of Sept, 1979, by the City Engineer of the City of Loveland, Colorado.

APPROVED this 27th day of March, 1979, by the City Planning Commission to the City of Loveland, Colorado.

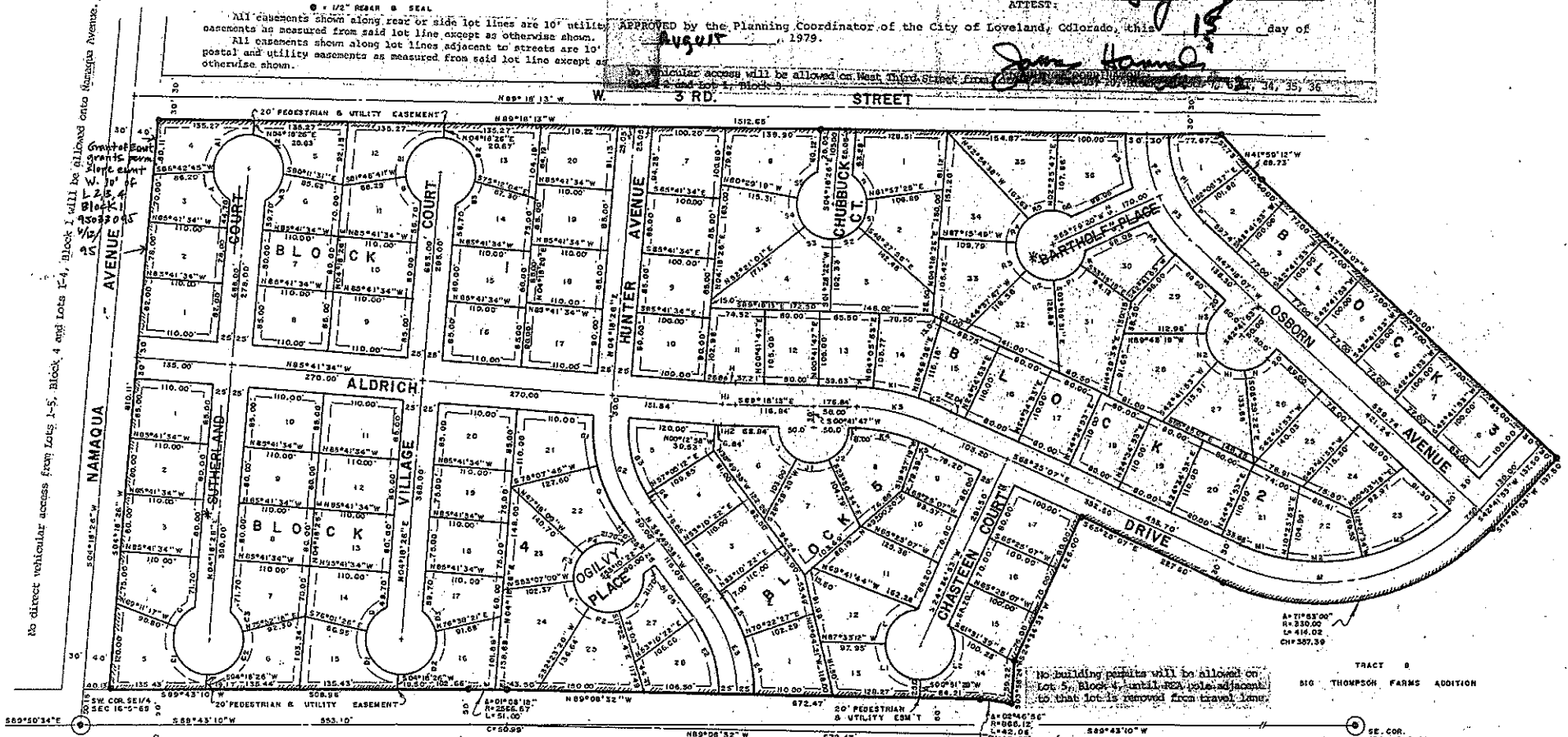
APPROVED by the City Council of the City of Loveland, Colorado this 17th day of April, 1979.

APPROVED by the Planning Coordinator of the City of Loveland, Colorado, this 15 day of August, 1979.

Particular access will be allowed on West Third Street, from Block 1, Block 2, Block 3, Block 4, Block 5, Block 6, Block 7, Block 8, Block 9, Block 10, Block 11, Block 12, Block 13, Block 14, Block 15, Block 16, Block 17, Block 18, Block 19, Block 20, Block 21, Block 22, Block 23, Block 24, Block 25, Block 26, Block 27, Block 28, Block 29, Block 30, Block 31, Block 32, Block 33, Block 34, Block 35, Block 36.

SCALE 1" = 100'
FEB. 7, 1979

All easements shown along rear or side lot lines are 10' utility easements as measured from said lot line except as otherwise shown.
All easements shown along lot lines adjacent to streets are 10' postal and utility easements as measured from said lot line except as otherwise shown.



| LOT | BEAR | DETA | ACRES | TRACT | AREA IN SQ. FT. | |
|-----|------------|----------|--------|--------|-----------------|--------|
| A | 52°24'19" | 50.00 | 45.73 | 44.15 | 24.61 | 175.00 |
| A-1 | 97°35'41" | 50.00 | 85.17 | 75.24 | 57.11 | 11.95 |
| A-2 | 95°30'03" | 50.00 | 83.34 | 74.02 | 55.05 | 17.02 |
| A-3 | 54°29'57" | 50.00 | 47.56 | 45.79 | 25.75 | 18.91 |
| B | 50.00 | 41.43 | 40.25 | 31.99 | 20.40 | 20.80 |
| B-1 | 102°31'15" | 50.00 | 39.47 | 38.00 | 22.33 | 54.23 |
| B-2 | 100°29'30" | 50.00 | 87.70 | 76.88 | 60.11 | 51.59 |
| B-3 | 49°30'30" | 50.00 | 43.20 | 41.87 | 23.05 | 57.42 |
| B-4 | 43°29'43" | 50.00 | 37.96 | 37.05 | 19.95 | 33.20 |
| C-1 | 106°30'17" | 50.00 | 92.94 | 80.13 | 66.96 | 67.58 |
| C-2 | 108°26'08" | 50.00 | 94.63 | 81.12 | 69.37 | 50.34 |
| C-3 | 41°33'52" | 50.00 | 36.27 | 35.48 | 18.98 | 125.06 |
| D | 50.00 | 43.92 | 42.32 | 33.49 | 21.80 | 107.87 |
| D-1 | 99°40'08" | 50.00 | 66.98 | 76.42 | 59.24 | 21.80 |
| D-2 | 167°40'05" | 50.00 | 93.96 | 80.73 | 68.40 | 71.68 |
| D-3 | 42°19'55" | 50.00 | 36.94 | 36.11 | 19.36 | 79.93 |
| E | 0°43'53" | 2,566.57 | 32.76 | 32.76 | 16.38 | 110.20 |
| E-1 | 0°24'25" | 2,566.57 | 18.23 | 18.23 | 9.11 | 376.38 |
| E-2 | 37°41'06" | 175.00 | 115.10 | 113.04 | 59.72 | 66.68 |
| E-3 | 37°41'06" | 200.00 | 131.55 | 129.19 | 68.25 | 107.87 |
| E-4 | 20°29'01" | 225.00 | 80.44 | 80.01 | 40.65 | 141.66 |
| E-5 | 17°12'05" | 225.00 | 67.55 | 67.30 | 34.03 | 35.62 |
| F | 79°27'24" | 50.00 | 69.34 | 63.91 | 41.55 | 42.92 |
| F-1 | 49°45'36" | 50.00 | 43.42 | 42.07 | 23.19 | 41.52 |
| F-2 | 50°43'40" | 50.00 | 44.27 | 42.84 | 23.70 | 37.02 |
| F-3 | 49°34'51" | 50.00 | 43.27 | 41.93 | 23.09 | 27.93 |
| F-4 | 70°29'11" | 50.00 | 61.50 | 57.70 | 33.32 | 114.49 |
| G | 22°57'23" | 225.00 | 90.15 | 89.55 | 45.69 | 87.99 |
| G-1 | 18°10'41" | 225.00 | 71.39 | 71.09 | 35.99 | 79.56 |
| G-2 | 41°08'04" | 200.00 | 143.59 | 140.52 | 75.04 | 66.44 |
| G-3 | 37°13'14" | 175.00 | 113.68 | 111.70 | 59.93 | 76.14 |

NOTICE: ALL HEREIN BY THESE PRESENTS THAT the undersigned, being all the owners and lienholders of the following described property except any existing public streets, roads or highways, located in Section 16, Township 5, Range 69 West of the 6th P.M., Larimer County, Colorado, being more particularly described as follows:

All of Tract A of Big Thompson Farms Addition to the City of Loveland, County of Larimer, State of Colorado.

do hereby subdivide the same into lots, blocks, recreation areas, passageways, streets, future streets, utility and other easements as shown on this map; and do hereby designate and dedicate all such recreation areas, parks, passageways, streets, future streets and easements, other than utility easements, to and for public use, all such utility easements to and for the installation and maintenance of utility, irrigation and drainage facilities; and do hereby designate the same as BIG THOMPSON FARMS FIRST SUBDIVISION to the City of Loveland, Larimer County, Colorado.

All expenses involving necessary improvements for a water system, sanitary sewer system, storm sewer system, curbs and gutters, sidewalks, street improvements, street signs, traffic control signs, alley grading and surfacing, gas service, electric service, grading and landscaping shall be paid by Robert D. Fancher, Vivian Ann Fancher, George S. Fancher, Sidney A. Fancher, Margaret J. Kontour, Melvin D. Kontour, Patricia Ann Mueller, Edwin A. Mueller, Rebecca Lynn Weisert and Robert A. Weisert.

STATE OF COLORADO,)
COUNTY OF LARIMER,)
I, Patricia Ann Mueller, Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this 17th day of February, 1979, by Robert D. Fancher and Edwin A. Mueller.

STATE OF COLORADO,)
COUNTY OF LARIMER,)
I, Rebecca Lynn Weisert, Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this 15th day of August, 1979, by Robert A. Weisert.

STATE OF COLORADO,)
COUNTY OF LARIMER,)
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COUNTY OF LARIMER,)
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THE FIRST NATIONAL BANK IN LOVELAND, A NATIONAL BANKING ASSOCIATION, TRUSTEE OF GEORGE A. AND JEAN M. FANCHER TRUST FOR GRANDCHILDREN.

Horrison L. Heth, Vice President and Trust Officer, do hereby certify that the foregoing instrument was acknowledged before me this 15th day of August, 1979, by Horrison L. Heth, Vice President and Trust Officer of the First National Bank in Loveland, a National Banking Association, Trustee of George A. and Jean M. Fancher Trust for Grandchildren.

THE FIRST NATIONAL BANK IN LOVELAND, A NATIONAL BANKING ASSOCIATION, TRUSTEE OF HAROLD O. KESTER AND BONNIE JANE KESTER TRUST FOR GRANDCHILDREN.

Horrison L. Heth, Vice President and Trust Officer, do hereby certify that the foregoing agreement was acknowledged before me this 15th day of August, 1979, by Horrison L. Heth as Vice President and Trust Officer of the First National Bank in Loveland, a National Banking Association, Trustee of Harold O. Kester and Bonnie Jane Kester Trust for Grandchildren.

STATE OF COLORADO,)
COUNTY OF LARIMER,)
I, Vivian Ann Fancher, Notary Public, do hereby certify that the foregoing instrument was acknowledged before me this 22nd day of February, 1979, by Robert D. Fancher, Vivian Ann Fancher, George S. Fancher and Sidney A. Fancher.

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Attachment 8

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
September 9, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on September 9, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Krenning, and Prior. Members absent: Commissioners Crescibene and Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

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

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Mr. Bob Paulsen, Current Planning Manager**, explained that **Ms. Kimber Kreutzer, Planning Commission Secretary**, would be sending out an email each Friday prior to Planning Commission meetings, and encouraged the Planning Commissioners to contact Planning if they see an item on the agenda that might require other city staff to attend. **Mr. Paulsen** stated that if needed, arrangements could be made as late as 5:00 p.m. on meeting days to have a city staff representative available.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

There were no comments.

APPROVAL OF THE MINUTES

Chair Meyers asked if there were any corrections needed in the August 26, 2013 meeting minutes. Needing no amendments, **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Prior**, the meeting minutes were approved unanimously.

CONSENT AGENDA

St. John Parish Vacation of ROW

1. This is a legislative matter and public hearing to consider a request to vacate a public right-of-way within the St. John Addition and Hill Top Addition. The right-of-way to be vacated consists of a remnant portion of Truman Avenue that is no longer in use as a public street.

The subject portion of right-of-way does have public utilities within it and will need to be retained as a public utility easement. If the Commission recommends granting the request for vacation, Loveland Municipal Code Section 16.36.010.C.3 also calls for the Commission to recommend a form of ordinance to Council. The proposed ordinance is attached to this staff report as Attachment 3. City development review offices have reviewed this application and supports approval with the recommended condition.

Chair Meyers asked for a motion to approve the St. John's Vacation of ROW.

Commissioner Middleton moved to make the findings listed in Section VIII of the Planning Commission staff report dated September 9, 2013 and, based on those findings, recommend that City Council approve the requested vacation of public rights-of-way subject to the condition listed in Section IX, as amended on the record. **Mr. Middleton** further moved to recommend to the City Council the form of vacation ordinance attached to the staff report dated September 9, 2013. Upon a second from **Commissioner Dowding**, the motion was passed 5-0 with **Commissioner Molloy** recusing himself from the vote.

REGULAR AGENDA

Big Thomson Farms

2. This is a public hearing to consider a parcel-specific Comprehensive Plan amendment to amend the recommended land use category of property within the Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR), followed by a rezoning from R1-Developing Low Residential District to DR-Developing Resource District.

Staff supports the requested Comprehensive Plan amendment and rezoning because information has been submitted to demonstrate that there are Economically Viable Mineral Resources underlying the site. CRS 35-1-305 (1) and (2), as well as Sub-section 18.52.040 of the Municipal Code stipulate that the City may not zone any property in a manner that interferes with the extraction of a commercial mineral deposit. At the time of annexation and initial zoning, a report was provided to the City indicating that there were no commercial mineral resources underlying the site. However, with changes in the market, the existing mineral resources have now been determined as economically viable.

Mr. Brian Burson, Senior Planner, addressed the Commission and explained that the item before the Commission was a proposed Comprehensive Plan and rezoning for the Big Thompson Farms Addition, tracts A and B, located northwest of Wilson St. and 1st Avenue. Tract A is currently zoned R1, and tract B is currently zoned DR—Developing Resources. The request asks for consideration of a parcel-specific Comprehensive Plan amendment to amend the land use category of the property from Low Density Residential (LDR) to Development Reserve (DR), followed by a rezoning from R1-Developing Low Density Residential District to DR—Developing Resource District.

Mr. Burson stated that there are no uses by right in the DR zone. Certain uses that can be approved by Special Review include farming, greenhouses, garden supply, public utility, public parks, storm water detention areas, and extraction of commercial minerals.

Mr. Burson went on to explain that City Municipal Code 18.52.040 precludes the city from applying zoning to property in a manner that interferes with extraction of identified economically viable minerals. When the property was originally annexed back in the 1980's, it was determined that it was not economically viable to extract the minerals. However, with the change in the economy, the applicant has presented the city with an updated extraction report indicating that the minerals are now, in fact, economically viable for extraction. It was noted that mining has been ongoing in the adjacent area for many years.

The policies currently in the Comprehensive Plan specifically address issues related to "growth" and "development". The definition of growth and development does not include the extraction of minerals. Staff concluded that the rezoning findings in city policy either do not apply or have been already met.

Staff is recommending the approval of both the Comprehensive Plan Amendment and the Rezoning. **Mr. Burson** clarified that staff does not currently have a Special Review application, but anticipates one in the future if the requests are eventually approved by City Council. A Special Review requires a neighborhood meeting and allows for an appeal process.

Ms. Kim Lambrecht, Landmark Engineering, stated she is representing Big Thompson Farms. She reiterated that adjacent uses allow for mining at the site. She stated that Big Thomson Farms Addition consists of 302 acres and was annexed in 1979 with R1-Developing Residential, and DR-Developing Resource zoning. At the time there were no commercial mineral deposits found on site that could be economically extracted. Subsequently in 1979, tract A was subdivided and platted into a 108 unit residential subdivision.

In 1996, the city vacated the plat as an obsolete subdivision; however the original R1 zoning remained. Currently, the entire property is being used for agricultural purposes. Viable mineral deposits are located under the eastern 2/3rds of the site. Of this, approximately 15.26 acres falls under the portion of the site zoned R1, which does not allow for the extraction of minerals. The proposal requests 15.26 acres be rezoned from R1 to DR resulting in 15.93 acres zoned R1 and 32.91 acres zoned DR.

In order for the property to be rezoned, an assessment of the land use map of the Comprehensive Master plan was conducted. The rezoning is intended to "align" with land uses designated in the Comp Plan. The Comp Plan is intended to forecast desired development in the city, with an outlook of 15-20 years into the future. **Ms. Lambrecht** clarified that the applicant's plans are more interim in nature.

Future development, more in line with a typical urban development pattern in the 15-20 year time frame, will be assessed at such time an application is put forth.

Ms. Dowding asked if this particular property is rezoned to DR, would a Special Review be required to allow farming. **Mr. Burson** responded that typically when property is annexed into the city, there is an assumption, an operation of law, which states existing legal uses can

continue unless the city comes to an agreement with the landowner to do something different. **Ms. Judy Schmidt, Deputy City Attorney**, clarified that there are parts of the code that allow for legal, non-conforming use at the time of annexation.

Commissioner Prior asked that based on the proposal of tract A, why the line for the rezoning was drawn the way it was. **Ms. Lambrecht** responded that last fall, several core drillings were conducted across the site to determine the location of the economically viable minerals. **Mr. Prior** asked what the size of the mineral deposit was determined to be. **Ms. Lambrecht** replied that the exact size of the deposit wasn't entirely known, however future analysis with specifics would be included in the Special Review application.

Commissioner Krenning questioned why the applicant did not request the entire two parcels be zoned as DR. **Ms. Lambrecht** responded that she wasn't sure that option was completely analyzed as a possibility.

Mr. Molloy stated that he understood the need for mineral extraction; however he asked the applicant what the definition of "interim use" would entail. **Ms. Lambrecht** explained that the DR assignment would allow for a "holding pattern". She explained that extraction of minerals would not be long term, much less in fact than the timeframe outlined in the Comp Plan of 15-20 years. Following the extraction of minerals, future use would be evaluated for a longer, more permanent solution.

Mr. Molloy questioned if reclamation plans would be included in a Special Review application. **Ms. Lambrecht** stated that all reclamation plans would definitely be required in the Special Review application process. Reclamation plans would also be required in conjunction with applications to the state bureau of land mining.

Mr. Molloy went on to question if the minerals were not "viable" in 1980's, why are they considered to be so now. **Ms. Lambrecht** explained that not only are the minerals more cost effective to mine now; they are considerably higher in value.

Chair Meyer stated that given the fact that an elementary school is in close proximity, would the security screen provided around the site ensure the safety of students and children. **Ms. Lambrecht** assured the Commission that the highest safety standards would be imposed.

Mr. Middleton asked if any part of the site was located in the FEMA flood plain. **Ms. Lambrecht** stated that while it was close to the flood plain, the site itself was not.

Mr. Middleton asked for an explanation of the Special Review process, for the benefit of the audience. **Mr. Paulsen** stated that the Special Review is a process that an applicant needs to go through to allow designated uses to occur within specific zoning districts. The process is designed to ensure compatibility between uses. It allows the applicant to choose among the Special Review uses and apply to for permission to do those uses through the city. The process requires notification to surrounding neighbors, posting signs at the proposed sites, and a neighborhood meeting whereby the applicant and owner must attend the meeting and

describe the intended use. City staff then works with the applicant to either approve or deny the request.

Chair Meyers opened the meeting for public hearing.

Mr. David Hollingsed, 5241 Cedar Valley Drive, Loveland, CO stated that there are residences to the south and west of the property in question, and he is concerned what the parcels will look like both during the mineral extraction process, and after it is complete. He questioned what would happen if the applicant abandoned plans mid-way through the project. **Mr. Burson** explained that the concerns **Mr. Hollingsed** raised would be addressed during the Special Review process which would focus on screening, dust control, hours of operation, and land reclamation once the project is complete. In addition, mining plans must always include reclamation plans along with any application.

Ms. Schmidt added that the Mined Land Reclamation Board would not provide a permit for mining until a local jurisdiction has zoned and allowed the land for use.

Mr. Krenning stated that the Mined Land Reclamation Board also requires the applicant to post a substantial bond to ensure reclamation activities are completed, regardless of when the project stops.

Mr. Molloy questioned if the Special Review is a formality since the state can supersede decisions regarding mining. **Mr. Burson** replied that the city will still have discretionary power through the Special Review, and would have the ability to deny the Special Review request if deemed appropriate. **Ms. Schmidt** stated that in order to receive a permit to mine, the applicant must satisfy local requirements.

Ms. Francine Webb, 377 Rossum Drive, Loveland, CO voiced apprehension about the reclamation process. She expressed concern that mining would occur in close proximity to a public school. She asked what reclamation plans might be done, other than just filling the area with water. She questioned how reclamation plans might impact potential future development.

Mr. Burson responded that given his previous experience in working with mining applicants, every effort is made to ensure reclamation returns the affected area to a usable, environmentally friendly condition. He added that in recent years, the water board has added a condition, stating that if ground water is exposed during extraction activities, mitigation of ground water is required.

Chair Meyers pointed out that concerns about reclamation would need to be addressed during the Special Review process. He added that the gravel pits have been in place since before 1982.

Mr. Burson explained that the majority of the gravel pits in the area are in county jurisdiction and all permits were granted by Larimer County.

Mr. Krenning pointed out that currently there is approved gravel mining at the site, and the request is to only get approval to mine extra acres.

Chair Meyers closed the public hearing.

Mr. Brad Fancher, 6405 Windemere Rd, Loveland, CO addressed the Commission to respond to concerns raised at the public hearing. He shared that questions about reclamation would have to be addressed during the Special Review process. He added that any mining would be closely monitored by the Mined Land Reclamation Board. He confirmed that his application for mining would require him to be fully bonded prior to the start of mining activities. The bond is required for future payment for reclamation costs. He also stated that mining activities in the area have been ongoing long before the grade school was built.

Chair Meyers asked if development of previously mined property is typical. **Mr. Fancher** responded that yes, development after the fact is very common. He pointed out that mining of the gravel would be shallow, going down no more than 15 feet from the surface.

Mr. Molloy asked if the city recreation trail would eventually travel through the area being mined. **Mr. Fancher** stated that those plans were part of an ongoing negotiation with the land owner and the city.

Mr. Krenning again questioned if the applicant considered zoning both parcels as Developing Resource. **Mr. Fancher** confirmed the idea was considered, but in the end it was decided not to do so in case the property owner decided to pursue development in the future.

Ms. Dowding shared that she also wants thoughtful reclamation, and committed to advocate that effort when and if the request comes under Special Review. She shared that she would be in support of the request.

Mr. Middleton communicated that he has been involved in the permitting and bonding process for mining in the past, and stated that it is very strict and arduous. He imparted that he is also in support of the request and feels it would be a good use of the land.

Mr. Molloy stated that given the strict Special Review and bonding process, he is comfortable with the request and will be supporting it.

Mr. Prior said he shared concerns regarding the reclamation process, however, he felt the Special Review process would help address and mitigate fears.

Mr. Krenning explained that he had no issue with the project. He added that the applicant has a strong record for mining in the area. He voiced support the request.

Chair Meyers agreed that the applicant has a solid track record for mining in the area, and is a long term resident of Loveland. He stated he would support the request.

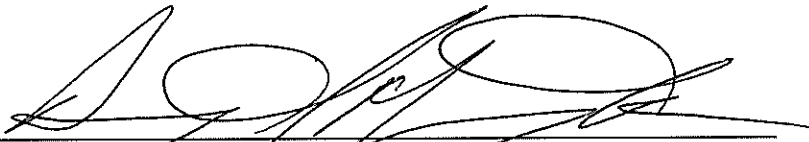
Chair Meyer asked for a recommendation on the motion.

Ms. Dowding moved to make the findings listed in Section VI of this report dated September 9, 2013; and, based on those findings, recommend that the Future Land Use Plan, incorporated into Section 4.0 of the 2005 City of Loveland Comprehensive Plan, be amended for Tracts A and B of Big Thompson Farms Addition from Low Density Residential (LDR) to Development Reserve (DR). **Mr. Prior** seconded the motion. After **Mr. Fancher** verbally agreed to accept the conditions, or no conditions, the motion was approved unanimously.

Mr. Middleton moved to make the findings listed in Section VII of this report dated September 9, 2013; and, based on those findings, recommend approval of the rezoning of the land described in Attachment # 4 of this report from R1-Developing Low Density Residential District to DR-Developing Resource District. **Ms. Dowding** seconded the motion. After **Mr. Fancher** verbally agreed to accept the conditions, or no conditions, the motion was approved unanimously.

ADJOURNMENT

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

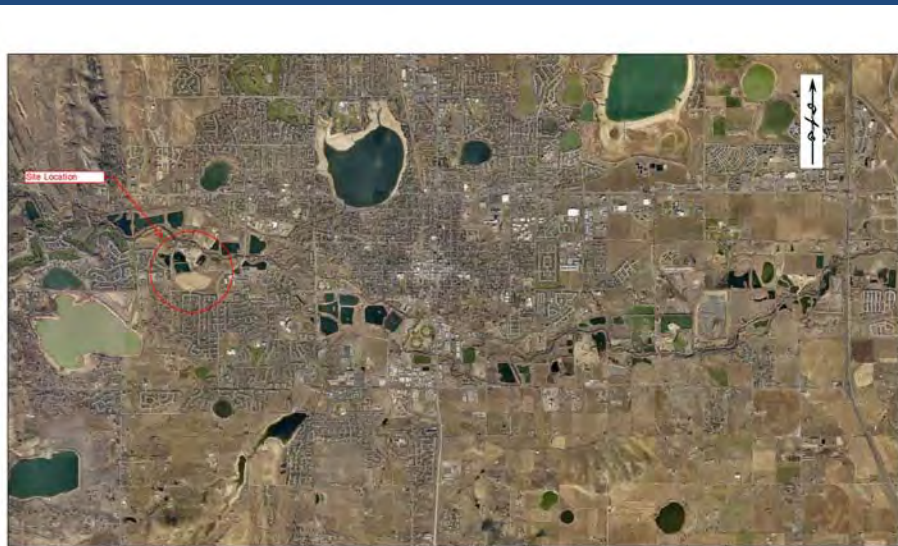
Approved by: 
Buddy Meyers, Planning Commission Chairman


Kimber Kreutzer, Planning Commission Secretary

Big Thompson Farms Addition

City Council
October 15, 2013

Comprehensive Plan Amendment
And
Rezoning



Date: 9/9/2013



Big Thompson Farms Addition

Comprehensive Plan Amendment

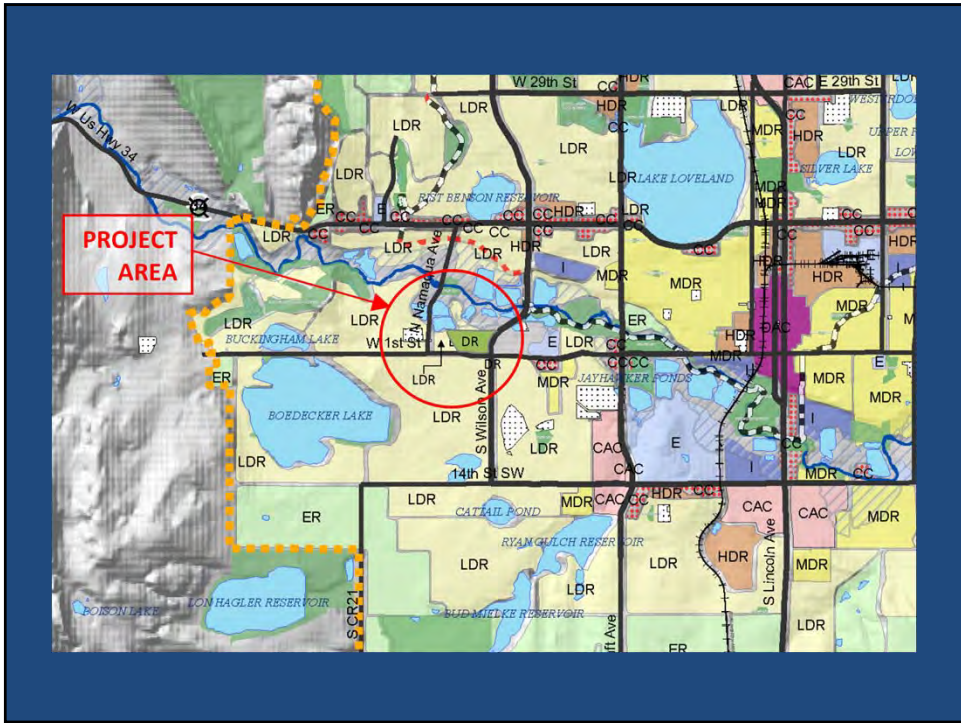
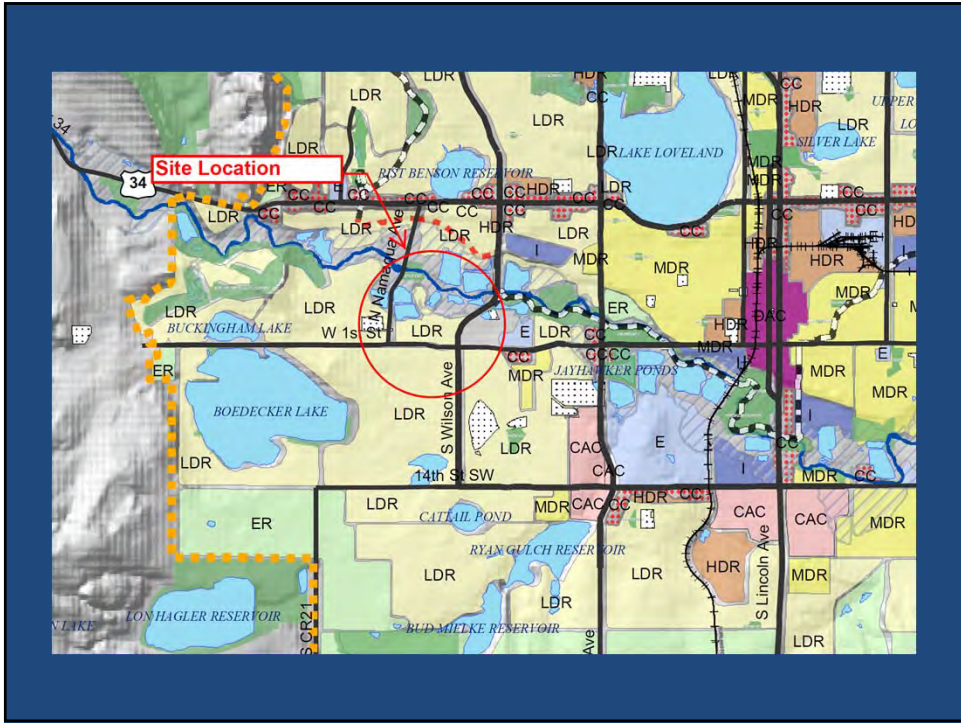
Current Designation: Low-Density Residential (LDR)

Residential development with gross density of 2-4 dwelling units /acre

Proposed Designation: Development Reserve (DR)

Development of these lands would likely occur beyond 15-20 years





Big Thompson Farms Addition

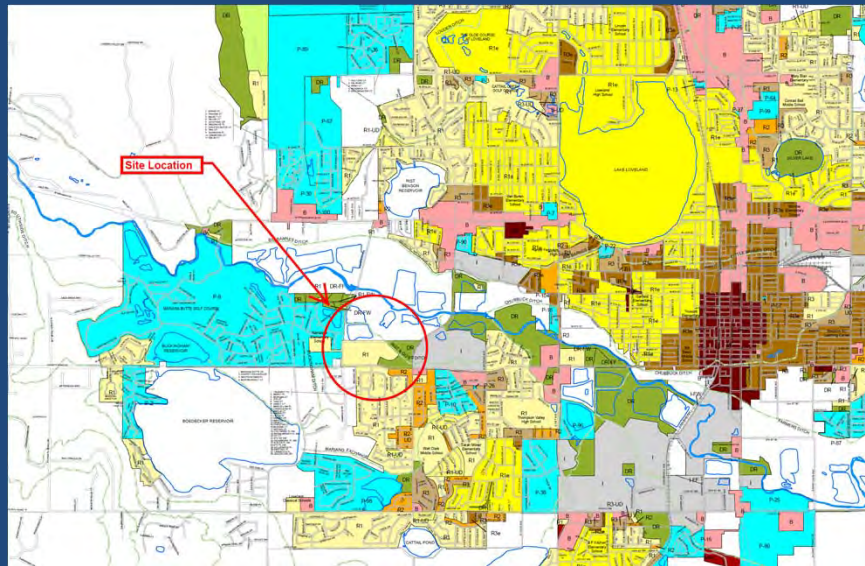
Rezoning

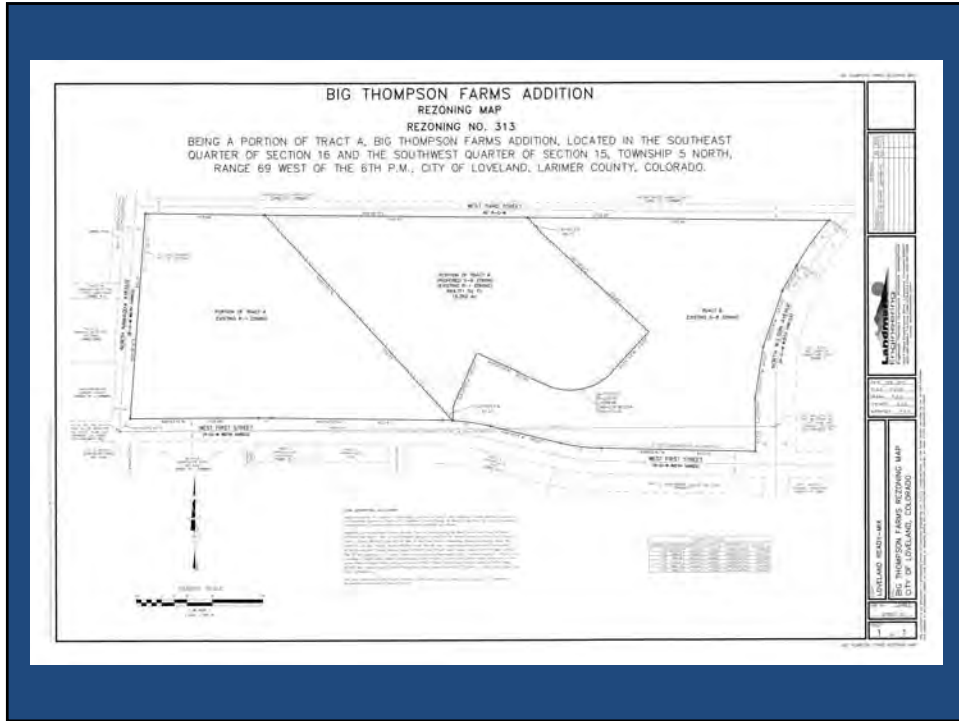
Current Zoning: R1 – Developing Low-Density Residential

Residential development with gross density of 2-4 dwelling units /acre

Proposed Zoning: Development Reserve (DR)

No uses by right





Big Thompson Farms Addition

Uses by right in the DR zone:

None.



Big Thompson Farms Addition

Uses by special review in the DR zone:

- Farms, gardens, raising crops
- Sale of agricultural products produced on site
- Greenhouses, turf and sod farms, nurseries
- Garden supply centers
- Public utility and public service facilities
- Public parks, recreation, golf courses, storm water detention areas



Big Thompson Farms Addition

Uses by special review in the DR zone:

- Oil, gas and other hydrocarbon well drilling
- Personal Wireless Service Facilities (cell towers and antennas)

ALL - no permanent structures that permanently preclude extraction of commercial minerals

- Extraction of commercial minerals



Big Thompson Farms Addition

Commercial Mineral Deposit:

Natural mineral deposit of limestone used for construction purposes, coal, sand, gravel and quarry aggregate for which extraction by an extractor is, or will be, commercially feasible and regarding which it can be demonstrated by geologic, mineralogic or other scientific data that such deposit has a significant or strategic value to the area, state or nation.



Big Thompson Farms Addition

CRS 35-1-305 (1) and (2)

City Municipal Code 18.52.040

Precludes the City from applying zoning to property in a manner that interferes with extraction of identified commercial minerals.



Big Thompson Farms Addition

Purpose of the Land Use Plan and Map in the 2005 Comprehensive Plan, as amended:

To provide:

1. A consolidated set of goals and objectives addressing growth management, annexation, activity centers and commercial and industrial **development**, **residential growth** and neighborhood preservation, and community facilities;



Big Thompson Farms Addition

2. A framework or "roadmap" for future **growth**;
3. Guidelines to assist in the interpretation and application of the Plan during **development** review;
4. Information to further describe and support designations of land uses and trends likely to be encountered based on the 2005 General Plan update.



Big Thompson Farms Addition

Comprehensive Plan Findings

Finding 1. *Does the amendment implement or further, or is it otherwise consistent with, one or more of the philosophies, goals, policies and strategies of the Comprehensive Plan, as amended.*

Finding 2. *Will the amendment interfere with the existing, emerging, proposed or future land use patterns and/or densities/intensities of the surrounding neighborhood as depicted on the Land Use Plan Map as contained within the 2005 Comprehensive Plan, as amended?*



Big Thompson Farms Addition

Comprehensive Plan Findings

Finding 3. *Will the amendment interfere with, prevent or implement the provision of any of the area's existing planned, or previously committed services or proposals for community facilities, or other specific public or private actions contemplated within the 2005 Comprehensive Plan, as amended?*

Finding 4. *Will the amendment interfere with, prevent, or implement the provision of any of the area's existing or planned transportation system services as contemplated by the 2030 Transportation Plan, as amended?*



Big Thompson Farms Addition

Rezoning Findings

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

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



Big Thompson Farms Addition

Rezoning Findings

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

Finding 4. *Development* of the subject property pursuant to any of the *uses permitted by right* under the zoning district being requested would result in *development* that is consistent with relevant policies contained in Section 4.0 of the 2005 Loveland Comprehensive Plan, as amended.



Big Thompson Farms Addition

Rezoning Findings

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

Finding 6. Colorado Revised Statute 34-1-305 and Municipal Code Section 18.52.040. *The proposed location and the use of the land, and the conditions under which it would be developed, will not interfere with the present or future extraction of a commercial mineral deposit underlying the surface of the land, as defined by CRS 34-1-302 (1), as amended. Owners of all severed mineral estates have been notified of the public hearing at least 30 days prior to the hearing date.*



Big Thompson Farms Addition

Staff Recommendations:

1. Make the findings in Section VI. of the staff report and approve the proposed Comprehensive Plan amendment.
2. Make the findings in Section VII. of the staff report and approve the proposed rezoning.
(See formal motions in the staff report.)





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

AGENDA ITEM: 6
MEETING DATE: 11/5/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Bethany Clark, Community & Strategic Planning

TITLE:

An Ordinance on Second Reading Amending Ordinance #4971 Designating as a Historic Landmark the Loveland Feed & Grain Building Located at 130 West 3rd Street in Loveland, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance on second reading.

OPTIONS:

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

SUMMARY:

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

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

On April 5, 2005, City Council adopted on second reading Ordinance #4971 which designated the Feed & Grain Building, located at 130 West 3rd Street, as a Historic Landmark. The property

owner has filed an application for a boundary line adjustment and lot merger, to subdivide the property into two separate parcels, to be known as Lot 1 and Lot 2, Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition. Lot 1 would be the land included in the amended historic landmark designation and on which the existing Loveland Feed and Grain building is located. Lot 2 would be sold to Artspace LP for construction of a new multifamily affordable housing project. The affordable housing project would be financed primarily by Low Income Housing Tax Credits (LIHTC) provided by the Colorado Housing and Finance Authority (CHFA). CHFA and federal tax regulations require that no LIHTC funds be spent on non-residential uses. A separate lot for the Loveland Feed and Grain is being created through the subdivision process to meet this requirement.

On September 19, 2013, the Historic Preservation Commission made a finding that the proposed Lot 2 will no longer meet the criteria for designation as a Loveland Historic Landmark and are forwarding their recommendation that the Council amend Ordinance #4971 to modify the boundaries of the Landmark Designation to include only the property to be known as Lot 1 on the Amended Plat. On October 15, 2013 City Council unanimously approved the ordinance on first reading as part of the Consent Agenda.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Complete first reading packet can be accessed at:
<http://www.cityofloveland.org/index.aspx?page=20&recordid=49813>

FIRST READING: October 15, 2013

SECOND READING: November 5, 2013

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE #4971 DESIGNATING AS A HISTORIC LANDMARK THE LOVELAND FEED & GRAIN BUILDING LOCATED AT 130 WEST 3RD STREET IN LOVELAND, COLORADO

WHEREAS, on April 5, 2005, the Loveland City Council (“Council”) adopted Ordinance #4971 on second reading, designating the Feed & Grain Building located on that real property (“Property”) known as 130 West 3rd Street, Loveland, Colorado, as a historic landmark pursuant to Chapter 15.56 of the Loveland Municipal Code (“Code”) and Ordinance #4971 was recorded in the real property records of the Larimer County, Colorado, Clerk and Recorder on May 2, 2006 at Reception #2006-0032442 (the Original Designation Ordinance”); and

WHEREAS, Barry J. Floyd, as owner of the Property (“Owner”), has filed an application for a boundary line adjustment and lot merger, to result in the subdivision of the Property into two (2) separate parcels, to be known as Lot 1 and Lot 2, Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition, City of Loveland, Larimer County, Colorado (the “Amended Plat”); and

WHEREAS, the Owner intends to sell the Property, Lot 2 of which is to be acquired by Artspace Loveland, LP, a Colorado limited partnership (“Artspace LP”), and Lot 1 of which is to be acquired by a wholly-owned affiliate of Artspace Projects, Inc., a Minnesota nonprofit corporation (“API Affiliate”); and

WHEREAS, Lot 1 of the Amended Plat will contain the Feed & Grain Building, which is a historic landmark designated under the Original Designation Ordinance; and

WHEREAS, Artspace LP intends to construct a new multifamily affordable housing project containing thirty (30) affordable live/work units for income-eligible artists and their families, along with parking and common amenities (the “Affordable Housing Project”) on Lot 2; and

WHEREAS, the primary funding source for the Affordable Housing Project is low income housing tax credits (LIHTC) provided by the Colorado Housing and Finance Authority (CHFA); and

WHEREAS, CHFA and federal tax regulations require that no LIHTC funds be spent on non-residential uses; and

WHEREAS, by completing the Amended Plat to create Lots 1 and 2 and by amending the Original Designation Ordinance, to modify the boundaries of the Property covered by the

Original Designation Ordinance to be limited to Lot 1, Artspace LP and API Affiliate seek to ensure that no LIHTC funds are spent on non-residential uses; and

WHEREAS, Loveland Municipal Code Section 15.56.040 provides a mechanism to amend or rescind the designation of a landmark if the property is found to no longer meet the criteria for designation; and

WHEREAS, the Historic Preservation Commission has made a finding that the proposed Lot 2 will no longer meet the criteria for designation as a Loveland Historic Landmark; and

WHEREAS, the Historic Preservation Commission has recommended that the Council amend the Original Designation Ordinance to modify the boundaries to include only that real property to be designated as Lot 1 on the Amended Plat, which is described on **Exhibit A** attached hereto and incorporated herein by reference (the “Amended Property Description”); and

WHEREAS, the Council desires to amend the Original Designation Ordinance as herein after set forth, to be effective upon the Amended Plat being finalized, fully executed and recorded by the City in the real property records of the Larimer County Clerk and Recorder.

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

Section 1. The Council hereby finds that the proposed Lot 2 will, upon recording of the Amended Plat, no longer meet the criteria for designation as a Loveland Historic Landmark for the following reasons:

- a. No structures or features on the proposed Lot 2 are at least 50 years old, and
- b. The proposed Lot 2 does not meet at least one criterion in Code Section 15.56.100 for Architectural, Social/Cultural, or Geographic/Environmental significance.

Section 2. The Original Designation Ordinance (Ordinance #4971) is hereby amended to reduce the boundaries of the historic landmark designation to Lot 1 of the Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition, City of Loveland, Larimer County, Colorado, which real property is described in **Exhibit A** attached hereto and incorporated herein by reference; which amendment is expressly conditioned and shall be effective upon recording of the Amended Plat.

Section 3. Ordinance #4971 shall remain in full force and effect in accordance with its terms, as amended by this Ordinance.

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

Section 5. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 6. The City Clerk, in accordance with Loveland Municipal Code Section 15.15.56.030.E.3, is hereby directed to promptly notify the Owner of the adoption of this Ordinance and shall record this Ordinance with the Larimer County Clerk and Recorder after its effective date in accordance with State Statutes.

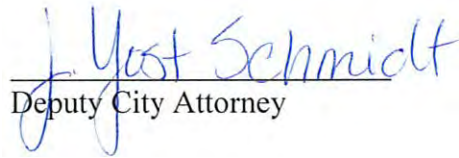
Signed this 5th day of November, 2013

Cecil A. Gutierrez, Mayor

Attest:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

Exhibit A

Legal Description – To be designated as Lot 1, Amended Plat of Lots 1-10 and 26-30, Block 21, Loveland Addition, City of Loveland, Larimer County, Colorado

A PARCEL OF LAND BEING A PORTION OF BLOCK 21 AND A PORTION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY THE COLORADO & SOUTHERN RAILWAY COMPANY) 100.00 FOOT WIDE RIGHT OF WAY, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE EAST LINE OF LOT 1 BLOCK 21, WHICH BEARS S 00°20'26" W.

BEGINNING AT THE INTERSECTION OF THE EASTERLY EXTENSION OF THE NORTH LINE OF SAID BLOCK 21 AND THE EAST LINE OF THE WESTERLY 25.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY THE COLORADO & SOUTHERN RAILWAY COMPANY) 100.00 FOOT WIDE RIGHT OF WAY BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE;

THENCE S 00°20'26" W, ON THE EAST LINE OF THE WESTERLY 25.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S (FORMERLY THE COLORADO & SOUTHERN RAILWAY COMPANY) 100.00 FOOT WIDE RIGHT OF WAY BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, A DISTANCE OF 192.01 FEET, TO A POINT ON A LINE DRAWN PARALLEL WITH AND DISTANT 192.0 FEET SOUTHERLY, AS MEASURED AT RIGHT ANGLES FROM SAID EASTERLY EXTENSION OF THE SOUTH LINE OF SAID BLOCK 21;

THENCE S 89°47'03" W, ON SAID LINE, A DISTANCE OF 23.66 FEET, TO A POINT ON THE EAST LINE OF LOT 30 OF SAID BLOCK 21;

THENCE S 00°13'55" E, ON SAID EAST LINE, A DISTANCE OF 38.16 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH ½ OF LOTS 26 THROUGH 30, INCLUSIVE, OF SAID BLOCK 21;

THENCE S 89°47'11" W, ON SAID SOUTH LINE, A DISTANCE OF 66.05 FEET;

THENCE N 00°13'51" W, A DISTANCE OF 181.82 FEET;

S 89°46'09" W, A DISTANCE OF 12.50 FEET;

N 00°13'51" W, A DISTANCE OF 9.00 FEET;

S 89°46'09" W, A DISTANCE OF 9.42 FEET;

N 00°24'09" W, A DISTANCE OF 39.31 FEET, TO THE NORTH LINE OF SAID BLOCK 21;

N 89°45'58" E, ON SAID NORTH LINE AND THE EASTERLY EXTENSION THEREOF, A DISTANCE OF 113.67 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 20,903 SQUARE FEET, OR 0.4799 ACRES.



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: 7
MEETING DATE: 11/5/2013
TO: City Council
FROM: Economic Development Department
PRESENTER: Mike Scholl, Economic Development Manager

TITLE:

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget to Provide Incentives to House of Neighborly Service for the Community Life Center

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance on second reading.

OPTIONS:

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

SUMMARY:

This is an administrative action on second reading to approve a supplemental appropriation ordinance of \$500,000 from the Council Reserve Fund. The agreement provides a total package valued at \$780,516.14 that includes reimbursements for public improvements, a matching grant, and fee waivers. On October 15, 2013, City Council unanimously approved the first reading of the ordinance and Resolution #R-88-2015 authorizing the City Manager to sign a Grant and Fee Waiver Agreement with the House of Neighborly Service (HNS) for the construction of the "Community Life Center" at 1511 East 11th Street.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The City would fund \$500,000 from the Council Reserves Fund.

BACKGROUND:

HNS, a local non-profit which provides a range of social services to low income individuals and families, is expanding their operations at 1511 East 11th Street, creating the Community Life Center. Multiple non-profits have agreed to co-locate at the Center. The facility is estimated to cost \$5,000,000 on completion. HNS is actively raising funds for the project and the request to the City is part of the overall campaign.

The agreement provides \$250,000 in 2013, for public improvement and an additional \$250,000 in 2014, as a challenge grant to be matched by other contributions. In addition, the agreement provides a fee waiver of \$280,516.14.

As part of the agreement, the City agrees to release the existing lien on 565 North Cleveland in exchange for a promissory note and deed of trust on 1511 East 11th Street, for \$780,516 subordinate to the current financing. The note would be payable to the City if HNS were to sell or transfer the property within the next 20 years.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Complete first reading packet can be accessed at:
<http://www.cityofloveland.org/index.aspx?page=20&recordid=49813>

FIRST READING: October 15, 2013

SECOND READING: November 5, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET TO PROVIDE INCENTIVES TO HOUSE OF NEIGHBORLY SERVICE FOR THE COMMUNITY LIFE CENTER

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

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

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

Section 1. That reserves in the amount of \$500,000 from the Council Capital Reserve in the General Fund 100 are available for appropriation. Revenues in the total amount of \$500,000) are hereby appropriated for to provide a cash incentive and matching grant pursuant to the House of Neighborly Service Incentive and Fee Waiver Agreement for the Community Life Center. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 100**

| | | |
|-----------------------------|-----------------------------|----------------|
| Revenues | | |
| Fund Balance | | 500,000 |
| Total Revenue | | 500,000 |
| Appropriations | | |
| 100-18-180-0000-43714 | Payment to Outside Agencies | 500,000 |
| Total Appropriations | | 500,000 |

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has

been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

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

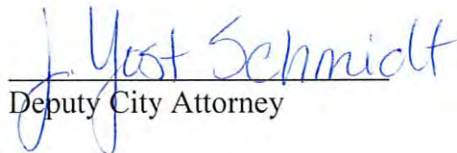
ADOPTED this ___ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
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: 11/5/2013
TO: City Council
FROM: Keith Reester, Public Works Department
PRESENTER: Keith Reester, Director of Public Works

TITLE:

An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2013 Loveland General Improvement District #1 for Downtown Parking Improvements

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance on second reading.

OPTIONS:

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

SUMMARY:

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

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The appropriation is from reserves reducing the flexibility to fund other projects.

BACKGROUND:

In 2013, the City entered into a lease for the land located west of the railroad tracks and south of 4th Street with the Burlington Northern Santa Fe Railroad (BNSF). Staff initially estimated the project to construct a parking lot adding 41 spaces of surface parking to be \$70,000. After field engineering for the base materials, safety requirements added by the railroad, and additional

utility work, the bid for the project came in at \$90,000. This equates to \$2,195 per space which is substantially lower than recent parking space project additions. This additional funding from the General Improvement District supports the GID's mission of parking management and growth in Downtown. GID funds are collected from property owners in the Loveland Downtown District.

This ordinance was approved on first reading unanimously by City Council at the October 15, 2013 regular meeting.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING: October 15, 2013

SECOND READING: November 5, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND GENERAL IMPROVEMENT DISTRICT #1 FOR DOWNTOWN PARKING IMPROVEMENTS

WHEREAS, the Loveland General Improvement District #1 (“**District**”) has reserved funds not appropriated at the time of the adoption of the 2013 District budget; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, acting as the ex officio Board of Directors of the Loveland General Improvement District #1:

:

Section 1. That revenues in the amount of \$20,000 from reserves in the Loveland General Improvement District #1 Fund 602 are available for appropriation. Revenues in the total amount of \$20,000 are hereby appropriated for parking lot improvements and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Loveland General Improvement District #1 Fund 602**

| | | |
|------------------------------|--------------|---------------|
| Revenues | | |
| Fund Balance | | 20,000 |
| Total Revenue | | 20,000 |
| Appropriations | | |
| 602-90-901-0000-49360-DT1201 | Construction | 20,000 |
| Total Appropriations | | 20,000 |

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

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

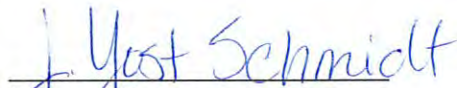
ADOPTED this ___ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
CITY CLERKS OFFICE

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

AGENDA ITEM: 9
MEETING DATE: 11/5/2013
TO: City Council
FROM: Terry Andrews, City Clerk
PRESENTER: Terry Andrews

TITLE:

An Ordinance on First Reading Amending the Loveland Municipal Code at Chapter 12.30 Concerning Licensing of Vendors in Public Rights-of-Way and Certain Other Public Places

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the ordinance on first reading.

OPTIONS

1. Adopt the ordinance as recommended.
2. Take no action; which would allow the emergency ordinance to expire on December 31, 2013 and prohibit mobile vending on City Streets effective January 1, 2014.

SUMMARY:

This is a legislative action. City Council directed Staff to draft an ordinance for consideration that would allow mobile vendors to be permitted to vend in the City of Loveland. This ordinance on first reading allows Staff to license mobile vendors in the City and defines the parameters under which the use may be permitted. Licensees will be subject to all other Restrictions in Chapter 12.30 for mobile vendors.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

On August 6, 2013 City Council approved Emergency Ordinance #5798 allowing ice cream trucks to vend on City Streets through the end of 2013. Council directed Staff to bring an ordinance for consideration that would amend the Code allowing permitting of mobile vendors on public streets. This ordinance allows Staff to license mobile vendors in the City and requires them to provide proof of insurance. The ordinance prohibits mobile vendors from stopping to vend in the middle of the street; vending on major roads, i.e. Taft, US 287, etc. or within City

Parks and on roads adjacent to City Parks. Licensees will be subject to all other restrictions identified in Chapter 12.30.

If Council approved the ordinance on first reading, the ordinance would come back to City Council on second reading November 19, 2013, and if approved, take effect December 3, 2013.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance- Clean
2. Code- Redline version

FIRST READING November 5, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE LOVELAND MUNICIPAL CODE AT CHAPTER 12.30 CONCERNING LICENSING OF VENDORS IN PUBLIC RIGHTS-OF-WAY AND CERTAIN OTHER PUBLIC PLACES

WHEREAS, Chapter 12.30 of the Loveland Municipal Code concerning licensing of vendors within the City of Loveland requires persons desiring to sell goods and services within and on the City’s public rights-of-way to obtain a vendors license from the City Clerk before doing so; and

WHEREAS, Section 12.30.090 places several restrictions on licensed vendors selling within the City’s public rights-of-way, including the prohibition on conducting “any business out of any motor vehicle, stand, cart or otherwise upon the street portion of any public right-of-way”; and

WHEREAS, this prohibition prevents mobile food vendors who desire to conduct their business from their vehicles upon the street portion of the public rights-of-way from obtaining a vendors license under Chapter 12.30; and

WHEREAS, on August 6, 2013, the City Council adopted emergency Ordinance No. 5798 authorizing the City Clerk to issue temporary vendors licenses under Chapter 12.30 to operators of ice cream trucks; and

WHEREAS, in Ordinance No. 5798, the City Council directed the City Manager and the City Attorney to evaluate and review Chapter 12.30 for possible amendments that would allow, in 2014 and thereafter, the issuance of vendors licenses to operators of ice cream trucks and mobile food trucks that would permit them to conduct their businesses on the street portion of the public rights-of-way, and to report back to the City Council with proposed amendments to Chapter 12.30 by the end of 2013; and

WHEREAS, the City Manager and the City Attorney, in consultation with affected City departments, have evaluated and reviewed Chapter 12.30 and recommend certain amendments to permit operators of mobile food trucks, including ice cream trucks, to conduct their businesses on the street portion of the public rights-of-way pursuant to a valid vendors license issued by the City Clerk as further defined herein.

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

Section 1. That Chapter 12.30 of the Loveland Municipal Code is hereby amended to read as follows:

Chapter 12.30

LICENSING OF VENDORS IN PUBLIC RIGHTS-OF-WAY AND CERTAIN OTHER PUBLIC PLACES

Sections:

- 12.30.010 Intent.**
- 12.30.020 Definitions.**
- 12.30.030 License required.**
- 12.30.040 Exceptions.**
- 12.30.050 Application.**
- 12.30.060 Application fee.**
- 12.30.070 Review of application.**
- 12.30.080 License.**
- 12.30.090 Renewal.**
- 12.30.100 Transfer.**
- 12.30.110 Restrictions.**
- 12.30.120 Local events.**
- 12.30.130 Suspension or revocation of license.**

12.30.010 Intent.

It is the intent of this chapter to set forth the conditions and restrictions which shall apply to the sale of services, merchandise, and food from the streets, sidewalks, and other public rights-of-way within the city which are deemed necessary in order to regulate and limit congestion, promote a neat and wholesome atmosphere, discourage littering, encourage diversity of activity, enhance and promote a festive atmosphere, attract shoppers, provide opportunities for entrepreneurs, and advance vehicular and pedestrian traffic safety. It is the further intent of this chapter to implement the power reserved to the city council in section 5.12.040 of this code as to public rights-of-way defined in this chapter.

12.30.020 Definitions.

As used in this chapter, the following definitions of terms apply:

“Food” means any item intended for human consumption, including beverages.

“Licensee” means any person licensed pursuant to this chapter.

“Mobile food truck” means a motorized wheeled vehicle or wheeled vehicle designed and equipped to serve food while being towed by a motorized vehicle.

“Park” means any area, field, trail, open land, golf course, and or other recreational facility operated, managed, and supervised by the city’s parks and recreation department.

“Public right-of-way” means any public street, road, highway, alley, lane, or sidewalk, as well as any public parking lot or place of any nature open to the public and held by the public for vehicular or pedestrian travel.

“Sell” means the act of holding out a thing of value for acquisition by another upon the payment of, or the promise to pay, anything of value thereof.

“Sidewalk” means that part of the public right-of-way designated for the use of pedestrians and ordinarily used to the exclusion of motor vehicles. Such term does not include crosswalks within streets.

“Vend” means to sell, attempt to sell, or otherwise offer to provide to the public any services, merchandise, or food.

“Vendor” means any person who sells or attempts to sell, or who offers to the public free of charge, any service, merchandise, or food.

12.30.030 License required.

It is unlawful for any person to vend from or upon any public right-of-way without first obtaining a vendors license in compliance with the provisions of this chapter.

12.30.040 Exceptions.

A vendors license shall not be required under any of the following circumstances:

- A. vendors operating within the public right-of-way pursuant to a valid encroachment permit issued under section 12.28.030;
- B. vendors operating within any park or other city-owned property pursuant to a concessionaire agreement or other agreement with the city;
- C. vendors operating at a city-sponsored event pursuant to an agreement with the city; or
- D. vendors participating in a local event pursuant to a valid permit issued under chapter 12.26 of this code.

12.30.050 Application.

Any person desiring to obtain a vendors license shall make an application in writing to the city clerk upon forms provided by the city. Applications for new licenses may be filed at any time. Applications for renewal of existing licenses may be filed on or after December 1 of the year prior to the year for which the license is requested. The application shall contain, without limitation, the following information:

- A. name, address, and telephone number of the vendor;
- B. type of operation to be conducted, including the particular type of service, merchandise, or food to be sold;
- C. description of the design of any vehicle, pushcart, kiosk, table, chair stand, box, container, or other structure or display device to be used in the operation;
- D. for mobile food trucks, the vehicle license plate number and a photograph of each of the four sides of the vehicle;
- E. proposed days and hours of operation;
- F. proposed location of operation. For mobile food trucks, location may be specified as “within the city of Loveland.” For all other vendors, location must be specified by block or address. A separate application shall be made for each location, and in the case of mobile food trucks, for each vehicle. Specific block or address locations shall be assigned on a first-come, first-served basis. In the event the city clerk has applications filed as of December 1 for the same block or address location, preference shall be determined by lot;
- G. proof of liability insurance in an amount acceptable to the city;
- H. sales and use tax license in good standing issued by the the state, the county, and the city; and

- I. for the vending of food, all licenses and permits required by Larimer County and the State of Colorado.

12.30.060 Application fee.

Vendors shall pay an application fee for each application filed. The application fee shall be established by resolution of the city council. There shall be no proration of the fee where the application is for a vendors license less than one full year in duration. There shall be no refund of the fee for applications that are denied.

12.30.070 Review of application.

The city clerk shall endeavor to review the application and make a determination as to whether issuance of a vendors license is consistent with the requirements of this chapter and compatible with the public interest within fifteen working days of receiving a complete application and the application fee. In making such determination, the city clerk shall consider the following factors:

- A. degree of congestion of any public right-of way that may result from the proposed use, design, and location of any operation, including the probable impact of the proposed operation on the safe flow of vehicular and pedestrian traffic;
- B. proximity, size, design, and location of existing street fixtures at or near the proposed location, including, without limitation, sign posts, street lighting, bus stops, benches, planters, public art, and newspaper vending devices;
- C. probable impact of the proposed use on the maintenance, care, and security of the specified location;
- D. number and types of vendors already licensed for the proposed location; and
- E. probable impact that issuance of the vendors license would have on surrounding properties.

12.30.080 License.

- A. Upon determination that issuance of a vendors license is consistent with the requirements of this chapter and compatible with the public interest, the city clerk shall issue a vendors license. Subject to the licensee's compliance with the provisions of this chapter, the vendors license shall entitle the vendor and vendor's bona fide employees to operate the business at the location or locations specified in the license.
- B. Each license shall be valid for one year beginning January 1 or the date of issuance, whichever is later, and ending December 31 of the same year.
- C. Each license shall contain the following information:
 - 1. the name, address, and telephone number of the vendor;
 - 2. the type of operation;
 - 3. the length of time for which the license was issued;
 - 4. the days and hours of operation;
 - 5. the location of operation;
 - 6. a brief description of any vehicle, cart, kiosk, table, chair, stand, box, container, or other structure or display device to be used by the licensee;
 - 7. for mobile food trucks, the vehicle's license plate number;
 - 8. a statement that the license is personal to the vendor and is not transferrable in any manner;

9. a statement that the license is valid only when used at the location designated in the license; and
 10. a statement that the license is subject to the provisions of this chapter.
- D. The license must be posted and available for inspection at any time.

12.30.090 Renewal

Renewal of a license shall be treated as a new application under the provisions of this chapter. Any violation by the licensee of the provisions of this chapter and chapter 3.16 shall be an additional factor to be considered in the review and approval set forth in section 12.30.070.

12.30.100 Transfer

If the licensee requests the transfer of a license to a new licensee or to a new location, or requests an additional location, such request shall be treated as a new application.

12.30.110 Restrictions.

The following conditions and restrictions shall apply to all licensees unless otherwise specified. Failure to abide by such conditions and restrictions shall result in suspension or revocation of the license as set forth in this chapter.

- A. No licensee shall operate in such a manner as to block any alleys, doors, fire exits, parking spaces, bus stops, taxi stands, loading zones, driveways, pedestrian crosswalks, or otherwise impede or interfere with or visually obstruct the safe movement of vehicular and pedestrian traffic.
- B. Mobile food trucks shall have an affirmative and independent duty to determine the safety, suitability, and legality of any particular stopping point or location of operation, both in general and at any particular time, and to operate in a manner reasonably calculated to avoid and prevent harm to others in the vicinity of the licensee's operations, including, without limitation, potential and actual customers, pedestrians, and other vendors and vehicles; provided, however, that in no case shall a mobile food truck stop to vend from a federal or state highway or "arterials" as this term is defined in the city's master transportation plan.
- C. Mobile food trucks shall use flashing lights and other similar warning and safety indicators when stopped to vend in the street portion of any public right-of-way.
- D. Mobile food trucks must serve the public only from the sidewalk and not from the street or adjacent parking spaces.
- E. Mobile food trucks shall not stop to vend within two hundred feet of the property boundary of any kindergarten or primary or secondary school.
- F. No licensee shall operate in such a manner as to leave less than a six-foot wide, unobstructed passageway for pedestrians along the sidewalk.
- G. No licensee shall operate within a park, on a public street or sidewalk abutting a park, or within any city-owned facility except as a concessionaire pursuant to an agreement with the city.
- H. No licensee shall operate within one hundred feet of any business with which such licensee is in direct competition unless the licensee receives prior written approval from such business.
- I. No licensee shall use any amplified music or public address system in the conduct of business in a manner that violates the sound limitations set forth in chapter 7.32 of this

code.

- J. Any licensee offering merchandise or food with throwaway or disposable wrappers or containers shall provide containers for their disposal, shall keep the area within fifty feet of such licensee's location free of all such containers and wrappers, and shall dispose of all accumulated trash in other than public trash disposal facilities.
- K. No licensee shall offer any food without all valid licenses and permits required by Larimer County and the State of Colorado.
- L. No licensee shall use or operate any open fire, barbeque, grill, or other heat source without first having obtained approval from the city's fire marshal.
- M. No licensee shall leave unattended any vehicle, pushcart, kiosk, table, chair stand, box, container, or other structure or display device or merchandise or food in the public right-of-way. Any items left unattended may be impounded by the city at the licensee's sole cost and expense.
- N. Each license, when issued, shall specify the days of the week and the hours during the day the licensee shall operate as stated in the application. The licensee shall generally operate during such hours on all of such days. Failure to operate for a period of fourteen consecutive days for which the license is issued may be deemed to be an abandonment of the licensed location, and such location shall be open for assignment to another vendor.

12.30.120 Local events.

Whenever a permit has been issued pursuant to chapter 12.26 of this code, no licensee shall operate in the area covered by such permit during the hours of such local event without also securing the written approval of the sponsor of such event.

12.30.130 Suspension or revocation of license.

The city clerk, upon five days written notice to the licensee, may suspend or revoke the vendors license for violation of any of the provisions of this chapter. The written notice shall specify the alleged violations and shall afford the licensee an opportunity to request a hearing before the city clerk. If the hearing is requested within five days of the receipt of the notice, the suspension or revocation shall be held in abeyance pending the hearing; otherwise, it shall take effect at the expiration of the five-day period. Any licensee aggrieved by the decision of the city clerk following a hearing shall have the right to appeal such decision to the city manager. The filing of such appeal shall not abate or otherwise suspend the decision of the city clerk. The city manager shall review the record of the hearing before the city clerk and shall render a decision within ten working days following the filing of the appeal. The decision of the city manager shall be final, subject to judicial review in accordance with Colorado law.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this ____ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

Chapter 12.30

LICENSING OF VENDORS IN PUBLIC RIGHTS-OF-WAY AND CERTAIN OTHER PUBLIC PLACES

Sections:

- 12.30.010 Intent.
- 12.30.020 Definitions.
- 12.30.030 Permit License required.
- 12.30.040 Exceptions.
- 12.30.050 Application.
- 12.30.060 Fee Application fee.
- 12.30.070 Review of application.
- 12.30.080 License.
- 12.30.090 Renewal.
- 12.30.100 Transfer.
- 12.30.110 Restrictions.
- ~~12.30.100~~ Special 120 Local events.
- ~~12.30.110~~ 130 Suspension or revocation of license.

12.30.010 Intent.

It is the intent of this chapter to set forth the conditions and restrictions which shall apply to the sale of services, merchandise, and food from the streets, sidewalks, and other public rights-of-way within the city which are deemed necessary in order to regulate and limit congestion, promote a neat and wholesome atmosphere, discourage littering, encourage diversity of activity, enhance and promote a festive atmosphere, attract shoppers, provide opportunities for entrepreneurs, and advance vehicular and pedestrian traffic safety. It is the further intent of this chapter to implement the power reserved to the city council in Section section 5.12.040 of this code, as to public rights-of-way defined in this chapter.

12.30.020 Definitions.

As used in this chapter, the following definitions of terms apply:

A. “Food” means any item intended for human consumption, including beverages.

“Licensee” means any person licensed pursuant to this chapter.

“Mobile food truck” means a motorized wheeled vehicle or wheeled vehicle designed and equipped to serve food while being towed by a motorized vehicle.

“Park” means any area, field, trail, open land, golf course, and or other recreational facility operated, managed, and supervised by the city’s parks and recreation department.

“Public right-of-way” means any public street, road, highway, alley, lane, or sidewalk, as well as any public parking lot or place of any nature open to the public and held by the public for vehicular or pedestrian travel.

B. “Sell” means the act of holding out goods or services a thing of value for acquisition by another upon the payment of, or the promise to pay, anything of value thereof.

C. “Sidewalk” means that part of the public right-of-way designated for the use of pedestrians and ordinarily used to the exclusion of motor vehicles. Such term does not include crosswalks within streets.

~~D.~~—“Vend” means to sell, attempt to sell, or otherwise offer to provide to the public any services, merchandise, or food.

“Vendor” means any person ~~licensed pursuant to this chapter, who sells or attempts to sell, or who offers to the public free of charge, any service, merchandise, or food.~~

12.30.030 Permit License required.

It is unlawful for any person to ~~offer for sale or to sell any goods, services or merchandise~~ vend from or upon any public right-of-way without ~~having first obtained~~ obtaining a vendors license ~~pursuant to in compliance with~~ the provisions of this chapter.

12.30.040 Exceptions.

~~The provisions of Section 12.30.030 of this chapter shall not apply to persons permitted to display and demonstrate merchandise for sale pursuant to the provisions of Section 12.28.030 of this title, while acting in accordance with the provisions of such section, nor shall they apply to persons participating in, and under the sponsor of, any street fair, celebration, special sale days, special promotions, local events, etc., provided that a permit therefore has been obtained pursuant to the provisions of Chapter 26 of this title.~~

A vendors license shall not be required under any of the following circumstances:

- A. vendors operating within the public right-of-way pursuant to a valid encroachment permit issued under section 12.28.030;
- B. vendors operating within any park or other city-owned property pursuant to a concessionaire agreement or other agreement with the city;
- C. vendors operating at a city-sponsored event pursuant to an agreement with the city; or
- D. vendors participating in a local event pursuant to a valid permit issued under chapter 12.26 of this code.

12.30.050 Application.

Any person desiring to obtain a vendors license shall make an application in writing to the city clerk ~~for a license, upon forms provided by the city clerk. Such application shall include, but not be limited to, information regarding the identification of the applicant, the proposed manner of doing business, a description of the goods or services to be offered for sale, the design and construction of the facilities from which goods or services are to be offered for sale, desired location and any other matters which may be required by the provisions of this chapter.~~ upon forms provided by the city. Applications for new licenses may be filed at any time. Applications for renewal of existing licenses may be filed on or after December 1 of the year prior to the year for which the license is requested. The application shall contain, without limitation, the following information:

- A. name, address, and telephone number of the vendor;
- B. type of operation to be conducted, including the particular type of service, merchandise, or food to be sold;
- C. description of the design of any vehicle, pushcart, kiosk, table, chair stand, box, container, or other structure or display device to be used in the operation;

for mobile food trucks, the vehicle

~~12.30.060~~—**Fee.**

- D. ———The annual fee for a vendors license ~~plate number and a photograph of each of the four sides of the vehicle;~~

- E. proposed days and hours of operation;
- F. proposed location of operation. For mobile food trucks, location may be specified as “within the city of Loveland.” For all other vendors, location must be specified by block or address. A separate application shall be ~~twenty five dollars~~made for the period ~~January 1st to~~ each location, and in the case of mobile food trucks, for each vehicle. Specific block or address locations shall be assigned on a first-come, first-served basis. In the event the city clerk has applications filed as of ~~December 31st~~1 for the same block or address location, preference shall be determined by lot;
- G. proof of liability insurance in an amount acceptable to the city;
- H. sales and use tax license in good standing issued by the the state, the county, and the city; and
- I. for the vending of food, all licenses and permits required by Larimer County and the State of Colorado.

12.30.060 Application fee.

Vendors shall pay an application fee for each year application filed. The application fee shall be established by resolution of the city council. There shall be no proration of the fee for where the application is for a vendors license less than ~~a~~one full year in duration. There shall be no refund of the fee for applications that are denied.

12.30.070 Review of application.

The city clerk shall ~~notify all affected governmental agencies of the filing of an application. Such agency shall have a period of five days from notification within which endeavor to review any the application and make comment thereon. Thea determination as to whether issuance of a vendors license is consistent with the requirements of this chapter and compatible with the public interest within fifteen working days of receiving a complete application and the application fee. In making such determination, the city clerk shall take into consideration~~consider the ~~comments~~following factors:

- A. degree of congestion of any public right-of way that may result from the proposed use, design, and location of any such governmental agencies in assigning locations and determining compatibility with businesses in the immediate vicinity of the requested locations. operation, including the probable impact of the proposed operation on the safe flow of vehicular and pedestrian traffic;
- B. proximity, size, design, and location of existing street fixtures at or near the proposed location, including, without limitation, sign posts, street lighting, bus stops, benches, planters, public art, and newspaper vending devices;
- C. probable impact of the proposed use on the maintenance, care, and security of the specified location;
- D. number and types of vendors already licensed for the proposed location; and
- E. probable impact that issuance of the vendors license would have on surrounding properties.

12.30.080 License.

- A. Upon ~~compliance~~determination that issuance of a vendors license is consistent with the ~~provisions~~requirements of this chapter, ~~approval of and compatible with the application and payment of the fee~~public interest, the city clerk shall issue a vendors

~~license. Such~~ Subject to the licensee's compliance with the provisions of this chapter, the vendors license shall entitle the vendor and vendor's bona fide employees to operate the business at the location or locations specified in the license.

~~B. Each license shall be on display at all times during the conduct~~ valid for one year beginning January 1 or the date of issuance, whichever is later, and ending December 31 of the same year.

~~C. Each license shall contain the following information:~~

- ~~1. the name, address, and telephone number of the vendor;~~
- ~~2. the type of operation;~~
- ~~3. the length of time for which the license was issued;~~
- ~~4. the days and hours of operation;~~
- ~~5. the location of operation;~~
- ~~6. a brief description of any business vehicle, cart, kiosk, table, chair, stand, box, container, or other structure or display device to be used by such vendor~~ the licensee;
- ~~7. for mobile food trucks, the vehicle's license plate number;~~
- ~~8. a statement that the license is personal to the vendor and is not transferrable in any public right-of-way of the city. Such license shall entitle the person named therein, or such person's bona fide employees, to conduct the business and sell the goods and services for which such license is issued~~ manner;
- ~~9. a statement that the license is valid only when used at the location specified therein, or at any other location not licensed to another vendor, provided that the conditions designated in the license; and~~
- ~~10. a statement that the license is subject to the provisions of this chapter.~~

~~D. The license must be posted and available for inspection at any time.~~

12.30.090 Renewal

~~Renewal of a license shall be treated as a new application under the provisions of this chapter. Any violation by the licensee of the provisions of this chapter and chapter 3.16 shall be an additional factor to be considered in the review and approval set forth in this chapter are met.~~ section 12.30.070.

12.30.100 Transfer

~~If the licensee requests the transfer of a license to a new licensee or to a new location, or requests an additional location, such request shall be treated as a new application.~~

12.30.090110 Restrictions.

~~The following conditions and restrictions shall apply to all vendors-licensees unless otherwise specified. Failure to abide by such conditions or and restrictions shall subject the vendor to result in suspension or revocation of the license, as set forth in Section 12.30.110 of this chapter.~~

- ~~A. Each license, when issued, shall specify a location by side of the street and intersecting streets, and such location shall be the primary location for such vendor. Location shall be assigned on a first-come, first-serve basis, except that no applications shall be processed before December 1st in each year for the following year. In the event the city clerk has applications filed as of December 1st for the same primary location, preference shall be~~

- determined by lot. There shall be only two primary locations on the sidewalk on each side of any street between the nearest intersecting streets.
- ~~B. No vendor shall conduct any business in any public right-of-way other than pursuant to the vendors license issued to such vendor, and in the manner set forth in the application therefore.~~
- ~~C. No vendor shall conduct any business out of any motor vehicle, stand, cart or otherwise upon the street portion of any public right-of-way.~~
- ~~D. No vendor shall operate so~~ A. No licensee shall operate in such a manner as to block any alleys, doors, fire exits, parking spaces, bus stops, taxi stands, loading zones or driveways, driveways, pedestrian crosswalks, or otherwise impede or interfere with or visually obstruct the safe movement of vehicular and pedestrian traffic.
- B. Mobile food trucks shall have an affirmative and independent duty to determine the safety, suitability, and legality of any particular stopping point or location of operation, both in general and at any particular time, and to operate in a manner reasonably calculated to avoid and prevent harm to others in the vicinity of the licensee's operations, including, without limitation, potential and actual customers, pedestrians, and other vendors and vehicles; provided, however, that in no case shall a mobile food truck stop to vend from a federal or state highway or "arterials" as this term is defined in the city's master transportation plan.
- C. Mobile food trucks shall use flashing lights and other similar warning and safety indicators when stopped to vend in the street portion of any public right-of-way.
- D. Mobile food trucks must serve the public only from the sidewalk and not from the street or adjacent parking spaces.
- E. Mobile food trucks shall not stop to vend within two hundred feet of the property boundary of any kindergarten or primary or secondary school.
- ~~E. F. No vendor/licensee shall operate in such a manner as to leave less than a six-foot wide, unobstructed passageway for pedestrians along the sidewalk.~~
- ~~F. No vendor shall occupy a space greater than twenty square feet without obtaining special permission from the city manager.~~
- G. No licensee shall operate within a park, on a public street or sidewalk abutting a park, or within any city-owned facility except as a concessionaire pursuant to an agreement with the city.
- ~~G. H. No vendor/licensee shall operate within one hundred feet of any business with which such vendor/licensee is in direct competition unless vendor/the licensee receives prior written approval, in writing, from such business.~~
- ~~H. I. No vendor/licensee shall use any amplified music or public address system in the conduct of business in a manner that violates the sound limitations set forth in chapter 7.32 of this code.~~
- ~~I. J. Any vendor/licensee offering goods/merchandise or food with throwaway or disposable wrappers or containers shall provide containers for the/their disposal of the same, shall keep the area within fifty feet of such vendor's/licensee's location free of all such containers and wrappers, and shall dispose of all accumulated trash in other than public trash disposal facilities.~~
- ~~J. K. No vendor/licensee shall offer any food, drinks or other items for human consumption without first having obtained any necessary certificates from without all valid licenses and permits required by Larimer County and the county health~~

~~department.~~ State of Colorado.

- ~~K.~~ L. No ~~vendor~~licensee shall use or operate any open fire, barbeque, grill, or other heat source without first having obtained approval from the city's fire marshal.
- M. No licensee shall leave unattended any vehicle, pushcart, kiosk, table, chair stand, box, container, or other structure or display device or merchandise or food in the public right-of-way. Any items left unattended may be impounded by the city at the licensee's sole cost and expense.
- ~~L.~~ N. Each license, when issued, shall specify the days of the week and the hours during the day the ~~licensed vendor~~licensee shall operate, ~~based upon as stated in~~ the application. The ~~vendor~~licensee shall generally operate during such hours on all of such days. Failure to operate for a period of ~~five~~fourteen consecutive days for which the license is issued may be deemed to be an abandonment of the licensed location, and such location shall be open for assignment to another vendor.

12.30.~~100~~120 Local events.

Whenever a permit has been issued pursuant to ~~Chapter~~chapter 12.26 of this ~~title~~code, no ~~vendor~~licensee shall operate in the area covered by such permit during the hours of such local event without also securing the written approval of the sponsor of such event.

12.30.~~110~~130 Suspension or revocation of license.

The city clerk, upon five days written notice to ~~a vendor~~the licensee, may suspend or revoke ~~such vendor's~~the vendors license for violation of any of the provisions of this chapter. The written notice shall specify the alleged violations and shall afford the ~~vendor~~licensee an opportunity to request a hearing before the city clerk. If the hearing is requested within five days of the receipt of the notice, the suspension or revocation shall be held in abeyance pending the hearing; otherwise, it shall take effect at the expiration of the five-day period. Any ~~vendor~~licensee aggrieved by the decision of the city clerk following a hearing shall have the right to appeal such decision to the city manager. The filing of such appeal shall not abate or otherwise suspend the decision of the city clerk. The city manager shall review the record of the hearing before the city clerk and shall render a decision within ten working days following the filing of the appeal. The decision of the city manager shall be final, ~~subject to judicial review~~ in accordance with Colorado law.



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

AGENDA ITEM: 10
MEETING DATE: 11/5/2013
TO: City Council
FROM: Greg George, Director of Development Services
PRESENTER: Troy Bliss

TITLE:

An Ordinance on First Reading Amending Ordinance #1587 to Modify a Condition Set Forth Therein Pertaining to the Annexation and Zoning of the Park Lane Addition to the City of Loveland, Larimer County, Colorado

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and adopt the ordinance on first reading.

OPTIONS:

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

SUMMARY:

This is a legislative action to adopt an ordinance on first reading modifying a condition on Annexation Ordinance #1587 of the Park Lane Addition. The applicant for the request is Tribus Anstalt (property owner).

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

Airpark North Addition was annexed into the City in August of 1977, by Ordinance #1587 (the "Annexation Ordinance"). The addition is a 6 lot, 4 acre area of land located on the west side of North Garfield Avenue between West 41st Street and West 43rd Street. The annexation ordinance was approved subject to a condition on the annexation petition that "there shall be no

building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code."

The property owner has no plans to develop the property, but would like to market the property for sale. The associated condition prevents the City from approving any of the uses allowed by right in the B – Developing Business Zoning District without approval of a Special Review Permit. Therefore, the property owner is requesting that the condition be eliminated so the City could approve a Site Development Plan and Building Permit for a use permitted by right.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Staff Memorandum

FIRST READING November 5, 2013

SECOND READING _____

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ORDINANCE 1587 TO MODIFY A
CONDITION SET FORTH THEREIN PERTAINING TO THE
ANNEXATION AND ZONING OF THE PARK LANE ADDITION TO
THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO**

WHEREAS, the Park Lane Addition to the City of Loveland is approximately 4 acres of land located at the southwest corner of N. Garfield Avenue and W. 43rd Street, City of Loveland, Larimer County, Colorado, more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “Property”); and

WHEREAS, the Property was annexed by Ordinance 1587 (the “Annexation Ordinance”) adopted by the Loveland City Council on August 2, 1977 and recorded on at Reception #220087 in the real property records of the Larimer County Clerk and Recorder; and

WHEREAS, the Property was zoned B-Developing Business by Ordinance 1599 (the “Zoning Ordinance”) adopted by the Loveland City Council on September 6, 1977; and

WHEREAS, the Annexation Ordinance was subject to conditions set forth in paragraph 11 of the Petition for Annexation dated July 18, 1977 attached hereto as **Exhibit B** and incorporated herein by reference (the “Petition”), including item #“(11). (g).” which reads:

“(11). (g). There shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code.”; and

WHEREAS, the owner of the Property has requested that the City amend the Annexation Ordinance by removing condition #(11). (g). set forth in the Petition and incorporated therein, which removal will permit uses allowed by right in the B-Developing Business zone district without requiring a Special Review for the Property, with the understanding that all uses allowed by right must meet all City regulations and standards as they may exist from time to time; and

WHEREAS, the City Council desires to amend the Annexation Ordinance by removing condition #(11). (g). set forth in the Petition and incorporated into the Annexation Ordinance, which removal will permit uses by right without a Special Review, on the terms and conditions forth herein.

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

Section 1. That Annexation Ordinance (Ordinance 1587) is hereby amended by deletion of Section 3 in its entirety and substitution of the following in lieu thereof:

“Section 3: That the annexation of said territory is subject to the conditions set forth in Paragraph (11)(a) through (11)(f) of the Petition for Annexation of said territory filed with the City of Loveland; provided, however, that condition (11)(g) shall be deemed to be deleted from the Petition and shall have no application to said territory.”

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 ten days after its final publication, as provided in City Charter Section 4-8(b).

Section 4. That the City Clerk shall record this Ordinance in the records of the Larimer County Clerk and Recorder after it becomes effective in accordance with Section 3 above.

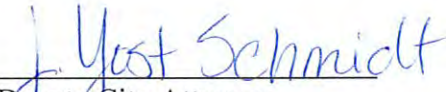
ADOPTED this _____ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A

**Park Lane Addition
To the City of Loveland, County of Larimer, State of Colorado**

Considering the North line of the Northeast Quarter of said Section 2 as bearing North 89° 16' 15" West and with all bearings contained herein

Beginning at the Northeast corner of said Section 2; thence along said North line of the Northeast Quarter North 89° 16' 15" West 463.00 feet to the Northeast corner of said Section 2; thence continuing North 89° 16' 15" West 50.00 feet to the Northeast corner of said Section 2; thence along said East line South 00° 00' 00" West 171.00 feet to the South line of said Ridgeview South Addition; thence along the Easterly prolongation of said South line of Ridgeview South Addition South 89° 16' 15" West 50.00 feet to the Northeast corner of said Section 2; thence continuing North 89° 16' 15" West 50.00 feet to the Easterly right of way line of U.S. Highway No. 287; thence along said Easterly right of way line North 00° 00' 00" West 721.02 feet to the Northeast corner of said Section 2; thence along said Easterly prolongation North 89° 16' 15" West 50.00 feet to the point of beginning.

EXHIBIT BPETITION FOR ANNEXATION

The undersigned, in accordance with Article 8, Chapter 31, Colorado Revised Statutes, 1973, hereby petition to the City Council of the City of Loveland, Colorado, for annexation to the City of Loveland, the following described unincorporated territory located in the County of Larimer, State of Colorado, to-wit:

Property located in Sections 1 and 2, all in Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 2 as bearing North 89°59'15" West and with all bearings contained herein relative thereto.

Beginning at the Northeast corner of said Section 2; thence along said North line of the Northeast Quarter North 89°59'15" West 400.00 feet to the East line of Ridgeview South Addition to the City of Loveland, Colorado; thence along said East line South 00°46'30" West 175.00 feet to the South line of said Ridgeview South Addition; thence along the Easterly prolongation of said South line of said Ridgeview South Addition South 89°59'15" East 50.00 feet; thence South 00°46'30" West 546.23 feet; thence North 89°59'07" East 350.00 feet to the East line of the Northeast Quarter of said Section 2; thence continuing North 89°59'07" East 51.49 feet to the Easterly right of way line of U. S. Highway No. 287; thence along said Easterly right of way line North 00°39'23" East 721.02 feet to the Easterly prolongation of the North line of said Northeast Quarter of Section 2; thence along said Easterly prolongation North 89°59'15" West 50.00 feet to the point of beginning, and hereby designated "PARK LANE ADDITION" to the City of Loveland, Colorado.

and in support of said Petition, your petitioners allege that:

(1). It is desirable and necessary that the above described territory be annexed to the City of Loveland, Colorado;

(2). That no less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the City of Loveland, Colorado;

(3). A community of interest exists between the territory proposed to be annexed and the City of Loveland, Colorado;

(4). The territory proposed to be annexed is urban or will be organized in the near future;

(5). The territory proposed to be annexed is integrated or is capable of being integrated with the City of Loveland, Colorado;

(6). The signatures of the Petition comprise one hundred per cent (100%) of the landowners of the territory to be included in the area proposed to be annexed and said landowners attesting to the facts herein contained will negate the necessity of any annexation election;

(7). No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate

(a). Is divided into separate parts or parcels without the written consent of the landowner or landowners thereof, unless such tracts or parcels are separated by a dedicated street, road or other public way;

(b). Comprising twenty (20) acres or more and which, together with the buildings and improvements situated thereon, has an assessed value in excess of Two Hundred Thousand Dollars (\$200,000.00) for ad valorem tax purposes for the year preceding the annexation, is included within the territory proposed to be annexed without the written consent of the landowner or landowners.

(8). The mailing address of each signer, the legal description of the land owned by each signer, and the date of signing of each signature are all shown on this Petition;

(9). Accompanying this Petition are four (4) prints of

the annexation map containing the following information:

- (a). A written legal description of the boundaries proposed to be annexed;
- (b). A map showing the boundary of the area proposed to be annexed, such map prepared and containing the seal of a registered engineer or land surveyor;
- (c). Within the annexation boundary map there is shown the location of each ownership tract in unplatted land, and if part or all of the area to be platted, then the boundaries and the plat number of plots or of lots and blocks are shown;
- (d). Next to the boundary of the area proposed to be annexed is drawn the contiguous boundary of the City of Loveland, and the contiguous boundary of any other municipality abutting the area proposed to be annexed;
- (e). The dimensions of the contiguous boundaries are shown on the map.

(10). The above described territory is not presently a part of any incorporated city, city and county, or town.

(11). The following conditions shall be complied with:

- (a). Water rights as required by the Municipal Code;
- (b). Five percent (5%) for recreation, to be furnished in cash;
- (c). Zoning recommended DE, Developing Business District;
- (d). That Petitions for Exception No. 115 and 116 are approved by the City Council;
- (e). That a revised Petition for Exception No. 130 should be filed requesting that a part width

Street be permitted for Grant Avenue;

(f). That the frontage "road" be changed to frontage street; and


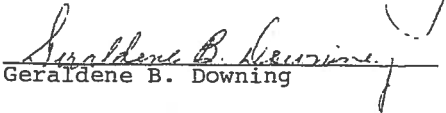
(g). There shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code.

EXECUTED this 18th day of July, 1977, by Everard S. Downing and Geraldene B. Downing.

The addresses of the above-described petitioners are as follows:

Everard S. Downing
1316 Hazel Court
Loveland, Colorado 80537

Geraldene B. Downing
1316 Hazel Court
Loveland, Colorado 80537

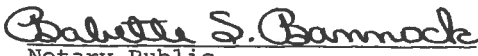

Everard S. Downing

Geraldene B. Downing

STATE OF COLORADO)
) SS:
COUNTY OF LARIMER)

The foregoing Petition for Annexation was acknowledged before me this 18th day of July, 1977, by Everard S. Downing and Geraldene B. Downing.

WITNESS my hand and official seal.

My Commission expires October 25, 1977


Notary Public



Development Services Current Planning

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

MEMORANDUM

TO: City Council

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

DATE: November 5, 2013

SUBJECT: Park Lane Addition, Annexation Amendment

I. EXHIBITS

- A. Planning Commission packet

II. KEY ISSUES

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

III. BACKGROUND

The subject property was annexed in 1977 as the Park Lane Addition zoned B – Developing Business. It is designated as Lots 1-6 which contains approximately 4 acres on the west side of N. Garfield Avenue between W. 41st Street and W. 43rd Street. The most southern lot (Lot 1) contains three existing single family homes. One is currently be used as a commercial sign business. The other two are vacant. The general area of the City these lots fall within represents the Highway 287 Commercial Corridor as identified on the Comprehensive Master Plan. The property is completely surrounded by existing and undeveloped commercial land with the exception of a mobile home community directly to the west.

When the annexation ordinance was considered on first reading (July 19, 1977) and subsequent second reading (August 2, 1977), it referenced conditions in the annexation petition that would be applicable to the property. The annexation ordinance with all the conditions from the annexation petition function much like the annexation agreements in more recent years – including specific requirements that need to be satisfied in conjunction with development.

Included in **Attachment 2** of the Planning Commission staff report is the annexation petition listing all of the conditions applied to the annexation ordinance. The condition proposed to be removed from the property is item (11). (g). which reads, ‘there shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code. The property owner wants to sell the property. Marketing it for commercial development, particularly with respect for uses that would be allowed by right in the B district is creating some difficulty from the owner’s perspective with the Special Review condition applied.

IV. ANNEXATION AND ZONING ORDINANCE AMENDMENT

The attached ordinance concerns a request to amend the Park Lane Addition Annexation Ordinance. Airpark North Addition was annexed into the City in August of 1977 by Ordinance 1587 (the “Annexation Ordinance”). It is a 6 lot, 4 acre area of land located on the west side of N. Garfield Avenue between W. 41st Street and W. 43rd Street. The annexation ordinance was approved subject to a condition on the annexation petition that there shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code. The property owner has no plans for development and would like to market the property for sale. The associated condition presents challenges for uses that are allowed by right in the B – Developing Business zoning district by requiring Special Review approval. Therefore, a request is being made to amend the associated condition so that it would not be applicable to uses allowed by right in the B district.

V. PLANNING COMMISSION REVIEW

The amendment to the annexation ordinance was reviewed by the Planning Commission at a public hearing on October 14, 2013. The Planning Commission unanimously recommended approval on the consent agenda, subject to the following condition which is reflected in the ordinance:

The following condition executed in an annexation petition dated July 18, 1977 be stricken and no longer associated with the property:

(11). (g). There shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code.

RECOMMENDATION

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



Development Services Current Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
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Planning Commission Staff Report

October 14, 2013

Agenda #: Consent Agenda - 1
Title: Park Lane Addition, Annexation Amendment (PZ #13-00107)
Applicant: Tribus Anstalt
Request: **Amend Annexation Ordinance**
Location: West side of N. Garfield Avenue between W. 41st Street and W. 43rd Street
Existing Zoning: B – Developing Business
Proposed Use: Undetermined
Staff Planner: Troy Bliss

Staff Recommendation

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

Recommended Motions:

1. Move to recommend that City Council approve the Applicant's request to amend the Park Lane Addition annexation ordinance to modify a condition of the annexation petition as set forth in Section IX of this report, as amended on the record.

Summary of Analysis

This is a public hearing to consider a legislative action requesting to amend the Park Lane Addition Annexation Ordinance. Airpark North Addition was annexed into the City in August of 1977 by Ordinance 1587 (the "Annexation Ordinance"). It is a 6 lot, 4 acre area of land located on the west side of N. Garfield Avenue between W. 41st Street and W. 43rd Street. The annexation ordinance was approved subject to a condition on the annexation petition that there shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code.

The property owner has no plans for development and would like to market the property for sale. The associated condition presents challenges for uses that are allowed by right in the B – Developing Business zoning district by requiring Special Review approval. Therefore, a request is being made to amend the associated condition so that it would not be applicable to uses allowed by right in the B district.

I. SUMMARY

In January of 1987, the City annexed a 4 acre parcel of land into its municipal boundaries on the west side on N. Garfield Avenue between W. 42st Street and W. 43rd Street known as the Park Lane Addition. The property was zoned B – Developing Business. When the annexation ordinance was considered on first reading (July 19, 1977) and subsequent second reading (August 2m 1977), it referenced conditions in the annexation petition that would be applicable to the property. The annexation ordinance with all the conditions from the annexation petition function much like the annexation agreements in more recent years – including specific requirements that need to be satisfied in conjunction with development. Included in **Attachment 2** is the annexation petition listing all of the conditions applied to the annexation ordinance. The associated annexation ordinance is included in **Attachment 3**.

The property owner wants to sell the property. Marketing it for commercial development, particularly with respect for uses that would be allowed by right in the B district is creating some difficulty from the owner’s perspective with the Special Review condition applied.

II. ATTACHMENTS

1. Letter of justification for amending the Park Lane Addition Annexation Ordinance
2. Park Lane Addition Annexation Petition
3. Park Lane Addition Annexation Ordinance (Ordinance #1587)
4. Park Lane Addition Annexation Map

III. VICINITY MAP



IV. SITE DATA

ACREAGE OF SITE: APPROXIMATELY 4 ACRES

| | |
|-------------------------------------|---|
| PROPERTY ZONING / USE..... | B – DEVELOPING BUSINESS |
| EXISTING ZONING / USE - NORTH..... | B – DEVELOPING BUSINESS / VACANT UNDEVELOPED |
| EXISTING ZONING / USE - SOUTH | B – DEVELOPING BUSINESS / LIGHT INDUSTRIAL (MM SOLUTIONS) |
| EXISTING ZONING / USE - EAST | B – DEVELOPING BUSINESS / STRIP COMMERCIAL AND PROFESSIONAL OFFICES |
| EXISTING ZONING / USE - WEST | R3 – DEVELOPING HIGH DENSITY RESIDENTIAL / MOBILE HOME COMMUNITY |

V. KEY ISSUES

There are no key issues regarding this request to amend the Park Lane Addition Annexation Ordinances. All City Divisions have no objections. Should this request to amend the annexation ordinance be approved, subsequent Site Development Plans (SDPs) will be required for uses allowed by right, prior to building permits being issued, to assure that the developments comply with all applicable City standards.

VI. BACKGROUND

The subject property was annexed in 1977 as the Park Lane Addition zoned B – Developing Business. It is designated as Lots 1-6 which contains approximately 4 acres on the west side of N. Garfield Avenue between W. 41st Street and W. 43rd Street. The most southern lot (Lot 1) contains three existing single family homes. One is currently be used as a commercial sign business. The other two are vacant. The general area of the City these lots fall within represents the Highway 287 Commercial Corridor as identified on the Comprehensive Master Plan. The property is completely surrounded by existing and undeveloped commercial land with the exception of a mobile home community directly to the west.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

- A. Notification:** An affidavit was received from Larry Melton, on behalf of the applicant, certifying that written notice was mailed to all property owners within a 1,200 foot radius and notices were posted in a prominent location on the perimeter on September 11, 2013. In addition, a notice was published in the Reporter Herald on September 28, 2013.
- B. Neighborhood Response:** A neighborhood meeting is not required in conjunction with an application to amend a zoning ordinance. Staff has received a number of phone calls from surrounding property owners wishing to obtain additional information. Upon discovering that this request is simply to amend a condition placed on the annexation of the property and that no development is currently being proposed, no concerns were raised.

VIII. FINDINGS AND ANALYSIS

The Loveland Municipal Code and the Colorado Revised Statutes specify findings or criteria pertaining to annexation. However, there are no specific findings or analysis to consider when amending an ordinance tied to annexation. Planning Commission is being asked to evaluate the information provided and arrive at recommendation to present to City Council.

IX. RECOMMENDED CONDITIONS

City Staff recommends the following condition executed in an annexation petition dated July 18, 1977 be stricken and no longer associated with the property:

- (11). (g). There shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code.

TRIBUS ANSTALT

Städtle 28
P.O. Box 683
FL-9490 Vaduz
Principality of Liechtenstein

Tel. 00423 236 38 20
Fax 00423 236 38 21

Mr. Cecil Gutierrez, Mayor
City of Loveland
500 E. Third Street
Loveland, Colorado 80537

June 18, 2013

RE: Park Lane Addition -- Removal of 'Special Review Provision'

Dear Mr. Gutierrez

We, Profile Management Trust reg. are the representatives of Tribus Anstalt. Tribus Anstalt is the owner of Lots 1, 2, 3, 4, 5 & 6, Block 1, Park Lane Addition which have street addresses of 4109 N. Garfield Avenue (Lots 1, 2 & 3) and 114 and 126 W. 43rd Street (Lots 4, 5 & 6), Loveland, Colorado 80538. Lots 1 & 2 are improved with a circa 1900 bungalow style residence and several outbuildings. These improvements are in dis-repair and add no contributory value to the property. Lots 3, 4, 5 & 6 are unimproved at this time.

We are preparing to market Park Lane Addition 'for sale' so it can be developed to its highest & best use as commercial real estate. We will be represented in this marketing effort by Ms. Annah Moore, Broker, Realtec Commercial Real Estate Services, Inc. and Larry Melton, Broker, Realtec-Loveland.

As shown on the City of Loveland 'Zoning District Map', Park Lane Addition is zoned 'B'-Developing Business. We are requesting the City of Loveland remove the requirement for 'Special Review Approval' for any development proposed to occur on the property. This requirement was placed on Park Lane Addition at the time of annexation in July 1977.

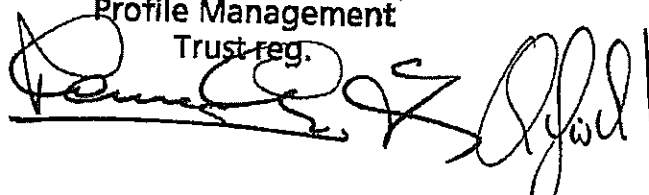
We believe this requirement is one that has outlasted its usefulness due to the City's planning and development review processes having evolved to account for those factors that would have been considered for proposed development on the property at the time of annexation. We see this requirement as an unnecessary burden to future development of the property. At this time, the City's Current Planning Department has the zoning and development guidelines and standards in place to competently review any development proposed on the property.

We hope that your consideration of this request is favorably received and viewed from a perspective of improving the planning and development processes applicable to Park Lane Addition. We look forward, with your assistance, in making Park Lane Addition a productive and useful asset for the City of Loveland.

Sincerely,

TRIBUS ANSTALT

Profile Management
Trust reg.



PC ATTACHMENT 1

TRIBUS ANSTALT

Städtle 26
P.O. Box 683
FL-9490 Vaduz
Principality of Liechtenstein

Tel. 00423 236 38 20
Fax 00423 236 38 21

Mr. Bob Paulsen
Current Planning Manager
City of Loveland
500 E. Third Street
Loveland, Colorado 80537

18 June 2013

RE: Park Lane Addition – Owner Representation Authorization

Dear Mr. Paulsen

We, Profile Management Trust reg. are the representatives of Tribus Anstalt. Tribus Anstalt are the owner of Lots 1, 2, 3, 4, 5 & 6, Block 1, Park Lane Addition, which have street addresses of 4109 N. Garfield Avenue (Lots 1, 2 & 3) and 114 and 126 W. 43rd Street (Lots 4, 5 & 6), Loveland, Colorado 80538. Lots 1 & 2 are improved with a circa 1900 bungalow style residence and several outbuildings. Lots 3, 4, 5 & 6 are unimproved at this time.

We are preparing to market Park Lane Addition 'for sale' so it can be developed to its highest & best use as commercial real estate. We will be represented in this marketing effort by Ms. Annah Moore, Broker, Realtec Commercial Real Estate Services, Inc. and Mr. Larry Melton, Broker, Realtec-Loveland. We are currently resided in Liechtenstein. According to Ms. Moore and Mr. Melton, the marketing of Park Lane Addition will require property owner approval for potential buyers, and/or the broker representing us, to undertake various planning processes for Park Lane Addition to receive the required approvals for development as commercial real estate.

It is our understanding these planning processes may include, but are not limited to, re-platting Park Lane Addition to accommodate a specific user or to make the property suitable for development in accordance with the City's current guidelines and standards, an evaluation of the existing residence and outbuildings to assess their historic significance, etc. To assist a potential buyer in pursuing the required planning processes, we respectfully request the City of Loveland acknowledge Ms. Annah Moore as the 'authorized owner's representative' in all City of Loveland planning processes required to sign and file applications for City approvals for development of the property on behalf of the owner, including development applications for re-platting the property, special review, demolition of existing improvements, etc.

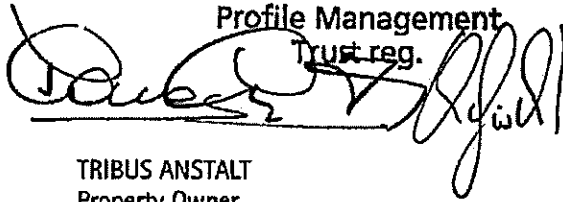
As evidenced by our signature below, please accept this letter as 'Owner Representation Authorization' for Ms. Annah Moore to act on our behalf in these matters for a period lasting twenty-four (24) months from the date of our signature. If the City of Loveland requires something other than this letter for Ms. Moore to act for Tribus Anstalt, please provide the necessary authorization documentation to Ms. Moore for our execution.

We understand that the City may require the signature of the property owner for planning agreements, plats, or other documentation intended to legally bind the owner of the property, rather than the authorized representative, either directly or by an attorney-in-fact under a valid power of attorney complying with Colorado laws. The City has indicated that it will notify Ms. Moore if owner signature is required for such documentation, as that need may be identified from time to time. The City has also indicated that it cannot provide a power of attorney for such purposes, and the owner will be responsible for obtaining the appropriate documentation when and if it is required.

We hope your consideration of this request is favorably received and viewed from a perspective of promoting the development of Park Lane Addition. Our hope is to move forward as efficiently as possible with the disposition of Park Lane Addition.

We look forward, with your assistance, in making Park Lane Addition a productive and useful asset for the City of Loveland.

Sincerely,


Profile Management
Trust reg.

TRIBUS ANSTALT
Property Owner
Park Lane Addition

18. Juni 2013

Date



Annah Moore
Broker
Realtec Commercial Real Estate Services, Inc.

6/19/13

Date

PETITION FOR ANNEXATION

The undersigned, in accordance with Article 8, Chapter 31, Colorado Revised Statutes, 1973, hereby petition to the City Council of the City of Loveland, Colorado, for annexation to the City of Loveland, the following described unincorporated territory located in the County of Larimer, State of Colorado, to-wit:

Property located in Sections 1 and 2, all in Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 2 as bearing North 89°59'15" West and with all bearings contained herein relative thereto.

Beginning at the Northeast corner of said Section 2; thence along said North line of the Northeast Quarter North 89°59'15" West 400.00 feet to the East line of Ridgeview South Addition to the City of Loveland, Colorado; thence along said East line South 00°46'30" West 175.00 feet to the South line of said Ridgeview South Addition; thence along the Easterly prolongation of said South line of said Ridgeview South Addition South 89°59'15" East 50.00 feet; thence South 00°46'30" West 546.23 feet; thence North 89°59'07" East 350.00 feet to the East line of the Northeast Quarter of said Section 2; thence continuing North 89°59'07" East 51.49 feet to the Easterly right of way line of U. S. Highway No. 287; thence along said Easterly right of way line North 00°39'23" East 721.02 feet to the Easterly prolongation of the North line of said Northeast Quarter of Section 2; thence along said Easterly prolongation North 89°59'15" West 50.00 feet to the point of beginning, and hereby designated "PARK LANE ADDITION" to the City of Loveland, Colorado.

and in support of said Petition, your petitioners allege that:

(1). It is desirable and necessary that the above described territory be annexed to the City of Loveland, Colorado;

(2). That no less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the City of Loveland, Colorado;

(3). A community of interest exists between the territory proposed to be annexed and the City of Loveland, Colorado;

(4). The territory proposed to be annexed is urban or will be organized in the near future;

(5). The territory proposed to be annexed is integrated or is capable of being integrated with the City of Loveland, Colorado;

(6). The signatures of the Petition comprise one hundred per cent (100%) of the landowners of the territory to be included in the area proposed to be annexed and said landowners attesting to the facts herein contained will negate the necessity of any annexation election;

(7). No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate

(a). Is divided into separate parts or parcels without the written consent of the landowner or landowners thereof, unless such tracts or parcels are separated by a dedicated street, road or other public way;

(b). Comprising twenty (20) acres or more and which, together with the buildings and improvements situated thereon, has an assessed value in excess of Two Hundred Thousand Dollars (\$200,000.00) for ad valorem tax purposes for the year preceding the annexation, is included within the territory proposed to be annexed without the written consent of the landowner or landowners.

(8). The mailing address of each signer, the legal description of the land owned by each signer, and the date of signing of each signature are all shown on this Petition;

(9). Accompanying this Petition are four (4) prints of

the annexation map containing the following information:

- (a). A written legal description of the boundaries proposed to be annexed;
- (b). A map showing the boundary of the area proposed to be annexed, such map prepared and containing the seal of a registered engineer or land surveyor;
- (c). Within the annexation boundary map there is shown the location of each ownership tract in unplatted land, and if part or all of the area to be platted, then the boundaries and the plat number of plots or of lots and blocks are shown;
- (d). Next to the boundary of the area proposed to be annexed is drawn the contiguous boundary of the City of Loveland, and the contiguous boundary of any other municipality abutting the area proposed to be annexed;
- (e). The dimensions of the contiguous boundaries are shown on the map.

(10). The above described territory is not presently a part of any incorporated city, city and county, or town.

(11). The following conditions shall be complied with:

- (a). Water rights as required by the Municipal Code;
- (b). Five percent (5%) for recreation, to be furnished in cash;
- (c). Zoning recommended DE, Developing Business District;
- (d). That Petitions for Exception No. 115 and 116 are approved by the City Council;
- (e). That a revised Petition for Exception No. 130 should be filed requesting that a part width

Street be permitted for Grant Avenue;

(f). That the frontage "road" be changed to frontage street; and

(g). There shall be no building permits issued without a Special Review Site Plan in accordance with Title 18 of the Municipal Code.

EXECUTED this 18th day of July, 1977, by Everard S. Downing and Geraldene B. Downing.

The addresses of the above-described petitioners are as follows:

Everard S. Downing
1316 Hazel Court
Loveland, Colorado 80537

Geraldene B. Downing
1316 Hazel Court
Loveland, Colorado 80537

Everard S. Downing
Everard S. Downing
Geraldene B. Downing
Geraldene B. Downing

STATE OF COLORADO)
) SS:
COUNTY OF LARIMER)

The foregoing Petition for Annexation was acknowledged before me this 18th day of July, 1977, by Everard S. Downing and Geraldene B. Downing.

WITNESS my hand and official seal.

My Commission expires October 25, 1977

Balnette S. Bannock
Notary Public

R E S O L U T I O N

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

The City Council of the City of Loveland finds that the Petition for Annexation filed by petitioners on _____, 1977, with the City Clerk of the City of Loveland, Colorado, for the annexation of certain land described in said Petition, is eligible to be annexed because there is at least one-sixth (1/6) contiguity between the municipality and the area seeking annexation and at least two (2) of the following conditions have been met:

(a). More than fifty per cent (50%) of the adult residents of the area proposed to be annexed use some of the recreation, civic, social, religious, industrial or commercial facilities of the municipality and more than twenty-five per cent (25%) of its adult residents are employed in the annexing municipality;

(b). Less than one-half (1/2) of the land proposed to be annexed is agricultural, or, if it is agricultural, less than one-half (1/2) of the landowners of the total area have expressed an intention under oath to devote the land to such agricultural use for at least five (5) years.

(c). It is practical to extend urban services which the municipality normally provides.

The City Council further determines the applicable parts of Sections 3 and 4 of The Municipal Annexation Act of 1965 have been met and further determines that an election is not required under Section 6 (2) of said Act and that there are no other terms and conditions to be imposed upon said annexation; and

Having found that "PARK LANE ADDITION" is eligible to become annexed, the City Council of the City of Loveland, Colorado, will undertake further annexation proceedings.

Mayor

Date

TO THE SUBDIVISION REGULATIONS NO. 116

To the City Council of the City of Loveland, Colorado, and the Planning Commission for the City of Loveland, Colorado:

The undersigned, or the duly authorized representatives thereof, being the owner(s) and lienholder(s) of the following described real property, to-wit: (1)

Park Lane Addition to the City of Loveland, County of Larimer, State of Colorado.

do hereby petition for an exception for the above described property to Section 16.28.070 (2) in accordance with Chapter 16.32 of the Municipal Code of the City of Loveland, Colorado, as follows: (3)

Alleys and Easements

The said Petition for Exception is required for the following reasons: (4)

Alleys will not be required because a 10 foot easement is provided at the rear of all lots.

There is attached hereto and made a part hereof three (3) copies of the drawing of the proposed exception.

Respectfully submitted,

Everard S. Downing
Everard S. Downing

Geraldene B. Downing (5)
Geraldene B. Downing

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

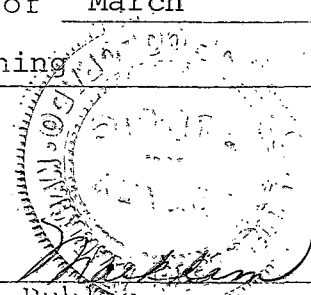
Everard S. Downing and Geraldene B. Downing, being first duly sworn upon their oath, depose(s) and say(s): That they ~~is~~ (are) the owner(s) and lienholder(s) of the above described real property; that they ~~has~~ (have) read the above Petition and know(s) the contents thereof and that the matters stated therein are true.

Everard S. Downing
Everard S. Downing

Geraldene B. Downing (5)
Geraldene B. Downing

Subscribed and sworn to before me this 31st day of March, 1977, by Everard S. Downing and Geraldene B. Downing.

My commission expires October 30, 1978



Elizabeth A. Peterson
Notary Public

Filed in City Clerks Office
MAR 28 1977

P E T I T I O N F O R E X C E P T I O N

TO THE SUBDIVISION REGULATIONS NO. 130

To the City Council of the City of Loveland, Colorado, and the Planning Commission for the City of Loveland, Colorado:

The undersigned, or the duly authorized representatives thereof, being the owner(s) and lienholder(s) of the following described real property, to-wit: (1)

Park Lane Addition to the City of Loveland, County of Larimer, State of Colorado.

Filed in City Clerks Office

Date MAY 2 1977

By B.M.

do hereby petition for an exception for the above described property to Section 16.28.060 L (2) in accordance with Chapter 16.32 of the Municipal Code of the City of Loveland, Colorado, as follows: (3)

Streets and highways.

The said Petition for Exception is required for the following reasons: (4)

Part wide street; Less than 40 foot of roadway is dedicated for Grant and 41st Street because the existing roads are not in the boundary of this subdivision.

There is attached hereto and made a part hereof three (3) copies of the drawing of the proposed exception.

Respectfully submitted,

Everard S. Downing

Geraldene B. Downing (5)

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

Everard S. Downing and Geraldene B. Downing, being first duly sworn upon their oath, depose(s) and say(s): That they (are) the owner(s) and lienholder(s) of the above described real property; that they (have) read the above Petition and know(s) the contents thereof and that the matters stated therein are true.

Everard S. Downing

Geraldene B. Downing (5)

Subscribed and sworn to before me this 2nd day of MAY 19 77, by Everard S. Downing and Geraldene B. Downing

My commission expires OCTOBER 30, 1978

Elizabeth Nickham Notary Public

FIRST READING ¹⁹ ~~7-18-77~~
SECOND READING 8-2-77

ORDINANCE NO. 1587

AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS "PARK LANE ADDITION" TO THE CITY OF LOVELAND, COLORADO.

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

Section 1: That a Petition for Annexation, together with four (4) copies of the plat of said territory as required by law, was filed with the City Council on the 5th day of July, 1977, by the owners of one hundred per cent (100%) of the area of the territory hereinafter described.

The Council, by Resolution at its regular meeting on the 5th day of July, 1977, accepted said Petition and found and determined that the applicable parts of Sections 3 and 4 of The Municipal Annexation Act of 1965 have been met and further determined that an election was not required under Section 6 (2) of The Municipal Annexation Act of 1965 and further found that no additional terms and conditions were to be imposed upon said annexation except those set out on said Petition.

Section 2: That the annexation to the City of Loveland designated as "PARK LANE ADDITION" to the City of Loveland, is hereby approved:

Property located in Sections 1 and 2, all in Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 2 as bearing North 89°59'15" West and with all bearings contained herein relative thereto.

Beginning at the Northeast corner of said Section 2; thence along said North line of the Northeast Quarter North 89°59'15" West 400.00 feet to the East line of Ridgeview South Addition to the City of Loveland, Colorado; thence along said East line South 00°46'30" West 175.00 feet to the South line of said Ridgeview South Addition; thence along the Easterly prolongation of said South line of said Ridgeview South Addition South 89°59'15" East 50.00 feet; thence South 00°46'30" West 546.23 feet; thence North 89°59'07" East 350.00 feet to the East line of the Northeast Quarter of said Section 2; thence continuing North 89°59'07" East 51.49 feet to the Easterly right of way line of U. S. Highway No. 287; thence along said Easterly right of way line North 00°39'23" East 721.02 feet to the Easterly prolongation of the North line of said Northeast Quarter of Section 2; thence along said Easterly prolongation North 89°59'15" West 50.00 feet to the point of beginning, and hereby designated "PARK LANE ADDITION" to the City of Loveland, Colorado.

Section 3: That the annexation of said territory is subject to the conditions set forth in Paragraph (11) of the Petition for Annexation of said territory filed with the City of Loveland.

Section 4: The City Council herewith finds, determines and designates that this Ordinance is necessary for the immediate preservation of the public peace, health and safety, in order to provide for the orderly development of said area; and whereas, in the opinion of the City Council, an emergency exists, this Ordinance shall take effect and be in force immediately after its passage, adoption and signature of the mayor.



Jean A. Harris

Mayor

ATTEST:
Richard A. Jung

City Clerk

PARK LANE ADDITION

TO THE CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO

KNOW ALL MEN BY THESE PRESENTS that the undersigned, being all the owners and lienholders of the following described property, except any existing public streets, roads or highways, located in Sections 1 and 2, all in Township 5 North, Range 69 West of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows:

Considering the North line of the Northeast Quarter of said Section 2 as bearing North 89°59'15" West and with all bearings contained herein relative thereto. Beginning at the Northeast corner of said Section 2; thence along said North line of the Northeast Quarter North 89°59'15" West 400.00 feet to the East line of Ridgeview South Addition to the City of Loveland, Colorado; thence along said East line South 00°46'30" West 175.00 feet to the South line of said Ridgeview South Addition; thence along the Easterly prolongation of said South line of Ridgeview South Addition South 89°59'15" East 50.00 feet; thence South 00°46'30" West 546.23 feet; thence North 89°59'10" East 350.00 feet to the East line of the Northeast Quarter of said Section 2; thence continuing North 89°59'10" East 51.49 feet to the Easterly right of way line of U.S. Highway No. 287; thence along said Easterly right of way line North 00°59'23" East 721.02 feet to the Easterly prolongation of the North line of said Northeast Quarter of Section 2; thence along said Easterly prolongation North 89°59'15" West 50.00 feet to the point of beginning.

do hereby subdivide the same into lots, blocks, recreation areas, passageways, streets, frontage street, future streets, utility and other easements as shown on this Map; and do hereby designate and dedicate all such recreation areas, parks, passageways, streets, future streets and easements, other than utility easements, to and for public use, all such utility easements to and for public use for the installation and maintenance of utility, irrigation and drainage facilities; and do hereby designate the same as PARK LANE ADDITION to the City of Loveland, County of Larimer, State of Colorado.

All expenses involving necessary improvements for a water system, sanitary sewer system, storm sewer system, curbs and gutters, sidewalks, street improvements, street signs, traffic control signs, alley grading and surfacing, gas service, electric service, grading and landscaping shall be financed by Everard S. Downing.

Everard S. Downing
Everard S. Downing
Geraldene B. Downing
Geraldene B. Downing

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

The foregoing instrument was acknowledged before me this 25th day of April, 1977, by Everard S. Downing and Geraldene B. Downing.

Witness my hand and official seal.
My commission expires October 30, 1978

Ernest Markham
Notary Public

SURVEYOR'S CERTIFICATE

Donald Frederick, being first duly sworn on his oath, deposes and says: that he is a registered land surveyor under the laws of the State of Colorado; that the survey of PARK LANE ADDITION to the City of Loveland, Colorado, was made by him or under his supervision; that the survey is accurately represented on this Map; and that the statements contained thereon were read by him and the same are true of his own knowledge.

KRUBACK ENGINEERING - SURVEYING, INC.

BY: Donald Frederick
Donald Frederick, Colorado L.S. #11989

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

The foregoing instrument was subscribed and sworn to before me this 25th day of April, 1977, by Donald Frederick.
Witness my hand and official seal.

My commission expires October 30, 1978

Ernest Markham
Notary Public

APPROVALS:

APPROVED this 26 day of Sept, 1977, by the City Engineer of the City of Loveland, Colorado.

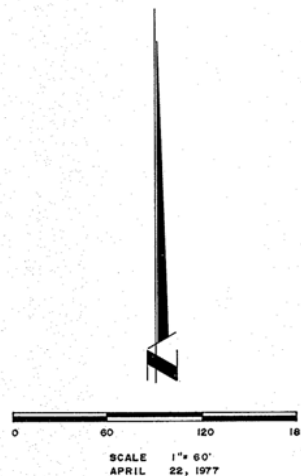
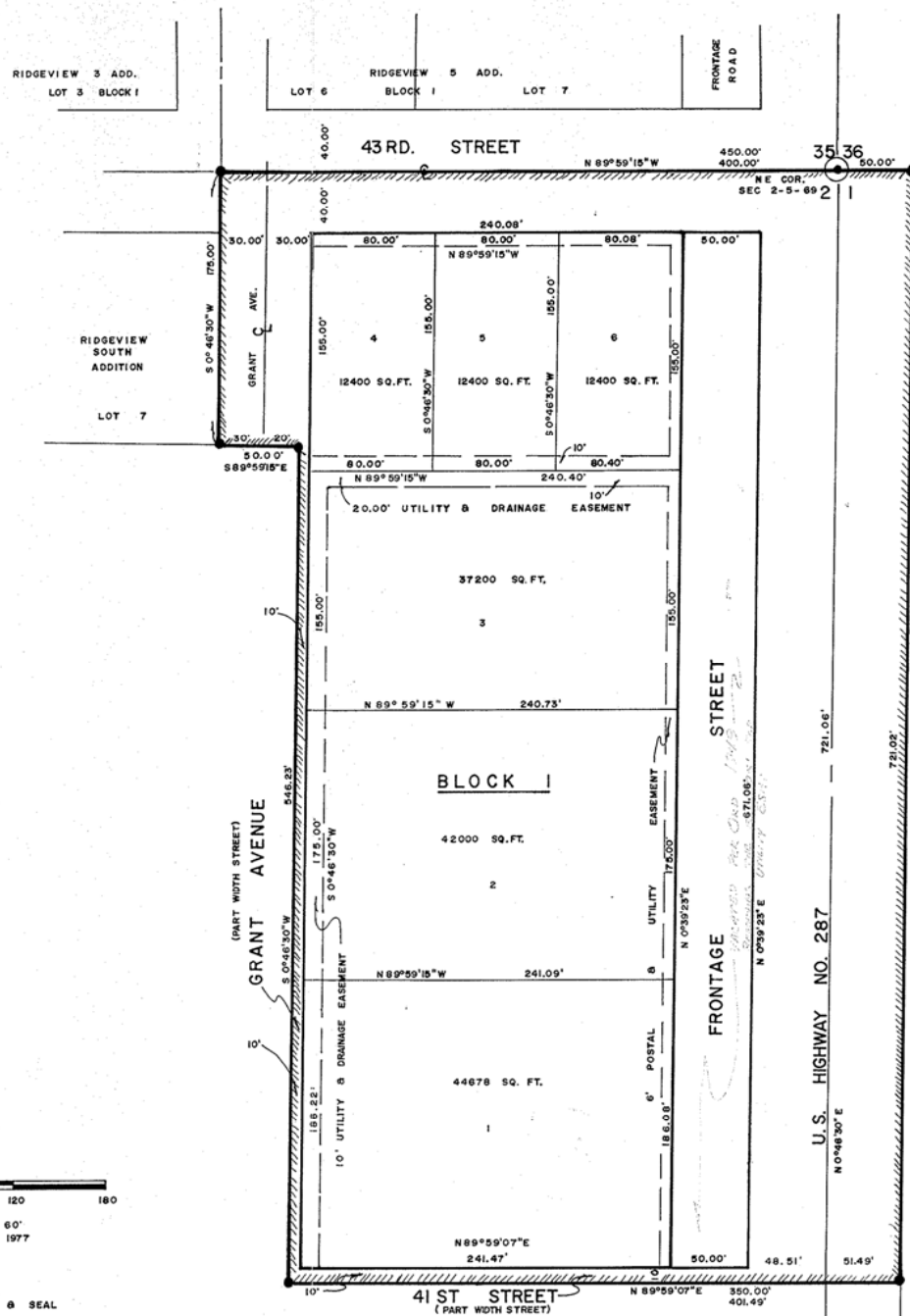
Jan Marchand
CITY ENGINEER

APPROVED this 28 day of June, 1977, by the City Planning Commission to the City of Loveland, Colorado.

Bruce Constant
CHAIRMAN

APPROVED by the City Council of the City of Loveland, Colorado, this 2 day of August, 1977.

Richard J. Gray
ATTEST:



● SET 1/2" REBAR @ SEAL



CITY OF LOVELAND
LOVELAND FIRE RESCUE AUTHORITY
 Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
 (970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM: 11
MEETING DATE: 11/5/2013
TO: City Council
FROM: Randy Mirowski, Loveland Fire Rescue Authority
PRESENTER: Randy Mirowski, Fire Chief

TITLE:

A Resolution Approving an Intergovernmental Mutual Aid Agreement Between the Loveland Fire Rescue Authority and the Laramie County Fire District #2

RECOMMENDED CITY COUNCIL ACTION:

Adopt the action as recommended.

OPTIONS:

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

SUMMARY:

This is an administrative action to consider a resolution approving an intergovernmental mutual aid agreement between the Loveland Fire Rescue Authority (LFRA) and the Laramie County Fire District #2. The agreement was approved by the LFRA Board on October 10, 2013.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The intergovernmental agreement that established the LFRA requires that mutual aid agreements be approved by the City.

A mutual aid agreement provides that LFRA or the Laramie County District #2 will be dispatched to an emergency response area when it is reasonable for both organizations and resources are available. It is a standard agreement necessary to ensure that there are policies and procedures in place for mutual aid response. Laramie County Fire District #2 assisted during the

flood response; therefore, it is prudent to make sure there is an agreement between the two organizations.

This agreement clarifies the area of auto response, roles and responsibilities, establishes procedures for cooperation and coordination, liability, worker's compensation coverage, provides no compensation for services, provides for response determination in terms of availability, sets the term for one year renewable annually, and sets procedures for termination of the agreement by either party.

REVIEWED BY CITY MANAGER: 

LIST OF ATTACHMENTS:

1. Resolution
2. Agreement

RESOLUTION # R-91-2013**A RESOLUTION APPROVING AN INTERGOVERNMENTAL MUTUAL AID AGREEMENT BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND THE LARAMIE COUNTY FIRE DISTRICT #2**

WHEREAS, in accordance with section §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 C.R.S. §29-1-201, 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, Loveland Fire Rescue Authority (“LFRA”) is an independent governmental entity duly organized and existing in accordance with Colorado law and the Laramie County Fire District #2 (“LCFD”) is duly organized and existing in accordance with Wyoming law (collectively referred to as “Participating Agencies”);

WHEREAS, both Participating Agencies are called upon to respond to emergency areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through mutual aid responses; and

WHEREAS, the Participating Agencies will provide mutual aid responses to one another for emergencies within their respective jurisdictions; and

WHEREAS, it is the intent and desire of the Participating Agencies 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 1.0 of the Rules and Regulations of the Loveland Fire Rescue Authority the Mutual Aid Agreement was presented to and approved by the LFRA Board of Directors on October 10, 2013 ; 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 COUNCIL OF THE CITY OF LOVELAND, COLORADO, AS FOLLOWS:

Section 1. That the Agreement is hereby approved.

Section 2. That the Fire Chief is hereby authorized and directed to execute the Agreement on behalf of the Loveland Fire Authority, 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 or to protect the interests of the Fire Authority.

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

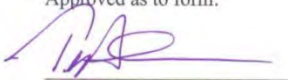
ADOPTED this _____ day of _____, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

Approved as to form:



Teresa Ablao
Assistant City Attorney

**INTERGOVERNMENTAL MUTUAL AID AGREEMENT
BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND LARAMIE COUNTY
FIRE DISTRICT #2**

THIS AGREEMENT is made and entered into this _____ day of September 2013, by and between Laramie County Fire District #2 ("LCFD") and the Loveland Fire Rescue Authority, ("LFRA"), concerning response to a designated area.

RECITALS

WHEREAS, in accordance with C.R.S. § 29-1-203, 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 C.R.S. § 29-1-201, 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, C.R.S. § 29-5-107 allows a fire chief to request temporary assignment of firefighters from another governmental entity in emergency circumstances; and

WHEREAS, LCFD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through ~~automatic~~ mutual aid responses; and

WHEREAS, it is the intent and desire of the Participating Agencies to provide an emergency fire and rescue response system that meets the health, safety and welfare needs of the affected residents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Participating Agencies agree as follows:

AGREEMENT

1. Mutual Aid Response.

a. The Parties agree that mutual aid is the assistance provided by a supporting agency at no cost to the jurisdictional agency. Each Participating Agency agrees to provide, if the Agency has such resources available, firefighters and equipment resources at no cost, for the duration of an incident located in the requesting party's jurisdiction and dispatch thereto when requested to respond by the Fire Chief of the requesting jurisdiction.

b. A Participating Agency is not under any obligation to respond to a call for mutual aid under this agreement when, in its sole discretion, it determines that responding would unreasonably deplete its ability to respond within its own jurisdiction.

c. Cancellation of any Participating Agency's response shall occur only after coordinated communication between the Participating Agencies on an assigned frequency. The first arriving Participating Agency shall determine whether to cancel the response of the other Participating Agency, or, when all units from a Participating Agency are en route to an emergency call, the Participating Agency having geographic jurisdiction may cancel the response of the other Participating Agency.

2. Purpose. The purpose for such dispatch and the responsibility of the Participating Agency is limited to temporary assignment of personnel and equipment under emergency circumstances.

3. Good Faith Discussion. In the event the responses outside a Participating Agency's jurisdiction that occur pursuant to this Agreement become a burden, the Participating Agencies agree to discuss, in good faith, amendments to this Agreement and/or other possible resolutions, but in no case shall the proposed resolution be onerous, as determined by the Participating Agencies in their sole subjective discretion, to the respective Participating Agencies.

4. Command. The first arriving Participating Agency officer-in-charge shall assume command of the incident. The incident commander shall provide in-coming responders with an arrival report and shall instruct them to begin operations. Upon arrival of an officer from the Participating Agency having jurisdiction, incident command shall be passed to such officer.

5. Liability. The Participating Agencies hereto agree, notwithstanding the provisions of C.R.S. §29-5-108, that during the time that a responding Participating Agency's employees are traveling to the requesting Participating Agency's staging area or command post, any liability which accrues under the provision of the Colorado Governmental Immunity Act, C.R.S. §24-10101, et seq., (the "Act") as a result of a negligent act or omission of any of the responding Participating Agency's employees shall be imposed upon the responding Participating Agency and not the requesting Participating Agency. However, once the responding Participating Agency's employees physically arrive at the requesting Participating Agency's staging area or command post, then, in accordance with the provisions of C.R.S. §29-5-108, any liability which accrues, under the provisions of the Act as a result of a negligent act or omission of the responding Participating Agency's employees while performing duties at that time and thereafter, shall be imposed upon the requesting Participating Agency, not the responding Participating Agency. In addition, the requesting Participating Agency, to the extent permitted by law, agrees to indemnify, defend and hold harmless the responding Participating Agency against any and all judgments, costs, expenses and attorney's fees incurred by the responding Participating Agency related to its performance under this Agreement that may result from any negligent act or omission by the requesting Participating Agency or by its employees. However, nothing herein shall be deemed a waiver of the notice requirements, defenses, immunities and limitations of liability that any of the Participating Agencies and their respective officers and employees may have under the Act and under any other law,.

6. Benefits. Pursuant to C.R.S. §§29-5-109 and 29-5-110, if any officer or other personnel of the responding Participating Agency is injured, disabled or dies as a result of performing services within the boundaries of the requesting Participating Agency, said individual shall remain covered by, and eligible for, the workers compensation and firefighters pension benefits which said individual would otherwise be entitled if the injury, disability or death had occurred within the boundaries of the responding Participating Agency.

7. Compensation. No Participating Agency shall be required to pay any compensation to any other Participating Agency for any services rendered hereunder, the mutual aid and assistance to be afforded under this Agreement being adequate compensation to the Participating Agencies, this Agreement shall not be construed as to limit reasonable compensation, as defined in C.R.S. §29-22-104, in response to hazardous materials incidents. The requesting Participating Agency agrees that it will reasonably pursue any legal reimbursement possible, pursuant to state and federal laws and that, upon receipt of any such reimbursement (after subtracting the reasonable costs of pursuing and collecting the reimbursement), will distribute the received funds in a fair and equitable manner to the responding Participating Agencies based upon a pro rata share of their documented expenses.

8. Response Determination. Obligations of the Participating Agencies to respond pursuant to the provisions of this Agreement shall be contingent upon each Participating Agency's determination that the specified equipment and personnel are available for response and that such equipment and personnel are not needed in its own jurisdictions. The responding Participating Agency shall communicate its determination regarding the availability of equipment and personnel to the requesting Participating Agency through the Comm. Center at the time of the request.

9. Term. The terms of this agreement shall continue for a period of one year from the date hereof, and shall be automatically renewed for successive one year periods unless terminated by any Participating Agency with respect to itself.

10. Severability. If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement shall not be affected thereby.

11. Entire Agreement. This Agreement shall not invalidate or otherwise affect any other agreement presently in effect. This Agreement represents the entire agreement of the Participating Agencies with respect to automatic mutual aid and any amendment to this agreement shall be in writing and executed by all the Participating Agencies hereto.

12. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the County of Larimer.
13. Assignment. This Agreement shall not be assigned by any of the Participating Agencies hereto.
14. Relationship of Participating Agencies. The Participating Agencies enter into this Agreement as separate and independent governmental entities and each shall maintain such status throughout the term of this Agreement.
15. Effect of Agreement. This Agreement is not intended to, nor should it be construed to, effect or extend the legal responsibilities of any of the Participating Agencies hereto; create or modify any preexisting legal obligations, if any; or create for or extend any of the legal rights to any person. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever. Any services performed or expenditures made in connection with furnishing mutual aid under this Agreement by any of the Participating Agencies hereto shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of such Participating Agency.
16. Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement. The Participating Agencies agree that counterpart signatures of this Agreement shall be acceptable and that execution of this Agreement in the same form by each and every Participating Agency shall be deemed to constitute full and final execution of this Agreement.
17. Headings. Paragraph headings in this Agreement are for convenience of reference only and shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement,
18. Construction of Agreement. This Agreement shall be construed according to its fair meaning as if it was prepared by all of the Participating Agencies hereto and shall be deemed to be and contain the entire Agreement between the Participating Agencies hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by all of the Participating Agencies hereto.
19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Participating Agencies hereto and the respective successors and permitted assigns
20. Termination. Any Participating Agency may terminate this Agreement, with or without cause, upon thirty days prior written notice to all other Participating Agencies to this Agreement.
21. Notices. Any notice under this Agreement to a Participating Agency shall be effective upon receipt at the addresses set forth below.

Loveland Fire Rescue Authority: Fire Chief
410 East Fifth Street
Loveland, Colorado 80537

and

City Attorney's Office
500 East Third Street, Suite 330
Loveland, Colorado 80537

Laramie County Fire District #2:

IN WITNESS WHEREOF, the Participating Agencies have executed this Agreement the day and year first above written.

LOVELAND FIRE RESCUE AUTHORITY:

By: Fire Chief

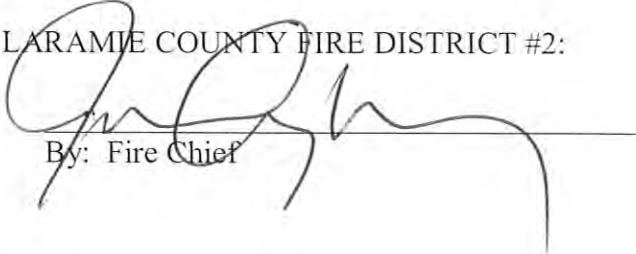
ATTEST:

Board Secretary

Approved as to Form:

Assistant City Attorney

LARAMIE COUNTY FIRE DISTRICT #2:



By: Fire Chief

ATTEST:

Approved as to Form:

Fire District 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: 12
MEETING DATE: 11/5/2013
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

A Resolution Approving the Loveland Fire Rescue Authority's 2013 Supplemental Budget and Appropriation for 2013 Larimer County Flood Expenditures

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolution.

OPTIONS:

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

SUMMARY:

This is an administrative action. The resolution provides for Council approval of supplemental changes to the Loveland Fire Rescue Authority 2013 Budget to appropriate funding related to the 2013 Flood response. City Council's approval of the budget is required for the Authority's budget to be in effect.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The resolution provides approval of the budget changes for additional expenses related to the 2013 Flood response. Implementation requires an additional contribution from the City of \$121,270 to be appropriated from reserves, reducing the flexibility for other projects.

BACKGROUND:

The Loveland Fire Rescue Authority was created through the Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity (IGA). At the Authority's October 10, 2013 meeting the Authority approved a resolution amending the budget by \$147,890 to appropriate expenses related to the 2013 Flood response.

The City's contribution was approved in Ordinance #5818, approved unanimously by City Council on October 15, 2013.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Resolution
2. Attachment A - Fire Authority Resolution #R-028 enacting a supplemental budget and appropriation to the 2013 Loveland Fire Rescue Authority Budget to appropriate additional funding for expenditures associated with the Larimer County 2013 Flood.
3. LFRA Staff Memo: requesting the change.

RESOLUTION #R-92-2013

**A RESOLUTION APPROVING THE LOVELAND FIRE RESCUE
AUTHORITY'S 2013 SUPPLEMENTAL BUDGET AND APPROPRIATION FOR
2013 LARIMER COUNTY FLOOD EXPENDITURES**

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-028, 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 \$147,890, and expenditures of \$147,890 for operations, is hereby approved.

Section 3. That this Resolution shall take effect as of the date of its adoption.

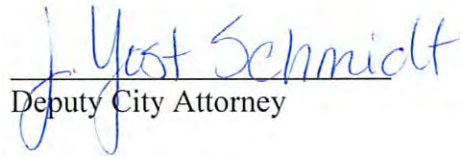
ADOPTED this 5th day of November, 2013.

Cecil a. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

RESOLUTION NO. R- 028

A RESOLUTION ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 LOVELAND FIRE RESCUE AUTHORITY BUDGET TO APPROPRIATE ADDITIONAL FUNDING FOR EXPENDITURES ASSOCIATED WITH THE LARIMER COUNTY 2013 FLOOD

WHEREAS, the Loveland Fire Rescue Authority (“Authority”) deployed crews for search and rescue and hazardous materials removal during and after the heavy rains and flash flooding that began in Larimer County on September 11, 2013 ; and

WHEREAS, the Authority has estimated that cost through the end of the 2013 fiscal year to be \$147,390; and

WHEREAS, the Authority includes these expenditures on monthly billings through the end of the 2013 fiscal year; and

WHEREAS, the Authority expects to receive 75% of the total expenditures from the Federal Emergency Management Agency (“FEMA”) at some point in the future; and

WHEREAS, the Authority has requested that City of Loveland (“City”) and Loveland Rural Fire Protection District (“District”) reserve funds be appropriated to the Authority in the amount of \$147,390 to fund the operations expenditures identified below, according to the provisions of the Intergovernmental Agreement creating the Authority, which provides for allocating the payment of costs and expenses of the Authority between the City at 82% and the District at 18%; and

WHEREAS, the Authority Board desires to authorize the expenditure of \$147,390 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 upon appropriation of \$112,270 by the City and of \$26,620 by the Rural District, the Authority shall supplementally budget and appropriate said monies as part of the 2013 Authority budget as follows:

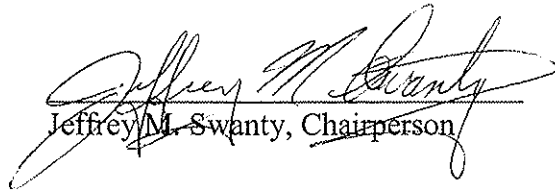
| Account Title | Account Number | Amount | Description |
|----------------------------------|-----------------------|------------------|--|
| Sources of Funds: | | | |
| Contribution from Rural District | 604-22-227-1601-32402 | \$26,620 | 18% of the remaining 75% total expenditures |
| Contribution from City | 604-22-227-1601-38600 | 121,270 | 82% of the remaining 75% of total expenditures |
| Total Sources of Funds | | \$147,890 | |
| | | | |

| Uses of Funds: | | | |
|----------------------|-----------------------|-----------|--|
| Overtime-Oprs | 604-22-224-0000-41021 | 133,650 | Overtime during incident response |
| Overtime-CSD | 604-22-224-0000-41021 | 5,000 | Overtime during incident response |
| FICA | 604-22-224-0000-41544 | 1,940 | Medicare Only – post 1986 hires |
| FICA | 604-22-224-0000-41544 | 70 | Medicare Only – post 1986 hires |
| Food | 604-22-224-0000-42422 | 2,250 | Food for crews throughout and for EOC on 9/12 and 9/13 |
| Parts and Supplies | 604-22-224-0000-42032 | 1,140 | Marking paint for buildings, debris, secure areas, water and Gatorade purchased by Public Works for station 1, EOC, and PW divisions |
| Other Supplies | 604-22-224-0000-42899 | 180 | Personal supplies for crew on the Estes Park Rescues, batteries for national guard air packs that were assigned to Stat 6, 50' barrier plastic fencing |
| Tool & Equip (<\$5k) | 604-22-224-0000-42033 | 1,210 | Jon boat for recon and water rescue |
| Travel & Meetings | 604-22-223-0000-43270 | 250 | Hotel for EOC Manager and mileage for Deputy Fire Marshall Dann |
| Office Supplies | 604-22-223-0000-42011 | 60 | Paper for EOC operations |
| Office Supplies | 604-22-227-1601-42011 | 60 | |
| Parts and Supplies | 604-22-224-1636-42032 | 180 | Stat 6 multifold paper towels Stat 6 |
| Parts and Supplies | 604-22-224-1633-42032 | 100 | batteries Stat 3 |
| Janitorial Supplies | 604-22-224-1633-42323 | 50 | trash liners and multifold paper towels Stat 3 |
| Uniforms-PPE Type | 604-22-224-0000-42025 | 710 | Dive gear (Stearns Type II & III SAR Vests) |
| Part and Supplies | 604-22-224-1633-42032 | 30 | Rehab supplies (water and Gatorade) for Stat 3 |
| Uniforms-Duty Type | 604-22-224-1631-42025 | 770 | 6 pairs of boots and 2 hip waders for river recon |
| Vehicle Maintenance | 604-22-226-1647-43534 | 190 | Army Guard Tender for fuel used on structure fire in canyon on TK 6 fuel card and diesel for Engine 226 on the 19th |
| Electrical Supplies | 604-22-224-0000-42336 | 50 | Inverter for BC Smith vehicle (709) used to charge batteries and other electric equipment |
| | | | |
| Total Uses: | | \$147,890 | |

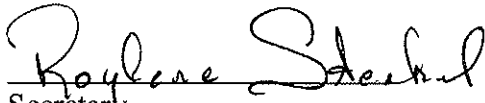
Section 2. That as provided in Article IV: Section 4.1 of the Intergovernmental agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity, this Resolution shall be published in full by the Board Secretary.

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

ADOPTED this 10th day of October 10, 2013.


Jeffrey M. Swanty, Chairperson

ATTEST:


Secretary

APPROVED AS TO FORM:


Assistant City Attorney

Agenda Item Cover

Item No.: 6

Meeting Date: October 10, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director



TITLE

Consider a Resolution Enacting a Supplemental Budget and Appropriation to the 2013 Loveland Fire Rescue Authority Budget to Appropriate Additional Funding for Expenditures Associated with the Larimer County 2013 Flood

EXECUTIVE SUMMARY

The attached resolution is the estimate of expenditures based on daily project tracking that was conducted during the incident and an estimate of the costs associated with the remaining missions for hazardous materials clean up and river searches.

BACKGROUND

During the flood incident expenditures were tracked including personnel costs, supplies, and equipment use. All these expenditures will be submitted to FEMA for reimbursement. However, the only expenditures included in this supplemental appropriation are related to overtime, FICA Medicare tax, and supplies that are not currently included in the budget. The attached resolution would authorize an appropriation for \$147,890, and it includes a listing of all expenditures by account code. The City share would be \$121,270 and the Rural District share would be \$26,620. These contributions are expected to come from fund balances of the partner organizations. It is expected that 75% of the total expenditures not covered by insurance, including equipment use, will be eligible for reimbursement. When the FEMA reimbursements are received, the fund balances will be restored.

The Fire Training Center was significantly impacted by the flood. This is a City asset, and the costs to clean up and restore the facility to full operations will be included in the City's total infrastructure appropriation should that become necessary. It is a CIRSA insured facility. At this time, we have been told to submit invoices for covered expenditures directly to CIRSA for payment. As more information becomes available, staff will brief the Board with actions that may be necessary.

STAFF RECOMMENDATION

Approve as written

Agenda Item Cover

Item No.: 6

Meeting Date: October 10, 2013

Prepared By: Renee Wheeler, Public Safety Administrative Director



FINANCIAL/ECONOMIC IMPACTS

The impact is related to the drawing down of fund balance for both partner organizations retained for this kind of event.

ASSOCIATED STRATEGIC GOALS

Deploy an effective emergency response to minimize damage and loss.

Deliver cost effective services.

ATTACHMENTS

Resolution



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

AGENDA ITEM: 13
MEETING DATE: 11/5/2013
TO: City Council
FROM: Brent Worthington, Finance
 Steve Adams, Water & Power
 Keith Reester, Public Works
PRESENTER: Brent Worthington, Finance Director

TITLE:

A Resolution Approving the City of Loveland Utility Relief Program to Assist City of Loveland Utility Customers Impacted by the 2013 Flood

RECOMMENDED CITY COUNCIL ACTION:

Approve the resolution.

OPTIONS:

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

SUMMARY:

This is an administrative action. This resolution provides for the forgiveness of certain City of Loveland utility bills for utility customers who were affected by the 2013 Flood.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

There will be a relatively small decrease in revenues as a result of this resolution.

BACKGROUND:

On September 12, 2013, the Emergency Operations Center (EOC) was activated in response to flooding of the Big Thompson River. This flooding came to be known as the 2013 Flood (the Flood). Following the initial emergency response to the Flood, on September 18, 2013, the City transitioned to the Recovery Phase of its emergency operations. The Recovery Phase includes three areas of focus: Community Recovery, Community Infrastructure, and Community Finance

and Operations. Under the umbrella of Community Recovery is economic and business recovery.

As part of a long-term economic recovery effort, the City wants to offer economic relief to its utility customers who were affected by the Flood. This relief would be in the form of forgiveness of specific utility bills, and would apply to both residential and business customers. Staff believes this forgiveness would produce significant economic benefits to the citizens of Loveland, primarily in the form of rebuilding and preserving the economic vitality of the City, jobs, and property tax revenues to the City, for the benefit of the citizens of Loveland. After consulting with the City Attorney's Office, it was decided that the forgiveness of utility bills is an action that must be considered by City Council.

A list of 573 City of Loveland utility customers who were affected by the Flood was developed after much diligence in comparing four databases of potential eligible customers for this forgiveness program:

- 1) Water and Power customers who had contacted the City directly
- 2) A list of status of structures from the City's Building Division
- 3) A list of status of structures from the Larimer County Assessor's Office
- 4) A list of registrants from the Disaster Assistance Center

This list started with over 1,700 potential names and addresses and ultimately resolved to 573 affected who are City of Loveland utility customers. Of the 573 customers, 417 are residential and 156 are businesses. The forgiveness program would be separated into the following categories and would be administered by Utility Billing Staff as follows:

- A) For Water customers that did not have potable water as a result of the Flood, the City will forgive their September water bill, including any balance that was carried forward, and will also forgive their October and November water bills. This will allow customers to thoroughly flush out their water systems. There will be no fees charged for deactivating or reactivating of a customer account.
- B) For Power customers who lost their power service as a result of the Flood, the City will forgive their September power bill, including any balance forward. As these Power customers have their power restored, a meter reading will be taken and normal billing for power will resume. There will be no fees charged for deactivating or reactivating of a customer account.
- C) For any utility customers that don't fit into category A or B, but have been affected by the Flood, the City will forgive their September utility bill, including any balance forward.

For any customers that fall into categories A-C, if they are also billed for Wastewater, Storm Water, Solid Waste, Recycling, Street Maintenance or Mosquito Control, the charges for those services will be forgiven, as well.

The estimated loss in revenue for each of these services as a result of forgiving these bills is:

| | |
|------------------------|-------------------------|
| Power | \$ 79,346 |
| Water | \$ 16,876 |
| Wastewater | \$ 6,982 |
| Storm Water | \$ 2,610 |
| Solid Waste | \$ 994 |
| Street Maintenance Fee | \$ 1,614 |
| Mosquito Control | \$ 52 |
| Total | <u>\$108,474</u> |

For those customers affected by the Flood, the Colorado Energy Office, Lightly Treading (our home energy audit provider), Platte River Power Authority, and Water and Power are working together to offer free energy audits and increased rebates to help rebuild as efficiently as possible. The Colorado Energy Office is working with the National Renewable Energy Lab to train energy advisors on flood related issues such as mold. Platte River Power Authority and Water and Power are working together to evaluate current rebates and to consider offering more. There are many other utilities that have customers affected by the Flood and are offering additional programs.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Resolution

RESOLUTION # R- 93-2013**A RESOLUTION APPROVING THE CITY OF LOVELAND UTILITY RELIEF PROGRAM TO ASSIST CITY OF LOVELAND UTILITY CUSTOMERS IMPACTED BY THE 2013 FLOOD**

WHEREAS, on September 12, 2013, the Loveland City Manager issued a “Declaration of Local Disaster” under C.R.S. § 24-33.5-709, which was extended by Resolution of the City Council on September 17, 2013 (the “Declaration”); and

WHEREAS, as stated in the Declaration, the City of Loveland (“City” or “Loveland”), and much of the Colorado Front Range, experienced heavy rains and flash flooding that occurred beginning September 11, 2013, resulting in loss of life and injury and substantial damage and destruction to private and public property (the “2013 Flood”); and

WHEREAS, the 2013 Flood caused roads to be closed in Loveland for days and caused significant damage to private and public property within the City and surrounding areas, including substantial damage to the City’s infrastructure, particularly its streets and bridges and its park and recreational areas; and

WHEREAS, flooding within Loveland was particularly serious in and around the Big Thompson River and significant, long-term and costly recovery efforts will be necessary in Loveland in and around the River and other parts of Loveland; and

WHEREAS, residential and business customers of the City for water and electric services (“Customers”) sustained damage and losses as a result of the 2013 Flood, including potable water and loss of electricity, and the recovery of such residents and businesses is of critical importance to the economic vitality of the community; and

WHEREAS, the City of Loveland desires to implement a program to forgive certain utility debt to aid the recovery of qualifying Customers who have been impacted by the 2013 Flood in the format generally outlined in Exhibit A attached hereto and incorporated by reference (the “Utility Relief Program”); and

WHEREAS, the Utility Relief Program is authorized under City Code Section 3.04.090 for all public purposes to the full extent authorized by the Colorado Constitution, which includes the public purposes of producing significant economic, cultural and social benefits to the citizens of Loveland; and

WHEREAS, authorizing the Utility Relief Program serves the public purpose of producing significant economic benefits to the citizens of Loveland, primarily in the form of rebuilding and preserving the economic vitality of the City, jobs, and property tax revenues to the City, for the benefit of the citizens of Loveland; and

WHEREAS, the City Council finds that it is in the best interest of its citizens to approve the Utility Relief Program.

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

Section 1. The Utility Relief Program is hereby approved.

Section 2. The City Manager, in consultation with the City Attorney, is hereby authorized and directed to implement and modify the Utility Relief Program as he may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

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

ADOPTED _____ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

EXHIBIT A
Utility Relief Program

On September 12, 2013, the Loveland City Manager issued a “Declaration of Local Disaster,” which was extended by City Council on September 17, 2013. As stated in the Declaration, the City of Loveland (“City”), and much of the Colorado Front Range, experienced heavy rains and flash flooding that occurred beginning September 11, 2013, resulting in loss of life and injury and substantial damage and destruction to private and public property (the “2013 Flood”)

In an effort to aid in the recovery of City Water and Power customers who were impacted by the 2013 Flood, the City has developed this utility forgiveness program referred to as the Utility Relief Program.

Methodology.

A list of 573 City of Loveland utility customers who were affected by the 2013 Flood and qualify for assistance under the Utility Relief Program was developed after much diligence in comparing four databases of potential eligible customers for this forgiveness program:

- 1) Water and Power customers who had contacted the City directly;
- 2) A list of status of structures from the City’s Building Division;
- 3) A list of status of structures from the Larimer County Assessor’s Office; and
- 4) A list of registrants from the Northern Colorado Disaster Assistance Center.

This list started with over 1,700 potential names and addresses and ultimately resolved to 573 affected who are City of Loveland utility customers. These 573 qualifying customers are comprised of both residential and businesses customers.

Forgiveness Amount.

The Utility Relief Program is divided into the following categories and shall be administered by Utility Billing Division as follows:

- A) For Water customers that did not have potable water as a result of the 2013 Flood, the City will forgive their September 2013 water bill, including any balance that was carried forward, and will also forgive their October and November 2013 water bills. This will allow customers time to access and thoroughly flush out their water systems. There will be no fees charged for deactivating or reactivating of a customer account.
- B) For Power customers who lost their power service as a result of the 2013 Flood, the City will forgive their September 2013 power bill, including any balance forward. As these Power customers have their power restored, a meter reading will be taken and normal billing for power will resume. There will be no fees charged for deactivating or reactivating of a customer account.
- C) For any Water or Power customer that does not fit into category A or B, but can document or otherwise reasonably demonstrate that he or she has been negatively affected by the 2013 Flood, the City will forgive their September 2013 water and power bill, including any balance forward.

For each customer that falls into category A, B or C, if the customer was also billed by the City for Wastewater, Storm Water, Solid Waste, Recycling, Street Maintenance or Mosquito Control services during the applicable forgiveness period, the charges for those services will be forgiven as well.

The City reserves the sole right to determine whether a customer's water was potable as a result of the 2013 Flood, whether there was a loss of power service as a result of the 2013 Flood, and whether a customer was negatively affected by the 2013 Flood.


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: 14
MEETING DATE: 11/5/2013
TO: City Council
FROM: Brent Worthington, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget

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

SUMMARY:

This is an administrative action. Each year in November, staff brings a “wrap-up” ordinance to address any remaining issues and insure there are sufficient appropriations to meet projected expenditures. The ordinance is necessary to resolve several year-end issues and finalize the 2013 Budget. Several of the issues are new and the remainder we have been following throughout the year and have waited until now to provide the best forecast for the cost to the end of the year. Revenues and fund balance of \$4,152,540 across several funds is appropriated.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The appropriations are primarily funded by reserves reducing the flexibility to fund other projects. Grant and donation revenue is included that offset some of the costs.

BACKGROUND:

The Ordinance is necessary to make adjustments in several departments. Staff has been monitoring these issues throughout the year to arrive at a single more accurate forecast. The details of the adjustments are as follows.

1. Equipment including a compressor, fans and a copier were damaged by the 2013 Flood. Funding is appropriated to the Information Technology Department and Fire & Rescue department to replace this equipment (\$13,920).
2. The repayment of incentives from the VNet agreement is appropriated back to the Economic Incentive account (\$599,000).
3. The Development Services Department has received a state historical grant to aid in the development of an application to create a Historic Downtown District (\$16,400).
4. Lodging Tax funds were appropriated for the costs associated with the Pro Cycle Challenge. The funds are transferred to the General Fund and Transportation Fund to cover costs incurred by City staff (\$34,100) and the Lodging Tax Fund budget is reduced by the same amount.
5. The Police Department has received state grants to pay for the overtime costs associated with the DUI and Seatbelt Enforcement campaigns (\$16,100).
6. Costs for the clean-up and rebuilding of infrastructure at the Fire Training Grounds is appropriated in the Facility Management Division (\$450,000).
7. Cost for the relocation and storage of the Museum history collection is included. The costs are offset by a donation of \$60,000 from the Kroh Charitable Trust (\$87,400).
8. Funding is appropriated for Summer Lagoon Series for costs not covered by donations or sponsorships (\$20,000).
9. Funding is appropriated for a contract to provide parking spaces for Museum staff to replace the parking that was available at the Home State Bank site (\$21,000).
10. The City's share of the required payment to the federal government related to the Mirasol development is appropriated (\$137,500).
11. The costs of sidewalk and road repairs related to the 2013 Flood are appropriated (\$116,770).
12. Additional funding is appropriated for traffic control costs resulting from the 2013 Flood (\$30,000).

13. Additional funding is appropriated for payment to the Loveland Fire Rescue Authority for vehicle repairs and fuel costs that exceeding initial estimates (\$40,000).
 14. Funding for the Water Treatment Plant Expansion Project is shifted from the Water Enterprise Fund to the Water SIF Fund. Staff has determined that impact fees should cover a higher percentage of the costs (\$390,800).
 15. Funding for power infrastructure to tie substations and reroute circuits to improve reliability are appropriated. These projects had been held up by easement acquisitions and coordination with other entities, but are now ready to move forward (\$1,967,650).
 16. In the Vehicle Maintenance Fund, fuel costs and fuel usage have been higher than estimated, partially due to the 2013 Flood Response, and additional equipment needed to be leased for the Flood Response effort. Additional funding for tires is necessary due to a change in specifications for Police cruisers going from a 15" to 18" tire (\$146,000).
 17. Replacement of the north auto-gate into the secured west parking lot at the Police and Courts Building (\$50,000).
 18. Stabilization of soils on the Police and Courts Building's perimeter (\$50,000).
-

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance

FIRST READING November 5, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET

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 revenues and/or reserves in the amount of \$4,152,540 from fund balance, grants and donations in the General Fund (\$1,657,890), Water SIF Enterprise Fund (\$390,800), Power Enterprise Fund (\$1,967,650), the Vehicle Maintenance Internal Service Fund (\$146,000) and the Loveland-Larimer Building Authority Fund 601 (\$23,000) are available for appropriation. Revenues in the total amount of \$4,152,540 are hereby appropriated for equipment at the Fire Training Grounds damaged by the 2013 Flood, economic incentives, development of a Historic Downtown District application, overtime for State grant to fund DUI and Seatbelt enforcement, costs to clean up and rebuild damaged areas at the Fire Training Grounds, costs to move and store the Museum collection, funding for the Lagoon Summer concerts, a contract for parking spaces for Museum staff, a payment to the Federal Government related to the Mirasol development, road and sidewalk repairs related to the 2013 Flood, additional funding for traffic control resulting from the 2013 Flood, power infrastructure to improve reliability, fuel and fleet maintenance costs and facility maintenance projects; 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**

Revenues

| | | |
|-----------------------|--------------------------------|---------|
| Fund Balance | | 937,830 |
| 100-18-180-1500-35201 | Unclassified Revenue | 599,000 |
| 100-19-193-0000-32107 | State Historical Grant | 12,160 |
| 100-21-202-2113-32100 | State Grant | 16,100 |
| 100-52-720-0000-35305 | Donations | 60,000 |
| 100-00-000-0000-37206 | Transfer from Lodging Tax Fund | 32,800 |

Total Revenue **1,657,890**

Appropriations

| | | |
|------------------------------|---------------------------------|---------|
| 100-16-161-0000-42015-FLD913 | Computer Supply and Equipment | 5,540 |
| 100-18-180-1500-43155 | Economic Incentives | 599,000 |
| 100-18-180-1500-43450 | Professional Services | 17,880 |
| 100-19-193-0000-43450 | Professional Services | 16,400 |
| 100-21-201-2101-41021 | Overtime | 9,540 |
| 100-21-202-2113-41021 | Overtime | 16,100 |
| 100-22-222-0000-42033 | Tools & Equipment | 8,380 |
| 100-23-250-1801-43569 | Repair and Maintenance | 200,000 |
| 100-23-250-1801-49360 | Construction | 250,000 |
| 100-52-720-0000-41012 | temporary Salaries | 3,850 |
| 100-52-720-0000-43450 | Professional Services | 10,050 |
| 100-52-720-0000-43648 | Building Rental | 73,500 |
| 100-52-720-0000-43738 | Marketing | 20,000 |
| 100-52-720-0000-43899 | Other purchased Services | 21,000 |
| 100-91-902-0000-43714 | Payment to Outside agencies | 214,500 |
| 100-91-902-0002-43714 | Payment to Outside agencies | 45,380 |
| 100-91-999-0000-47211-FLD913 | Transfer to Transportation Fund | 146,770 |

Total Appropriations **1,657,890**

**Supplemental Budget
Lodging Tax Fund 206**

Appropriations

| | | |
|-----------------------|---------------------------------|----------|
| 206-18-182-1507-43450 | Professional Services | (34,100) |
| 206-18-182-1504-47100 | Transfer to General Fund | 32,800 |
| 206-18-182-1504-47211 | Transfer to Transportation Fund | 1,300 |

Total Appropriations **-**

**Supplemental Budget
Transportation Fund 211**

Revenues

| | | |
|------------------------------|----------------------------|---------|
| 211-23-232-1701-37100-FLD913 | Transfer from General Fund | 146,770 |
| 211-23-235-0000-37206 | Transfer from Lodging Tax | 1,300 |

Total Revenue **148,070**

Appropriations

| | | |
|------------------------------|------------------------|---------|
| 211-23-232-1701-43569-FLD913 | Repair and Maintenance | 116,770 |
| 211-23-234-0000-41011 | Overtime | 1,300 |
| 211-23-235-0000-43899-FLD913 | Other Services | 30,000 |

Total Appropriations **148,070**

**Supplemental Budget
Water Enterprise Fund 300**

Appropriations

| | | |
|------------------------------|--------------|-----------|
| 300-46-318-2902-49360-W1300D | Construction | (390,800) |
|------------------------------|--------------|-----------|

Total Appropriations **(390,800)**

**Supplemental Budget
Water SIF Enterprise Fund 301**

Revenues

| | | |
|--------------|--|---------|
| Fund Balance | | 390,800 |
|--------------|--|---------|

Total Revenue **390,800**

Appropriations

| | | |
|------------------------------|-------------|---------|
| 301-46-318-2902-49352-W1300D | Engineering | 390,800 |
|------------------------------|-------------|---------|

Total Appropriations **390,800**

**Supplemental Budget
Power Enterprise Fund 330**

| | | |
|-------------------------------|-----------------------|-----------|
| Revenues | | |
| Fund Balance | | 1,967,650 |
| Total Revenue | | |
| 1,967,650 | | |
| Appropriations | | |
| 330-47-332-2903-49399-PW913 | Warehouse Withdrawals | 12,900 |
| 330-47-332-2903-49371-PW913 | Other Capital | 12,900 |
| 330-47-3332-2903-49371-PW913A | Warehouse Withdrawals | 461,530 |
| 330-47-332-2903-49371-PW913A | Other Capital | 512,160 |
| 330-47-3332-2903-49371-PW914 | Warehouse Withdrawals | 320,200 |
| 330-47-332-2903-49371-PW914 | Other Capital | 647,960 |
| Total Appropriations | | |
| 1,967,650 | | |

**Supplemental Budget
Vehicle Maintenance Fund 501**

| | | |
|-----------------------------|--------------------|---------|
| Revenues | | |
| Fund Balance | | 146,000 |
| Total Revenue | | |
| 146,000 | | |
| Appropriations | | |
| 501-23-261-1902-42030 | Motor Fuel | 56,000 |
| 501-23-261-1902-42031 | Oil and Lubricants | 20,000 |
| 501-23-261-1902-42039 | Tires and Tubes | 40,000 |
| 501-23-261-1903-43776 | Other Lease/Rental | 30,000 |
| Total Appropriations | | |
| 146,000 | | |

**Supplemental Budget
Loveland Larimer Building Authority Fund 601**

| | | |
|-----------------------------|-------------------------------|---------|
| Revenues | | |
| 601-00-000-0000-32300 | Larimer County Contribution | 23,000 |
| 601-00-000-0000-32302 | City of Loveland Contribution | 77,000 |
| Total Revenue | | |
| 100,000 | | |
| Appropriations | | |
| 601-23-250-1806-43569 | Repair and Maintenance | 100,000 |
| Total Appropriations | | |
| 100,000 | | |

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

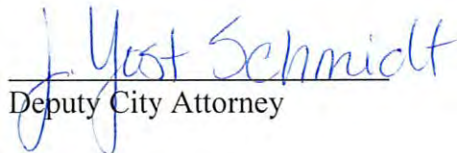
ADOPTED this ____ day of November, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy 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: 15
MEETING DATE: 11/5/2013
TO: City Council
FROM: Betsey Hale, Economic Development
PRESENTER: Betsey Hale

TITLE:

An Emergency Ordinance of the Loveland City Council Amending Ordinance #5817 Temporarily Waiving Building Permit Fees and Use Tax With Respect to Building Permits for the Renovation or Repair of Structures Located Within Loveland City Limits that Were Damaged by the 2013 Flood

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and approve the Emergency Ordinance which requires an affirmative vote of 2/3 of the entire Council (6 votes) under Charter Section 4-10.

OPTIONS:

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

SUMMARY:

This is a legislative action considering an Emergency Ordinance to amend Ordinance #5817 waiving the building permit fees and construction materials use taxes for residential and nonresidential structures which are located within Loveland city limits and were damaged by the Flood. Ordinance #5187 was unanimously approved by Council on October 15, 2013, with the coversheet stating building permit applications must be made and accepted as complete by the City's Building Division during the program period.

The amendment changes the ordinance language to clarify that the building permit applications must be submitted and deemed complete between October 15 and December 13, 2013. The building permit can be issued at any time thereafter and the applicant can still take advantage of the fee waiver.

BUDGET IMPACT:

Positive

- Negative
 Neutral or negligible
-

BACKGROUND:

In the early morning of September 12, 2013, the Emergency Operations Center (EOC) was opened due to the flooding of the Big Thompson River. For the next seven days the focus of the City was life and property protection and rescue. On September 18, 2013, the City entered the Recovery Phase of its emergency operations. This Recovery Phase includes three areas of focus: Community Recovery, Community Infrastructure, and Finance and Administration. Within Community Recovery, economic and business recovery is addressed. As part of this effort, City Staff in Building and Economic Development are recommending waiving building permit fees and use taxes to assist affected residents and business owners in the restoration of their property.

The previous version would have only waived fees for building permits issued before December 13, 2013. The amendment clarifies the intent of the ordinance, which is to waive building permit fees for construction, related to flood recovery, even if the building permit isn't issued until next year.

This waiver period will be in effect for 60 days from October 15, 2013. City staff has estimated there are 65 structures in the city limits and within the FEMA 100 year flood plain. Staff has projected that less than half a dozen structures have sustained damaged requiring permitting or use taxes.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance

FIRST AND ONLY READING: November 5, 2013

EMERGENCY ORDINANCE # _____

AN EMERGENCY ORDINANCE OF THE LOVELAND CITY COUNCIL AMENDING ORDINANCE #5817 TEMPORARILY WAIVING BUILDING PERMIT FEES AND USE TAX WITH RESPECT TO BUILDING PERMITS FOR THE RENOVATION OR REPAIR OF STRUCTURES LOCATED WITHIN LOVELAND CITY LIMITS THAT WERE DAMAGED BY THE 2013 FLOOD

WHEREAS, severe flooding of the Big Thompson River in September 2013 (“2013 Flood”) damaged residential and nonresidential structures located within Loveland city limits; and

WHEREAS, the Loveland City Council adopted Emergency Ordinance #5817 on October 15, 2013 (the “Ordinance”) to assist affected citizens and business owners by waiving building permit fees owed to the City under Loveland Municipal Code Title 15 and use tax owed to the City under Loveland Municipal Code Chapter 13.16 with respect to building permits **issued** for the renovation or repair of residential and nonresidential structures located within Loveland city limits that were damaged by the 2013 Flood beginning on October 15, 2013 and ending on December 13, 2015; and

WHEREAS, City Council desires to amend the Ordinance to waive such permit fees and use taxes with respect to any **application** for building permits for renovation or repair of residential and nonresidential structures **received and deemed complete** (rather than issued) by the Building Department beginning on October 15, 2013 and ending on December 13, 2013; and

WHEREAS, the City Council hereby finds and determines that an emergency exists requiring immediate passage of this Ordinance in order to effectively implement the assistance and financial relief to citizens and business owners affected by the 2013 Flood intended under the Ordinance.

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

Section 1. That Section 1 of the Ordinance is hereby deleted in its entirety and amended to read as follows:

That notwithstanding the provisions of Loveland Municipal Code Title 15 and Chapter 13.16, all building permit fees due and owing under Title 15 and use tax due and owing under Chapter 13.16 shall be waived with respect to building permits for the renovation or repair of residential and nonresidential structures located within Loveland City limits that were damaged by the 2013 Flood, provided that such waiver shall apply only to

building permits for which application is received and deemed complete by the City's Building Divisions on or after October 15, 2013 and no later than December 13, 2013.

Section 2. That the City Council hereby finds that the temporary waiver of building permit fees and use tax as set forth in the Ordinance and amended by Section 1 above will serve the public purpose of assisting affected citizens and business owners in recovering from the 2013 Flood.

Section 3. That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council. The City Clerk shall publish this Ordinance in full after its adoption.

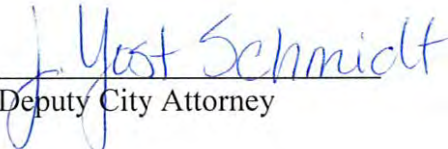
ADOPTED this 5th day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy 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: 16
MEETING DATE: 11/5/2013
TO: City Council
FROM: Betsey Hale, Economic Development Department
PRESENTER: Betsey Hale, Economic Development Director
 Mindy McCloughan, Loveland Chamber of Commerce

TITLE:

1. An Emergency Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for a Business Flood Relief Program to Aid Recovery from the 2013 Flood
2. A Resolution Approving an Agreement with the Loveland Chamber of Commerce for the Purpose of Operating the Loveland Disaster Recovery Fund

RECOMMENDED CITY COUNCIL ACTION:

1. Conduct a public hearing and approve the ordinance on first and only reading. A 2/3 vote of the entire Council (six votes) is required to adopt an emergency ordinance under Charter Section 4-10.
2. Approve the resolution.

OPTIONS:

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

SUMMARY:

1. This is an administrative action. The ordinance provides funding for a Business Flood Relief Program to be conducted by the Loveland Chamber of Commerce.
2. The resolution approves an agreement with the Loveland Chamber of Commerce to oversee and administer the business grant program.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The program is funded by fund balance in the Council Capital Reserve by \$200,000 and reduces the flexibility to fund other programs.

BACKGROUND:

In the early morning of September 12, 2013, the Emergency Operations Center (EOC) opened due to the flooding of the Big Thompson River. For the next seven days the focus of the City was on life, property protection, and rescue. On September 18, 2013, the City entered the Recovery Phase of its emergency operations. This Recovery Phase includes three areas of focus: community recovery, community infrastructure, and community finance and operations. Within community recovery, economic and business recovery exists.

As part of a long term economic recovery effort, the Loveland City Council approved the establishment of a Business Assistance Flood Recovery Fund in the 2014 Budget. This Fund was established by City Council at the October 15, 2013 regular meeting with the adoption of an ordinance on second reading approving the 2014 Budget.

City Council directed staff to return to a future meeting with a proposal for:

1. A funding request for a similar effort in 2013 to address immediate needs;
2. Development of a collaborative program with the Loveland Chamber of Commerce to oversee and administer the resources of the fund.

Program Description:

The Loveland Chamber of Commerce and the Loveland Development Fund have partnered with The Warehouse Foundation, a 501(c) 3, to provide grants to businesses that were affected by the 2013 Flood. The program is providing strategic assistance to its grantees in the form of business or financial mentors.

Disaster Recovery Grant terms:

- Funds may not be used to repay debt existing prior to the 2013 Flood;
- Grants will range from \$2,500 to \$25,000;
- Application process includes: site visit, interview, financial discovery and evaluation;
- Funds are to be used for Restoration, Renovation, Lost Business, Capital, and Post Flood Debt reduction;
- Applicant does not have to be a Chamber member.

Businesses that meet the following eligibility requirements can apply for a recovery grant:

- Business must reside within the City of Loveland GMA or along US Hwy 34, west of Glade Road up to 10103 W Hwy 34, Loveland, Colorado 80537 (The Dam Store);
- In business for at least six months prior to the 2013 Flood;
- In good standing with city, county, and state tax collecting entities;
- A viable business model before and after the 2013 Flood.

The application form and a copy of the site visit & interview questions are included as an attachment to the Council packet. A selection committee with representatives from the Loveland Chamber of Commerce, the Loveland Development Fund, and the business

community will be developed to select grant recipients. The City Manager will designate a City representative for the committee. This position will be non-voting and advisory only.

The Chamber and the Loveland Development Fund (LDF) are asking the City Council to seed the 2013 effort with \$200,000 from the Council's fund balance reserves. The Chamber and the LDF will raise an additional \$100,000. Once the \$100,000 is raised the Chamber may return to City Council for an additional contribution. The City will receive quarterly updates from the fund committee during the immediate flood recovery period and annual updates from the Chamber after 2014.

City Council should also consider:

1. The geographic area being served is outside of the Loveland City Limits, but within the City's Growth Management Area, and along US Hwy 34 in the Loveland postal code 80537 extending to 10103 W Hwy 34, Loveland, Colorado 80537.
2. This is a grant program and recipients will not be subject to a performance guarantee or clawback provision which the Council often requires in City incentive agreements.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Ordinance
2. Resolution and Agreement
3. Business Disaster Recovery Fund Application
4. Growth Management Area Map

FIRST AND ONLY READING November 5, 2013

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR A BUSINESS FLOOD RELIEF PROGRAM TO AID RECOVERY FROM THE 2013 FLOOD

WHEREAS, on September 12, 2013, the Loveland City Manager issued a “Declaration of Local Disaster” under C.R.S. § 24-33.5-709, which was extended by Resolution of the City Council on September 17, 2013 (the “Declaration”); and

WHEREAS, as stated in the Declaration, the City of Loveland, and much of the Colorado Front Range, experienced heavy rains and flash flooding that occurred beginning September 11, 2013, resulting in loss of life and injury and substantial damage and destruction to private and public property (the “2013 Flood”); and

WHEREAS, the 2013 Flood caused roads to be closed in Loveland for days and caused significant damage to private and public property within the City and surrounding areas, including substantial damage to the City’s infrastructure, particularly its streets and bridges and its park and recreational areas; and

WHEREAS, flooding within Loveland was particularly serious in and around the Big Thompson River and significant, long-term and costly recovery efforts will be necessary in Loveland in and around the River and other parts of Loveland; and

WHEREAS, businesses located within the City of Loveland sustained damage and losses as a result of the 2013 Flood and the recovery of such businesses is of critical importance to the economic vitality of the community; and

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

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter for a business flood relief program to aid recovery from the 2013 Flood (the “Business Flood Relief Program”); and

WHEREAS, providing funding for the Business Flood Relief Program is authorized under City Code Section 3.04.090 for all public purposes to the full extent authorized by the

Colorado Constitution, which includes the public purposes of producing significant economic, cultural and social benefits to the citizens of Loveland; and

WHEREAS, funding for the Business Flood Relief Program serves the public purpose of producing significant economic benefits to the citizens of Loveland, primarily in the form of rebuilding and preserving the economic vitality of the City, jobs, and property tax revenues to the City, for the benefit of the citizens of Loveland.

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

Section 1. That reserves in the amount of \$200,000 from the Council Capital Reserve, are available for appropriation. Revenues in the total amount of \$200,000 are hereby appropriated for the Business Flood Relief Program to aid recovery from the 2013 Flood. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 100 - Flood Relief Program**

| | | | |
|-----------------------------|-----------------------------|--|----------------|
| Revenues | | | |
| Fund Balance | | | 200,000 |
| Total Revenue | | | 200,000 |
| Appropriations | | | |
| 100-18-180-1500-43714 | Payment to Outside Agencies | | 200,000 |
| Total Appropriations | | | 200,000 |

Section 2. That this Ordinance is adopted as an emergency ordinance pursuant to City Charter Section 4-10 on the basis that there is an immediate need to rebuild and preserve the economic vitality, jobs, and property tax revenues by facilitating recovery of businesses damaged by the 2013 Flood. Accordingly, the City Council hereby finds and determines that an emergency exists requiring the immediate passage of this Ordinance for the preservation of the public health, safety and welfare of the citizens of the City of Loveland. Therefore, as provided in City Charter Section 4-10(b), this Ordinance shall take effect upon the date of its adoption and the City Clerk shall publish this Ordinance in full after its adoption.

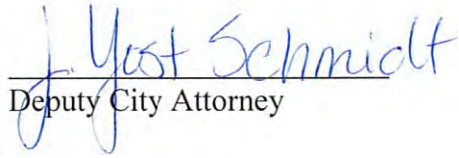
ADOPTED this 5th day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney

RESOLUTION # R-94-2013**A RESOLUTION APPROVING A RECIPIENT CONTRACT WITH THE
LOVELAND CHAMBER OF COMMERCE FOR CITY OF LOVELAND FUNDS TO
SUPPORT THE BUSINESS FLOOD RELIEF**

WHEREAS, on September 12, 2013, the Loveland City Manager issued a “Declaration of Local Disaster” under C.R.S. § 24-33.5-709, which was extended by Resolution of the City Council on September 17, 2013 (the “Declaration”); and

WHEREAS, as stated in the Declaration, the City of Loveland (“City” or “Loveland”), and much of the Colorado Front Range, experienced heavy rains and flash flooding that occurred beginning September 11, 2013, resulting in loss of life and injury and substantial damage and destruction to private and public property (the “2013 Flood”); and

WHEREAS, the 2013 Flood caused roads to be closed in Loveland for days and caused significant damage to private and public property within the City and surrounding areas, including substantial damage to the City’s infrastructure, particularly its streets and bridges, park and recreational areas and its utility facilities; and

WHEREAS, flooding within Loveland was particularly serious in and around the Big Thompson River and significant, long-term and costly recovery efforts will be necessary in Loveland in and around the River and other parts of Loveland; and

WHEREAS, businesses located within the City’s growth management area and along certain parts of West U.S. 34 in Larimer County (“Local Businesses”) sustained damage and losses as a result of the 2013 Flood and the recovery of such businesses is of critical importance to the economic vitality of the community; and

WHEREAS, the Loveland Chamber of Commerce, Inc. (the “Chamber”), in conjunction with other non-profits groups and local businesses, has developed a business flood relief program to aid recovery of qualifying Local Businesses from the 2013 Flood (the “Business Flood Relief Program”) through direct grant assistance and seeks monetary contributions from the City in the amount of \$200,000.00; and

WHEREAS, providing funding for the Business Flood Relief Program is authorized under City Code Section 3.04.090 for all public purposes to the full extent authorized by the Colorado Constitution, which includes the public purposes of producing significant economic, cultural and social benefits to the citizens of Loveland; and

WHEREAS, funding for the Business Flood Relief Program serves the public purpose of producing significant economic benefits to the citizens of Loveland, primarily in the form of rebuilding and preserving the economic vitality of the City, jobs, and property tax revenues to the City, for the benefit of the citizens of Loveland.

WHEREAS, the City desires to provide the requested grant funding and the Chamber desires to accept such grant funding on the terms and conditions set forth in the Recipient Contract with the Loveland Chamber of Commerce for City of Loveland Funds to Support the Business Flood Relief Program attached hereto as Exhibit "A" and incorporated herein by reference (the "Contract"); and

WHEREAS, the City Council finds that it is in the best interest of its citizens to enter into and participate in the Contract.

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

Section 1. The Contract is hereby approved.

Section 2. The City Manager is hereby authorized and directed to enter into the Contract, subject to such modifications in form or substance as the City Manager, in consultation with the City Attorney, may deem necessary to effectuate the purposes of this resolution or to protect the interests of the City.

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

ADOPTED _____ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

**RECIPIENT CONTRACT WITH THE LOVELAND CHAMBER OF COMMERCE FOR
CITY OF LOVELAND FUNDS TO SUPPORT THE BUSINESS FLOOD RELIEF
PROGRAM**

THIS CONTRACT (“Contract”) is made and entered into this ____ day of _____, 2013, by and between the CITY OF LOVELAND, a Colorado home rule municipality (“City”) and the LOVELAND CHAMBER OF COMMERCE, INC., a Colorado nonprofit corporation (“Chamber”).

WHEREAS, on September 12, 2013, the Loveland City Manager issued a “Declaration of Local Disaster” under C.R.S. § 24-33.5-709, which was extended by Resolution of the City Council on September 17, 2013 (the “Declaration”); and

WHEREAS, as stated in the Declaration, the City of Loveland, and much of the Colorado Front Range, experienced heavy rains and flash flooding that occurred beginning September 11, 2013, resulting in loss of life and injury and substantial damage and destruction to private and public property (the “2013 Flood”); and

WHEREAS, the 2013 Flood caused roads to be closed in Loveland for days and caused significant damage to private and public property within the City and surrounding areas, including substantial damage to the City’s infrastructure, particularly its streets and bridges, park and recreational areas and its utility facilities; and

WHEREAS, flooding within Loveland was particularly serious in and around the Big Thompson River and significant, long-term and costly recovery efforts will be necessary in Loveland in and around the River and other parts of Loveland; and

WHEREAS, businesses located within the City of Loveland’s growth management area and along certain parts of West U.S. 34 in Larimer County (“Local Businesses”) sustained damage and losses as a result of the 2013 Flood and the recovery of such businesses is of critical importance to the economic vitality of the community; and

WHEREAS, the Chamber, in conjunction with other non-profit groups and local businesses, has developed a business flood relief program to aid recovery of qualifying Local Businesses from the 2013 Flood (the “Business Flood Relief Program”) through direct grant assistance and the Chamber seeks monetary contributions from the City for this Business Flood Relief Program; and

WHEREAS, providing such funding is authorized under City Code Section 3.04.090 for all public purposes to the full extent authorized by the Colorado Constitution, which includes the public purposes of producing significant economic, cultural and social benefits to the citizens of Loveland; and

WHEREAS, by adoption of Resolution #R-____ on November 5, 2013, City Council made a finding that providing funds for the Business Flood Relief Program serves the public purpose of producing significant economic benefits to the citizens of Loveland, primarily in the

form of rebuilding and preserving the economic vitality of the City, jobs, and property tax revenues to the City, for the benefit of the citizens of Loveland.

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

1. Scope of Services. The Scope of Services (“Services”) to be rendered by the Chamber is set forth in **Exhibit A**, attached hereto and incorporated by reference. The Chamber agrees to perform the Services set forth in Exhibit A and warrants and represents that it has the requisite authority and capacity to perform the Services in compliance with the provisions of this Contract.

2. Responsibility of the City. The City shall designate a representative of the City to act as a liaison between the City and the Chamber during the term of this Contract. This representative shall serve as a non-voting member on the Flood Relief Program Board described in Exhibit A.

3. Grant and Payment. The City shall provide the Chamber with up to two hundred thousand dollars (\$200,000.00) for use in the Business Flood Relief Program. The Chamber shall periodically submit grant funding requests to the City for Local Businesses that have been selected by the Board for financial assistance through the Business Flood Relief Program. In no event shall any grant funding provided pursuant to this Contract exceed twenty five thousand dollars (\$25,000) per Local Business.

4. Term. The term of this Contract shall begin on the date first set forth above and end on the earlier of the Chamber’s termination of the Business Flood Relief Program or on December 31, 2015.

5. Termination and Remedies upon Default.

- a. Failure of the Chamber to comply materially with any term or condition of the Contract shall be deemed an “Event of Default.”
- b. Upon an Event of Default, the City may immediately terminate this Contract and/or seek repayment from the Chamber of any grant funds distributed in breach of the terms of this Contract. In the event this Contract is terminated, the Chamber shall return all City grant funds that have not been distributed as of the date of actual notice of termination.
- c. Upon the Chamber’s failure to timely pay any amounts that may become due under this Contract, which amounts shall include, without limitation, the costs and expenses of collection as described in Section 6 below, such amounts in default shall bear interest at the defaulting rate of eight percent (8%) per annum compounded annually from the date of default until paid in full.
- d. The City may pursue all remedies available to it under the law or in equity to collect any or all of the amounts owed to it under this Contract.

6. Expenses and Costs of Collection. If an Event of Default has occurred under this Contract and, as a result, the City pursues collection efforts through suit or otherwise, the Chamber agrees to pay all of the City's reasonable expenses and costs of collection incurred by the City in connection with any such collection efforts and/or suit, in addition to the other amounts owed under this Contract, which expenses and costs of collection shall include, without limitation, the following: collection agency fees; attorney's fees; expert witness fees; deposition costs; filing fees; the cost of mailing process, notice and other documents; the cost of serving process, notice and other documents; and copy costs.

7. Financial Records. The Chamber shall keep all records of all expenses and distributions under the Business Flood Relief Program on a generally recognized accounting basis. The City and its duly authorized representatives shall have access to all of the Chamber's books, documents, papers, and records which are directly pertinent to this Contract for the purpose of making an audit or examination. The Chamber's failure to provide the City access for its inspection of any such documents shall be deemed an Event of Default under this Contract.

8. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the progress and performance of the Business Flood Relief Program to ensure that the terms of this Contract are being satisfactorily met in accordance with the City and other applicable monitoring and evaluating criteria and standards. The Chamber shall cooperate with the City relating to such monitoring and evaluation.

9. Files and Reports. The Chamber shall retain information in its files which shall clearly document all activities performed in conjunction with this Contract including, but not limited to, distributions, other financial transactions, assurances and conformance with the provisions herein. These files shall be retained by the Chamber for a period not less than 3 years. Annual and quarterly reports shall be submitted to the City through the term of this Contract.

10. Independent Contractor. The parties agree that the Chamber shall be an independent contractor and shall not be an employee, agent, or servant of the City. Neither this Contract nor the actions of the parties hereto shall make or be construed to make the Chamber, its employees, agents, or servants the employees, agents, or servants of the City. The Chamber shall be solely and entirely responsible for its acts and the acts of its employees, agents, servants, and subcontractors. **The Chamber shall be solely responsible for providing necessary and adequate workers' compensation insurance and for withholding and paying all federal and state taxes. The Chamber and its employees are not entitled to unemployment insurance benefits through the City.**

11. Indemnification. The Chamber shall indemnify and hold harmless the City and its officers, agents, and employees from and against any and all claims, liabilities, costs, expenses, penalties, attorney's fees, and defense costs arising from the performance or nonperformance of this Contract by the Chamber, its employees, agents, servants, or subcontractors or out of any violation by the Chamber, its employees, agents, servants, or subcontractors of any law, regulation, or ordinance.

12. Assurances. The Chamber shall use the funds received from the City pursuant to

this Contract only for the purposes authorized in Exhibit A, and shall comply with all applicable federal, state and local laws.

13. Conflicts of Interest. The Chamber covenants that no member of its Board of Directors or any officer or employee presently has or shall acquire any interest that would conflict with the performance of the Services required under this Contract or by any applicable law, regulation, or ordinance.

14. Entire Agreement. This Contract contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. No statement, promise, condition, understanding, inducement, or representation, oral or written, express or implied, that is not contained herein shall be binding or valid.

15. Binding Effect. This Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

16. Governing Law and Venue. This Contract shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the parties hereto acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the City by its Charter and Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Contract. Notwithstanding any other provisions of this Contract to the contrary, in no event shall any of the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Contract shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Contract shall only be in the District Court for Larimer County, Colorado.

17. No Waiver. In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

18. Assignment. The Chamber shall not assign or transfer any or all of its interests, rights or obligations under this Contract without the prior written consent of the City. Any such assignment or transfer without the City Council's prior written consent shall be deemed null and void and of no effect.

19. Severability. If any provision of this Contract, or the application of such provision to any person, entity, or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of this Contract, or the application of such provision to persons, entities, or circumstances other than those in which it was held invalid, shall not be affected.

20. Headings. Paragraph headings used in this Contract are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Contract.

21. Notices. Written notices required under this Contract and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or 3 days after being sent by regular first class mail:

If to the City:

Betsey Hale
Economic Development Director
City of Loveland
500 East Third Street
Loveland, Colorado 80537

If to the Chamber:

Director
Loveland Chamber of Commerce
5400 Stone Creek Circle #200
Loveland, Colorado 80538

22. Multi-year Fiscal Obligation. To the extent the City’s obligations to provide the payments described in Sections 1 and 3 above and in Exhibit A may extend beyond December 31, 2013, such continuing obligation under this Agreement is considered a multi-year fiscal obligation under Article X, Section 20 of the Colorado Constitution and the City’s Charter Section 11-6 and is subject to annual appropriation by the Loveland City Council. The City shall have no obligation to make any payment sought or to be paid on or after December 31, 2013, unless the necessary appropriation has been made by the City Council to authorize such provision or payment.

23. Time is of the Essence. Time shall be of the essence for the performance of each and every obligation under this Agreement.

IN WITNESS WHEREOF, the Chamber and the City have executed this Contract as of the date first above written.

CITY OF LOVELAND

By: _____
William D. Cahill, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

LOVELAND CHAMBER OF COMMERCE, INC.

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing Recipient Contract with the Loveland Chamber of Commerce for City of Loveland Funds to Support the Business Flood Relief Program was signed and acknowledged before me this ____ day of _____ 2013, by _____
(Print Name of ABOVE Signer)

Witness my hand and official seal.

My commission expires _____.

Notary Public

EXHIBIT A SCOPE OF SERVICES

1. DESCRIPTION OF PROJECT:

The Chamber, the Loveland Development Fund, a 501(c)(3) nonprofit organization, and local business leaders from the lending community have created the Business Flood Relief Program and a Flood Relief Program Board (“Board”) to assist qualifying Local Businesses in recovering from the 2013 Flood by providing direct grant assistance.

2. QUALIFYING LOCAL BUSINESSES:

In order to qualify for assistance, Local Businesses must, among other requirements, (1) be located within the City’s Growth Management Area or be located within the City’s 80537 postal code extending to 10103 West Highway 34, (2) have been in existence at least six months prior to the 2013 Flood, (3) be in good standing with applicable tax collecting entities, (4) complete a Flood Relief Program application, (5) participate in an interview, financial discovery and a site visit, (6) be a viable business model prior to and after the 2013 Flood, and (7) be selected by the Board. Membership in the Chamber is not required in order for a Local Business to qualify for assistance under the Business Flood Relief Program.

3. FUND USES:

City grant funds provided to the Business Flood Relief Program shall only be used for distribution to qualifying Local Businesses, and shall not be used for administrative or other expenses. Funds distributed to qualifying Local Businesses shall be used for, among other things, restoration, renovation, capital equipment, and post-flood debt reduction (“Permissible Uses”). Such funds may not be used to repay debt existing prior to the 2013 Flood. The Chamber shall ensure that recipients of monetary assistance through the Business Flood Relief Program are contractually bound to use such assistance only for the Permissible Uses and to provide a written report to the Flood Relief Program accounting for such assistance. The City shall have access to such contracts and reports pursuant to Sections 7, 8, and 9 of this Contract as set forth herein.

4. GRANT AMOUNT:

The amount of assistance provided to any qualifying Local Business will be determined by the Board. Generally, the grant assistance will range from \$2,500.00 to no more than \$25,000 per Local Business. Grants are not loans and are not subject to any payback.

5. FUNDING SOURCE:

The initial funding of the Business Flood Relief Program is through the grant funds provided by this Contract. The Chamber and the Loveland Development Fund intend to raise an additional one hundred thousand dollars (\$100,000.00) for the Business Flood Relief Program. The Chamber shall be ineligible to request additional grant funding from the City for the Business Flood Relief Program, until such additional funding is raised. (Any additional grant funding shall be at the sole discretion of the Loveland City Council.) In order to reduce the administrative tracking of City grant funds for the Business Flood Relief Program, such funds shall be used first in the distribution to qualifying Local Businesses.

Business Disaster Recovery Fund

Program Description

The Loveland Chamber of Commerce and the Loveland Development Fund have partnered with The Warehouse Foundation to provide grants to businesses that were affected by the 2013 Flood. The program is also providing strategic assistance to its grantees in the form of business or financial mentors.

Disaster recovery grant terms are:

- Funds may not be used to repay debt existing prior to 2013 Flood.
- The Grants will range from \$2,500 to \$25,000.
- Application process includes site visit, interview, financial discovery and evaluation.
- Funds are to be used for Restoration, Renovation, Lost Business, Capital, and Post Flood Debt reduction.
- Applicant does not have to be a Chamber member.

Businesses that meet the following eligibility requirements can apply for a recovery grant:

- Business must reside within the City of Loveland GMA or along US 34 west of Glade Road up to the mouth of the Canyon, 10103 West Highway 34, Loveland, CO. 80537 (The Dam Store)
- In business for at least six months prior to 2013 Flood.
- In good standing with city, county and state tax collecting entities.
- A viable business model before and after 2013 Flood.

To Apply:

Mail completed and signed applications to: Loveland Chamber of Commerce – Business Disaster Recovery, 5400 Stone Creek Circle, Loveland, CO. 80538. Fax (970) 667-5211 or scan and email to info@loveland.org.

Business – Disaster Recovery Fund

Grant Application

(Please print or type)

Note: You may provide copies of SBA or other loan applications, insurance claims, or other grant applications to supply or supplement requested information

INFORMATION ABOUT YOUR BUSINESS

BUSINESS NAME: _____

PRE FLOOD BUSINESS STREET ADDRESS: _____

NEW BUSINESS STREET ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

CURRENT BUSINESS CONTACT INFORMATION OF APPLICANT:

NAME OF CONTACT: _____ TITLE: _____

BUSINESS PHONE: _____ HOME PHONE: _____

E-MAIL ADDRESS: _____

TYPE OF BUSINESS: PROPRIETORSHIP PARTNERSHIP CORPORATION

NONPROFIT ORGANIZATION OTHER _____

TAX ID#: _____ DATE OPERATIONS BEGAN: _____

HEADQUARTERS OFFICE LOCATION: _____ TYPE OF INDUSTRY: _____

NUMBER OF CURRENT EMPLOYEES: FULL-TIME _____ PART-TIME _____

NUMBER OF EMP. PRE 2013 FLOOD: FULL-TIME _____ PART-TIME _____

BUSINESS PREMISES ARE:

OWNED RENTED/LEASED MONTHLY PAYMENT: \$ _____

NAME OF LANDLORD OR PROPERTY MANAGER: _____

FISCAL YEAR END: MONTH _____ YEAR _____ ANNUAL REVENUES: \$ _____

PLEASE ATTACH THREE MOST RECENT YEARS OF FINANCIAL STATEMENTS AND TAX FILINGS AS WELL AS 2013 YEAR-TO-DATE FINANCIAL STATEMENTS AND ANY AVAILABLE PROJECTIONS.

FINANCIALS PROVIDED THROUGH WHAT DATE? _____

IF FINANCIALS NOT AVAILABLE, PLEASE EXPLAIN: _____

NAME OF INSURANCE COMPANY: _____

DATE YOU EXPECT PAYMENT FROM INSURANCE COMPANY: _____

DESCRIBE INSURANCE COVERAGE AND ANY EXPECTED RECOVERY: _____

BANK RELATIONSHIPS OF BUSINESS (List all checking, savings, investment/retirement accounts and pension plans.)

| BANK NAME | ACCOUNT TYPE | ACCOUNT NUMBER | CURRENT BALANCE |
|-----------|--------------|----------------|-----------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

PLEASE DESCRIBE HOW YOUR BUSINESS WAS AFFECTED (i.e. physical, customers, extraordinary costs, revenues, etc.)

FACILITIES DAMAGE _____

EQUIPMENT DAMAGE _____

LOST RECORDS _____

LOST MARKET _____

LOST EMPLOYEES _____

OTHER (please describe) _____

TOTAL AMOUNT REQUESTED FROM THE DISASTER RECOVERY FUND: \$ _____

ATTACH DETAILED USE OF PROCEEDS AND A PARAGRAPH DESCRIBING THE STRATEGY YOU WILL PURSUE TO REESTABLISH THE COMPANY'S VIABILITY (ie. Working capital requirements, relocation requirements, relocation expenses, equipment replacement, and other incidental costs arising from the 2013 Flood). YOU MAY WISH TO USE THE ATTACHED WORKSHEET AS A GUIDE.

ADDITIONAL INFORMATION

Are there now or have there ever been any judgments or liens against you or your business? Yes No

Are any federal, state, or local taxes delinquent? Yes No

Have you ever owned a business that has declared bankruptcy? Yes No

If you answered "Yes" to any question above, please explain: _____

Are there any debts or obligations outstanding on your business? Yes No

If "Yes," please list: _____

Is your business an endorser or guarantor for any debts not listed on this application or on your financial statements?
Yes No

If "Yes," please list: _____

REFERENCES

ACCOUNTING FIRM: _____ CONTACT: _____ # OF YEARS: _____

PHONE: _____ EMAIL: _____

LAW FIRM: _____ CONTACT: _____ # OF YEARS: _____

PHONE: _____ EMAIL: _____

BUSINESS REFERENCE* 1: _____ COMPANY: _____ RELATIONSHIP: _____

PHONE: _____ EMAIL: _____

BUSINESS REFERENCE* 2: _____ COMPANY: _____ RELATIONSHIP: _____

PHONE: _____ EMAIL: _____

BUSINESS REFERENCE* 3 _____ COMPANY: _____ RELATIONSHIP: _____

PHONE: _____ EMAIL: _____

*Business references should be current or former clients, customers, vendors, suppliers, bankers, or other business associates.

OWNERS AND OFFICERS

PLEASE LIST ALL OWNERS, OFFICERS AND PARTNERS. ATTACH SEPARATE SHEET IF NECESSARY. PLEASE ATTACH MOST RECENT PERSONAL TAX RETURNS FOR SIGNIFICANT OWNERS.

PRIMARY OWNER/APPLICANT NAME _____ TITLE _____

PRIMARY OWNER'S DATE OF BIRTH: ___/___/___ % OWNERSHIP _____

HOME ADDRESS _____

CITY, STATE, ZIP CODE : _____ SOCIAL SECURITY #: _____

ANNUAL SALARY \$ _____

NET WORTH: LIQUID ASSETS \$ _____ HOME \$ _____ OTHER ASSETS \$ _____

HOME MORTGAGE BALANCE: _____

OWNER/APPLICANT NAME _____ TITLE _____

HOME ADDRESS _____

CITY, STATE, ZIP CODE : _____ SOCIAL SECURITY #: _____

ANNUAL SALARY \$ _____

% OWNERSHIP _____

NET WORTH: LIQUID ASSETS \$ _____ HOME \$ _____ OTHER ASSETS \$ _____

HOME MORTGAGE BALANCE: _____

OWNER/APPLICANT NAME _____ TITLE _____

HOME ADDRESS _____

CITY: _____ STATE: _____ ZIP CODE: _____

SOCIAL SECURITY # _____ ANNUAL SALARY \$ _____

% OWNERSHIP _____

NET WORTH: LIQUID ASSETS \$ _____ HOME \$ _____ OTHER ASSETS \$ _____

HOME MORTGAGE BALANCE \$ _____

SIGNATURES

I certify to the truth of my statements above and **authorize the Disaster Recovery Advisory Board to obtain personal and/or business credit/legal/criminal reports and other public record of information in connection with this application, as well as any update, renewal, or extension thereof.** Additional information may be requested by the Advisory Board for further processing when I apply on this form. I also authorize the Advisory Board to verify with others information contained in this application. My signature is binding on me and the business named above.

I and my agents, servants, employees and attorneys unconditionally and irrevocably agree to indemnify, release and hold harmless the Loveland Chamber of Commerce, Loveland Development Fund, the City of Loveland, Warehouse Foundation (Disaster Recovery Advisory Board) and its directors, staff, volunteers, counselors, agents, employees, accountants and attorneys, against and from any and all losses, claims, damages, liabilities, suits, actions, proceedings, and expenses, including reasonable costs of investigation and counsel fees and disbursements, which may arise from any of my activities funded by the Grant.

BUSINESS NAME (Please print): _____

OWNER APPLICANT(S):

SIGNATURE _____ PRINT _____ DATE _____

SIGNATURE _____ PRINT _____ DATE _____

SIGNATURE _____ PRINT _____ DATE _____

NON-OWNER APPLICANT:

SIGNATURE _____ PRINT _____ DATE _____

Use of Grant Proceeds Worksheet

Business: _____

Estimated cash required

Total amount

Description

(Provide detailed per-employee, per-square ft, per-month calculations as appropriate.)

| | | |
|---|----------|--|
| Facilities | | |
| Buildout / repair space | | |
| Relocation costs | | |
| Equipment | | |
| Computer equipment and network | | |
| Office equipment (fax, copier, etc.) | | |
| Telephone and voicemail | | |
| Furniture | | |
| Other capital expense | | |
| Working capital | | |
| Clean up costs | | |
| Supplies | | |
| Other one-time expenses | | |
| Operating losses due to reduced or lost revenue | | |
| Total estimated cash required | A | |

Less: Other available funding sources

| | | |
|---|----------|--|
| Insurance proceeds | | |
| SBA / Other loans | | |
| Available / excess working capital | | |
| Owner contributions / available personal assets | | |
| Contributed of goods / services | | |
| Other | | |
| Total other available funding sources | B | |

(Attach additional pages as needed)

Net cash requirement

A - B

Requested from the Disaster Recovery Fund

Describe the strategy you will pursue to reestablish the company's viability

Disaster Recovery Fund Advisory Board Site Visit and Interview Questions for Evaluators

Business overview

- Describe your business.
- What is the history of your business (date started, ownership, etc.)?
- How did Flood disaster impact the business specifically?
- What products / services do you offer and how do you charge for them?
- Where are all of your facilities located and how have they been affected?

Customers / Revenue

- Describe your customer base, now and pre Flood 2013.
- How many customers do you have? How concentrated are they (i.e., how big is your biggest customer? How big are your five biggest customers?)
- How will you get new customers, where are they and how long will it take?
- What were your revenues (current, pre-Flood, past year, trend) and nature (recurring, one-time, contract) for 2011, 2012 and 2013?

Staff

- Describe your staff, current and pre-Flood and their status (i.e., left, leaving, staying, looking...).
- How many full time and part employees? How many professional / technical staff and administrative staff? What are average salaries for each category?
- How long will it take to recruit new staff? Where and how can you find the staff you need for the next 12 and 24 months?

Profitability

- Describe your profitability.
- How big does a project or customer need to be in order to be profitable? At what sales level do you reach breakeven?
- What factors underlie the trends in operating results for 2011, 2012 and 2013?

Forecast

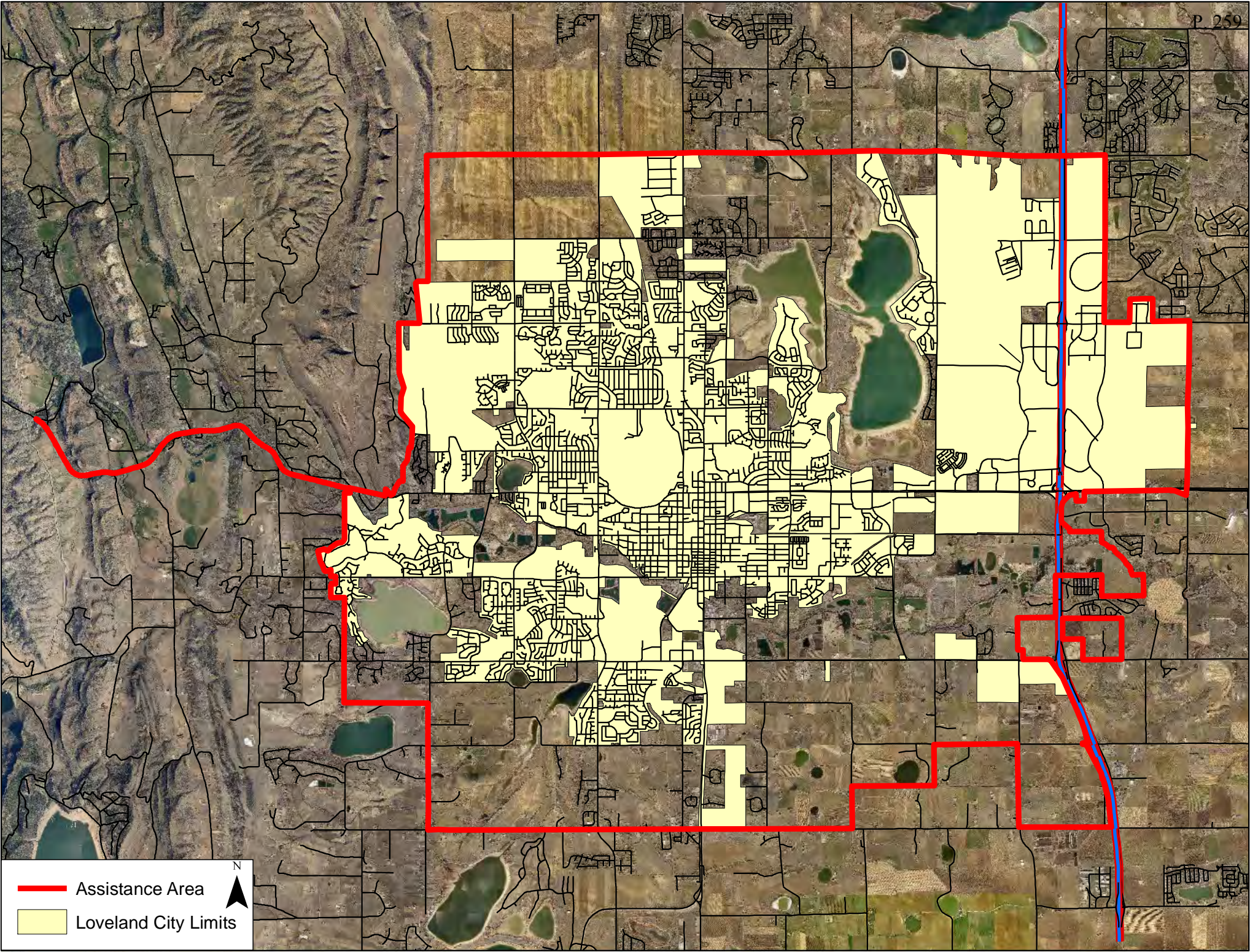
- What is your forecast for the future?
- What is your estimated sales volume for the rest of 2013, for 2014, 2015 and 2016? When will you be cash flow positive?
- What is your growth strategy going forward?

Financing / operational needs

- How much financing is needed for the next 12 - 24 months to remain operational and what specifically will you spend it on? (e.g., replace destroyed, uninsured equipment; cover additional costs to clean up / recover; lost revenue not available to cover operating costs immediately after Flood, etc.)
- Has the business applied for a loan, grant and the status of such applications?
- Other help needed or obtained (relocation, equipment, etc.)?
- What does the business need most urgently?

Other

- Verify accuracy of information submitted with the Application.
- Obtain additional information required to evaluate and for Advisory Board memo.



— Assistance Area

— Loveland City Limits





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

AGENDA ITEM: 17
MEETING DATE: 11/5/2013
TO: City Council
FROM: Greg George, Department Services
PRESENTER: Karl Barton, Community & Strategic Planning

TITLE:

A Resolution of the Loveland City Council Adopting the Intergovernmental Agreement Between the City of Loveland and Town of Johnstown

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and 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

SUMMARY:

This is an administrative action to adopt a resolution approving the Intergovernmental Agreement (IGA) between the City of Loveland and the Town of Johnstown. The agreement defines the Overlap Area and establishes a cooperative process to be used by the two municipalities when processing annexation applications from property owners located in the Overlap Area. The Overlap Area would remain within the Growth Management Areas of both communities.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

The intent of the IGA is to facilitate collaboration and cooperation between Loveland and Johnstown when considering annexation requests from owners of property in the Overlap Area, with the goal being to promote harmonious land uses and the provision of efficient utility

services. The IGA establishes a process of meetings between Loveland, Johnstown, and the annexation applicant for the purpose of determining where it makes the most sense for a property to annex into and if any annexation conditions should be established. The Overlap Area would be generally the area on the west side of I-25, extending west to County Road 7, and north from State Highway 60, for approximately 1.5 miles (see Attachment C). The agreement establishes only a cooperative arrangement agreed to by both municipalities and in no way infringes on the authorities granted either municipality to annex land pursuant to Colorado States Statutes or the rights' of land owners to submit a petition to annex to either municipality. There is language in the IGA that provides an opportunity for the two municipalities to cooperate on other planning efforts in the Overlap Area.

Staff held an open house for property owner's affected by the IGA on June 13, 2013 at RV America. Four property owners attended. The Planning Commission considered the IGA and adjustments to the Loveland Growth Management Area boundary on July 8, 2013 and unanimously recommended that City Council approve both. On July 24, 2013, the Johnstown Planning & Zoning Board considered the IGA and recommended approval to their Town Council, which is scheduled to consider the IGA on either November 18 or December 2, 2013.

Please note that Planning Commission Staff Report also contains discussion of an amendment to Loveland's Growth Management Area boundary that is a companion to an amendment to Johnstown's GMA boundary. Together, these amendments will eliminate all overlap of the two GMAs except for the Overlap Area as defined in the IGA. The amendment to Loveland's GMA is tentatively scheduled for Council on December 3, 2013. Johnstown's GMA amendment is scheduled to go to their Planning Commission on November 20, 2013.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Resolution with Agreement (listed as Exhibit A)
2. City Council Staff Memo
3. Planning Commission Staff Report, including attachments
4. Intergovernmental Agreement
5. Power Point Presentation
6. Planning Commission Minutes, dated July 8, 2013

RESOLUTION #R-95-2013**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND, COLORADO AND THE TOWN OF JOHNSTOWN, COLORADO FOR GROWTH MANAGEMENT**

WHEREAS, the management of growth is important to ensure that the benefits are realized and the negative consequences are minimized;

WHEREAS, changes that accompany growth and development in one community necessarily have impacts on adjacent communities;

WHEREAS, when nearby (adjacent) communities cooperate in the planning of urban growth there are benefits in the more efficient provision of public services to both communities for harmonizing land use arrangements;

WHEREAS, the geographical area covered by the Intergovernmental Agreement for Growth Management by and between the City of Loveland and Town of Johnstown attached is hereto as **Exhibit A** and incorporated herein by reference (the "IGA") is likely to face growth and development pressure due to its location in proximity to a major transportation corridor and planned future development by both Johnstown and Loveland;

WHEREAS, the geographical area covered by the IGA is located within the growth management areas of both Loveland and Johnstown;

WHEREAS, growth management areas allow municipalities, landowners, community residents and developers to prepare for growth by signaling that a municipality is willing and preparing to extend urban level services;

WHEREAS, future land use plans benefit municipalities, landowners, community residents and developers by providing a framework for decision making related to future growth and development;

WHEREAS, future land use plans benefit landowners by providing options for the long-term use of their property and it is the goal of the IGA to provide land owners with options regarding into which municipality they will annex;

WHEREAS, cooperation between municipalities in the planning of utilities and infrastructure can create efficiencies and reduce costs;

WHEREAS, pursuant to state law, local jurisdictions are authorized to: regulate the location of activities and developments; phase development of services and facilities; regulate development on the basis of its impact on the community or surrounding areas; plan for and

regulate the use of land so as to provide for planned and orderly use of land and protection of the environment; and to cooperate or contract with other units of government for the purpose of planning and regulating the development of land including but not limited to, the joint exercise of planning, zoning, subdivision, building; and related regulations and annexations of property, all in a manner consistent with constitutional rights and statutory procedures;

WHEREAS, as governmental entities in Colorado, the City of Loveland and Town of Johnstown 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 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.

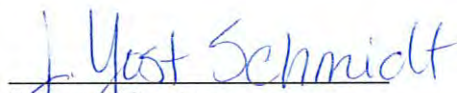
ADOPTED this ___ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A

**Intergovernmental Agreement for Growth Management
by and between
The City of Loveland and Town of Johnstown**

This Intergovernmental Agreement for Growth Management (“Agreement”) is entered into as of the ___ day of _____, 2013, by and between the City of Loveland, Colorado, a home rule municipality (“**Loveland**”) and the Town of Johnson, Colorado, a home rule municipality (“**Johnstown**”).

RECITALS

WHEREAS, the management of growth is important to ensure that the benefits are realized and the negative consequences are minimized;

WHEREAS, changes that accompany growth and development in one community necessarily have impacts on adjacent communities;

WHEREAS, when nearby (adjacent) communities cooperate in the planning of urban growth there are benefits in the more efficient provision of public services to both communities for harmonizing land use arrangements;

WHEREAS, the geographical area covered by this Agreement is likely to face growth and development pressure due to its location in proximity to a major transportation corridor and planned future development by both Johnstown and Loveland;

WHEREAS, the geographical area covered by this Agreement is located within the growth management areas of both Loveland and Johnstown;

WHEREAS, growth management areas allow municipalities, landowners, community residents and developers to prepare for growth by signaling that a municipality is willing and preparing to extend urban level services;

WHEREAS, future land use plans benefit municipalities, landowners, community residents and developers by providing a framework for decision making related to future growth and development;

WHEREAS, future land use plans benefit landowners by providing options for the long-term use of their property and it is the goal of this agreement to provide land owners with options regarding into which municipality they will annex;

WHEREAS, cooperation between municipalities in the planning of utilities and infrastructure can create efficiencies and reduce costs;

WHEREAS, the goals of this intergovernmental agreement are to:

- Implement the Comprehensive Plans and Future Land Use Plans of the City of Loveland and Town of Johnstown;
- Establish effective means of joint planning and management of urbanization within the Overlap Area of the Growth Management Areas of the City of Loveland and Town of Johnstown (as hereinafter defined);
- Establish procedures for the processing of development applications for annexation and zoning in the Overlap Area including rules for the referral of applications between municipalities and the facilitation of meeting between municipalities and landowners / applicants;
- Provide a mechanism for cooperation and coordination between the Loveland and Johnstown in the arenas of land use and infrastructure planning;
- Establish programs designed to provide benefit to both Loveland and Johnstown when property is annexed into either municipality; and
- Prevent annexation conflicts between Loveland and Johnstown;

WHEREAS, pursuant to state law, local jurisdictions are authorized to: regulate the location of activities and developments; phase development of services and facilities; regulate development on the basis of its impact on the community or surrounding areas; plan for and regulate the use of land so as to provide for planned and orderly use of land and protection of the environment; and to cooperate or contract with other units of government for the purpose of planning and regulating the development of land including but not limited to, the joint exercise of planning, zoning, subdivision, building; and related regulations and annexations of property, all in a manner consistent with constitutional rights and statutory procedures;

WHEREAS, planning and regulation of land use within the northern Colorado region is the responsibility of local jurisdictions; and

WHEREAS, any provisions in this Agreement may be implemented only to the extent legally permitted by Colorado law.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and obligations set forth herein, the parties agree as follows:

1.0 Definitions

As used herein, the following words, terms, and phrases shall be given the following meanings:

Annexation: Annexation means the incorporation of a land area into an existing municipality with a resulting change in the boundaries of that municipality.

Overlap Area: The area where the Loveland and Johnstown GMAs overlap, which is depicted on **Map 1** attached hereto and incorporated herein by reference, and which is bounded on the east by the I-25 right of way, on the south by the Colorado Highway 60 right of way, on the west by the Larimer County Road 7 right of way, and on the north by the north line of the parcel described as Bounded on the east by the right-of-way of I-25, on the south by the right-of-way of Colorado State Highway 60, on the west

by the right-of-way of Larimer County Road 7 and having its north boundary as the north lot line of the parcel described as:

PAR LOC NW 27-5-68; COM AT W 1/4 COR SEC 27-5-68; TH S 89 51' 50" E 30 FT TPOB; N 00 02' 18" W 442.45 FT; TH N 89 40' 58" E 3243.65 FT; S 23 41' 05" E 511.7 FT; TH N 89 51' 50" W 852.47 FT; TH N 89 51' 50" W 2596.39 FT TPOB (PER 98004450)

as such parcel exists on the date of this Agreement.

Community Influence Area: Areas of unincorporated Larimer County near Loveland and Johnstown beyond their respective GMAs for which Loveland and/or Johnstown have an interest in future development proposals due to the potential impact upon the respective municipalities as the result of development.

Growth Management Area or GMA: Area adjacent to Johnstown and Loveland the boundaries of which are depicted on **Maps 2 and 3**, respectively, attached hereto and incorporated by reference, into which urban development and annexation shall be directed and within which urban level services to support urban development will be needed.

Larimer County Growth Management Area Overlay Zoning District: The overlay zoning district applied by Larimer County to municipal GMAs to implement the standards and requirements of intergovernmental agreements (Larimer County Land Use Code Chapter 4.2.1), as it may be amended from time to time.

Loveland Comprehensive Plan: The City of Loveland 2005 Comprehensive Plan and the City of Loveland 2005 Comprehensive Plan - 2011 Implementation Plan, as both Plans may be amended from time to time, including all elements, functional (departmental) components, and area plans, as adopted and as they may be amended from time to time by the City of Loveland, Colorado, pursuant to Title 31, Article 23 of the Colorado Revised Statutes and pursuant to the City's Charter and Code, all of which provide authority for the City to make and adopt a long-range master plan for the physical development of the City, including any areas outside its boundaries.

Johnstown Comprehensive Plan: The Town of Johnstown's 2006 Area Comprehensive Plan, as may be amended from time to time, as authorized by Title 31, Article 23 of the Colorado Revised Statutes and the Town's Charter and Municipal Code.

Utilities and Infrastructure: Public facilities required for the development of property at an urban level, including, but not limited to, roads, streets, sidewalks, bike lanes, water, sewer, and stormwater drainage facilities, and open space networks.

2.0 Delineation of Overlap Area where the IGA applies (Map)

This Agreement addresses and shall be applied to the Overlap Area, the boundaries of which are depicted on **Map 1** attached hereto and incorporated herein by this reference. The Overlap

Area reflects a portion of the land included in both the Loveland GMA and the Johnstown GMA as of the date of this Agreement.

3.0 Amendments to City of Loveland and Johnstown Comprehensive Plans

Loveland and Johnstown may amend land use designations in their respective Comprehensive Plans at their sole discretion

4.0 Amendments to Growth Management Area Boundaries

Loveland and Johnstown shall provide notice to and meet with the other municipality to discuss any proposal to extend their Growth Management Area into an area within the Growth Management Area of the other municipality.

Nothing in this Agreement shall prevent either municipality from modifying their Growth Management Area boundaries as they see fit.

5.0 Relationship between Intergovernmental Agreement and Other Plans

5.1. Loveland Comprehensive Plan and Future Land Use Plan

The Loveland Comprehensive Plan and Future Land Use Plan will be the plan that guides land use decisions for any property annexed into the City of Loveland

5.2 Johnstown Comprehensive Plan and Future land Use Plan

The Johnstown Comprehensive Plan and Future Land Use Plan will be the plan that guides land use decisions for any property annexed into the Town of Johnstown

5.3 Larimer County Master Plan

The Larimer County Master Plan and Larimer County Land Use Code will continue to guide land use decisions for properties in unincorporated Larimer County.

5.4 Relationship to Other Plans

This Agreement is intended to further the goals of Loveland and Johnstown Comprehensive Plans and is not intended to conflict with any other plans.

6.0 Growth Management Area Overlay Zoning District

The municipalities agree to work with Larimer County to establish a Growth Management Overlay Zoning District on the properties located within the Overlap Area

7.0 Process for Annexations within Overlap Area

7.1 Process Initiation

The process set forth in this Section 7 shall be initiated by each municipality giving notice to the other municipality within seven (7) days after receipt of an inquiry regarding annexation of property within the Overlap Area that appears likely to proceed to a petition for annexation. If no such inquiry is received prior to receipt of a petition, each municipality shall initiate this process by notice to the other municipality within seven (7) days after receipt of an annexation petition for annexation of property within the Overlap Area. Notice initiating the process set forth in this Section 7 shall be given in writing and shall include such information, including but not limited to a copy of the petition for annexation, as the notifying municipality may have regarding the potential annexation (the “Initiating Notice”).

7.2 Meetings between Municipalities

Loveland and Johnstown shall meet to discuss such an annexation proposal in an effort to agree upon which municipality it would make the most sense for the property to annex into considering factors including but not limited to previous annexations, access, and land owner plans. The meeting shall be initiated by staff of the municipality receiving the inquiry or petition for annexation. At least one meeting shall include the Loveland Director of Development Services or his designee and Johnstown Town Planner. This meeting shall occur no later than thirty (30) days from the date of the Initiating Notice.

7.3 Three-Way Meetings

Loveland and Johnstown shall provide an opportunity to the applicant / property owner who made the inquiry or filed the petition (“Applicant”) to meet and discuss the annexation and development proposal with the two municipalities jointly. If, notwithstanding reasonable efforts by the municipalities to facilitate and schedule such a meeting, the Applicant does not participate in the meeting with Loveland and Johnstown within sixty (60) days after the Initiating Notice, the municipalities may proceed to implement their agreement as to which municipality should annex the property within the Overlap Area in question.

7.4 Further Annexation Proceedings and Opportunity for Municipality Comment

Loveland and Johnstown shall complete the process set forth in this Section 7, including the meetings contemplated in Sections 7.2 and 7.3 above, with respect to a petition seeking annexation of property within the Overlap Area prior to scheduling for consideration by their respective governing bodies a resolution determining substantial compliance of an annexation petition as required by C.R.S. §31-12-107(1)(f) and setting

the date, time and place of a public hearing on the proposed annexation as required by C.R.S. §31-12-108(1), under the Colorado Municipal Annexation Act (C.R.S. §31-12-101 et. seq) (the “Act”). Prior to holding any public hearings regarding a petition for annexation of property in the Overlap Area and after completing the notification and meeting processes set forth in this Section 7, the municipality in receipt of a petition for annexation of property in the Overlap Area shall provide the other municipality with written notice of the date, time and place of the public hearing on the proposed annexation and the other municipality shall have an opportunity provide written comments on the petition prior to the scheduled public hearing.

7.5 Annexation Agreements

The municipality annexing property in the Overlap Area shall, in good faith, consider placing any applicable conditions generated through the municipality comment process detailed in Section 7.4 into any annexation agreements adopted.

7.6 Final Approval Authority

The municipality receiving an annexation and zoning application has the final authority on whether or not to approve the application and annex the property. Nothing in this Agreement shall prohibit a municipality from annexing property at its discretion in accordance with State law.

8.0 Rights and Responsibilities of Municipalities and Property Owners

8.1 Decision to Pursue Annexation

The decision to apply for annexation and zoning shall rest solely with the property owner.

8.2 Ultimate Approval Authority for Annexation and Development Applications

The municipality receiving and processing an application for annexation and zoning has the sole discretion as to whether or not to approve the application.

8.3 Amendment of IGA

Either party may request amendment of this Agreement. No amendment of this Agreement shall be effective unless such amendment is set forth in writing, approved by the Loveland City Council and Johnstown Town Council and signed by the authorized representative of both municipalities.

9.0 Collaborative Planning Efforts

In order to achieve both the goals and purposes of this Agreement, as well as the region's broader planning goals, Loveland and Johnstown agree to participate in cooperative and regional planning efforts with other agencies in the region.

9.1 Further Planning Efforts in the Overlap Area and SH 402 Corridor

Within the Overlap Area, the municipalities agree to cooperate with each other on any planning efforts, including but not limited to, future land use plan amendments, zoning code amendments specific to the Overlap Area, transportation planning, and design guidelines.

The municipalities agree to cooperate with each other in planning efforts in the State Highway 402 Corridor.

9.2 Infrastructure

The municipalities agree to cooperate with each other and all other infrastructure providers in the planning of infrastructure in the Overlap Area with the goal of avoiding unnecessary duplication and providing services to current and future residents and businesses with the greatest level of efficiency, service efficacy, and cost savings possible.

9.3 Preserve Development Opportunities

The municipalities agree to cooperate in the consideration of ways to preserve development opportunities in the Overlap Area in accordance with their respective Comprehensive Plans.

10.0 Implementation of Agreement

10.1 Amendment of Codes and Plans

Each municipality shall initiate amendments to their respective plans, policies, procedures, and codes necessary to implement the terms and provisions of this Agreement within three hundred and sixty – five (365) days of the adoption of the Agreement.

10.2 Inform and Train Employees

The parties will notify newly elected officials, new managers, and key staff of the existence of this Agreement and conduct any necessary training to ensure it is implemented

11.0 Term and Termination

11.1 Term

This Agreement shall remain in force and effect for a period of ten (10) years from the date of its execution, subject to any earlier termination as may result from the provisions of Section 11.2 below. At the end of ten (10) years from the date of its execution, and on each five-year anniversary thereafter, the term of the Agreement shall be automatically extended for five years beyond its then stated expiration date, unless at least three hundred and sixty-five days (365) days prior to any five year anniversary, either party notifies the other in writing of its intention that the Agreement shall not be extended beyond its then stated expiration date.

11.2 Termination

Either party may terminate this Agreement for any reason and at any time upon three hundred and sixty-five (365) days written notice to other party. Prior to exercising any termination permitted by this Agreement, the governing body of the party seeking termination shall meet, in good faith, with governing body of non-terminating party in an attempt to resolve or explain the reasons for termination.

12.0 General Provisions

12.1 Amendment of Agreement

Either party may request an amendment of this Agreement at any time. Such request shall be in writing to the other party, and shall be considered without unreasonable delay and within no more than sixty (60) days of receipt.

12.2 Notice

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail, return receipt requested, postage and fees prepaid, addressed to the party to whom such notice is to be given at the addresses set forth below or at such other address as has been previously furnished in writing to the other party. Such notice shall be deemed given three (3) days after so deposited in the United States mail.

If to Loveland: City Manager
City of Loveland
500 E. Third Street, Suite 330
Loveland, Colorado 80537

With a copy to: City Attorney
City of Loveland
500 E. Third Street, Suite 300
Loveland, Colorado 80537

If to Johnstown:

With a copy to:

12.3 Application and Interpretation of Other Provisions

Whenever a provision of Loveland's Zoning Code or the Johnstown's Land Use Code are inconsistent with a specific provision of this Agreement, the party with the inconsistent code shall evaluate its regulations and initiate the process to amend its codes to be consistent with this Agreement and/or negotiate in good faith with the other party to amend this Agreement to be consistent with the applicable code and/or any amendment to the code. However, the decision of Loveland or Johnstown to so amend its code or to agree to amend this Agreement shall remain subject to the sole discretion of Loveland's and Johnstown's respective councils.

12.4 Exhibits or Maps

Exhibits and maps referred to in this Agreement are incorporated herein for all purposes.

12.5 Captions

The captions of the paragraphs are set forth herein only for the convenience of reference by the parties and are not intended in any way to define, limit or proscribe the scope or intent of this Agreement.

12.6 Additional Documents or Action

The parties may execute any additional documents or take any additional action reasonably necessary to carry out this Agreement.

12.7 Waiver of Breach

A waiver by any party to this Agreement of the breach of any term or provision of the Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

12.8 No Third Party Beneficiaries

Any enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Loveland and Johnstown, and nothing contained in this Agreement shall give to or allow any such claim or right of action by any other third person. It is the express intention of the parties that there shall be no third party beneficiaries of this Agreement and any person or entity other than Loveland and Johnstown receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

12.9 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 Loveland and Johnstown by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the Loveland and Johnstown by their respective charters and municipal codes, 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.

13.0 Maps and Exhibits

Map 1 Overlap Area map

Map 2 Johnstown Land Use Plan (showing growth management area)

Map 3 Loveland Land Use Plan (showing growth management area)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

CITY OF LOVELAND, COLORADO

By: _____

William D. Cahill, City Manager

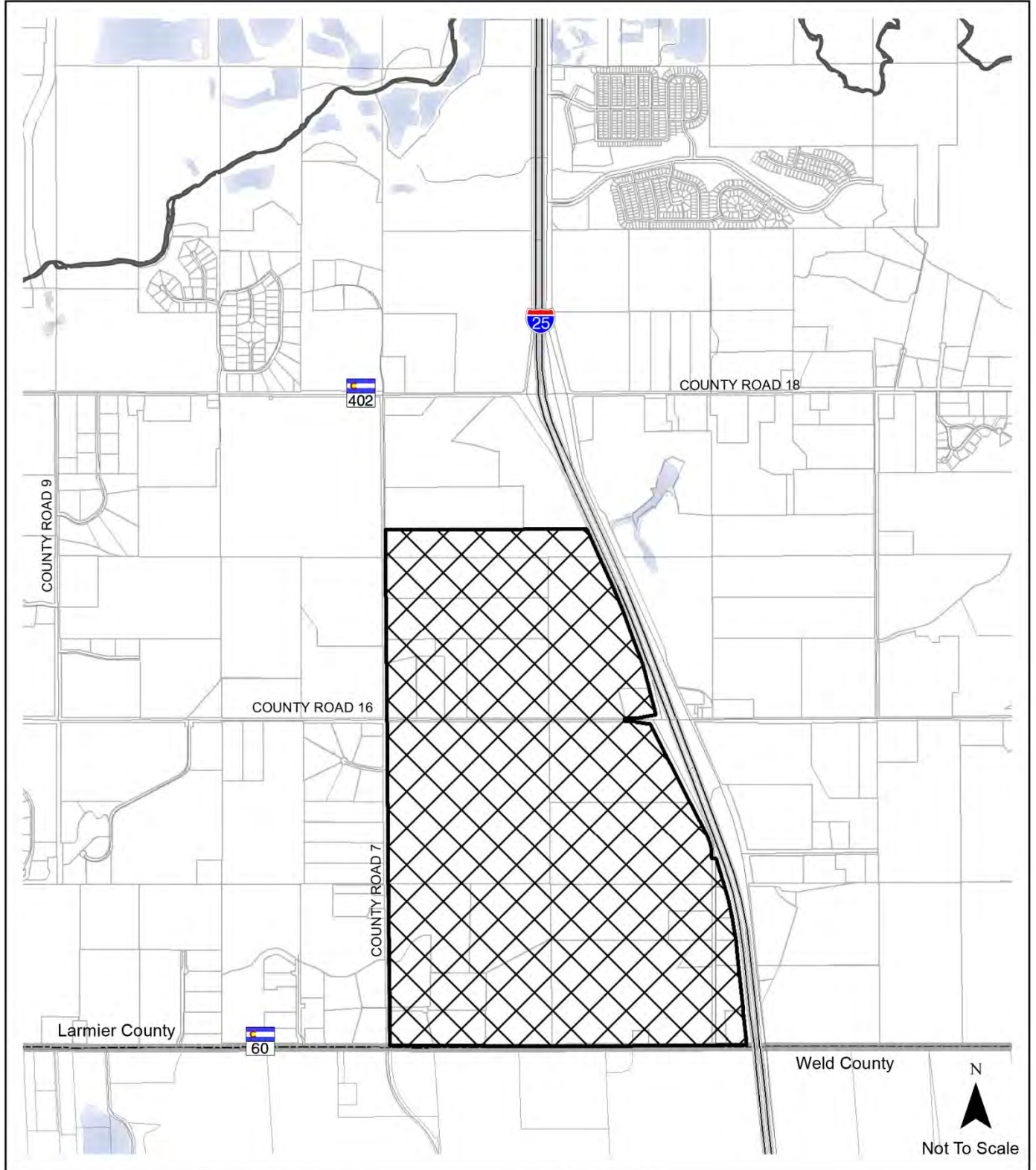
ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney






INSERT SIGNATURE PAGE FOR TOWN OF JOHNSTOWN

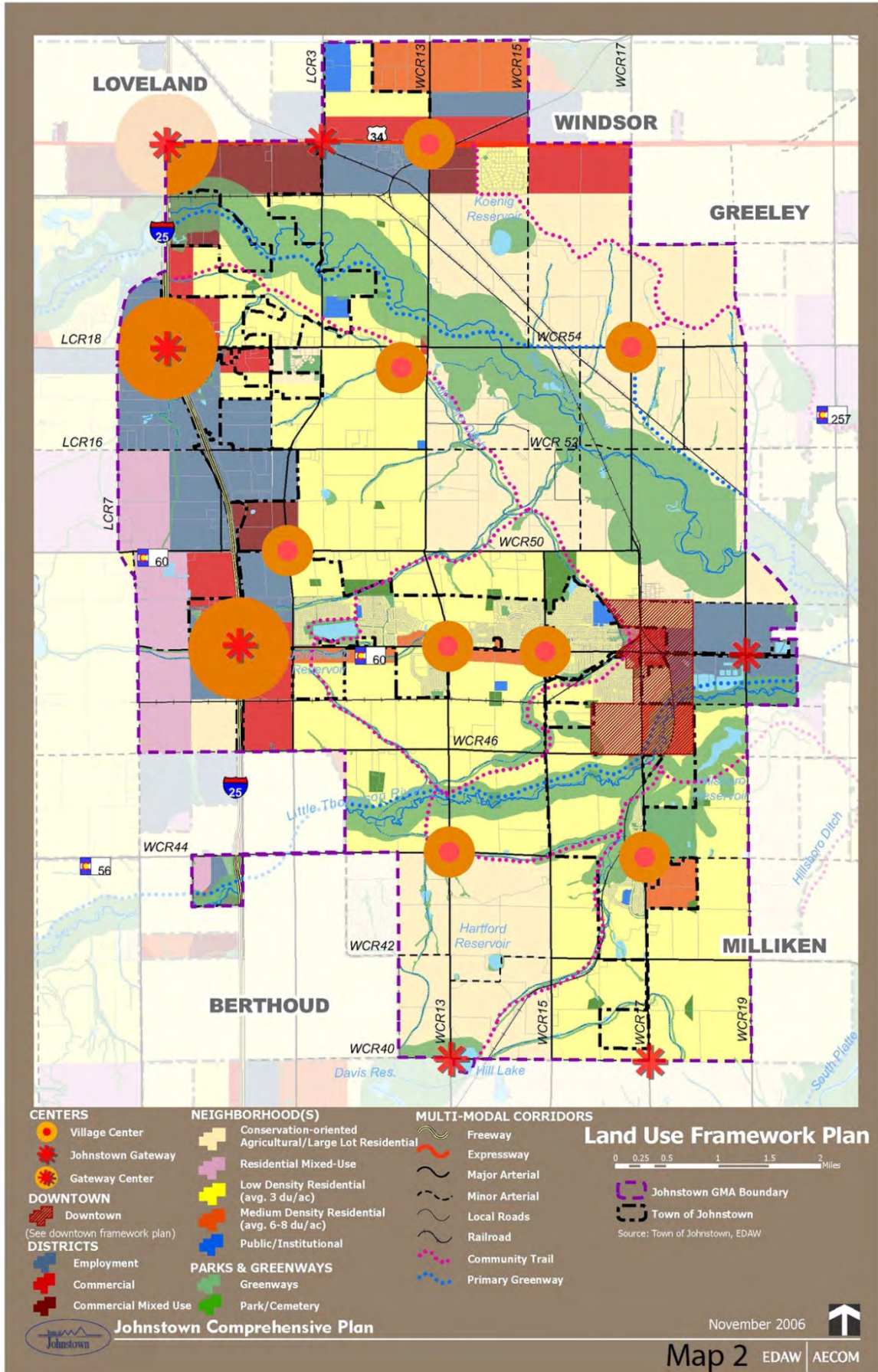


Overlap Area

MAP 1

Legend

-  Overlap Area
-  Big Thompson River
-  Lakes and Ponds
-  County Boundary
-  Parcels





Community & Strategic Planning

500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2607 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

Memorandum

To: Loveland City Council

From: Karl Barton, Community & Strategic Planning

Date: November 5, 2013

RE: Importance of Intergovernmental Agreement between Loveland and Johnstown

The Intergovernmental Agreement between Loveland and Johnstown is a critical part of a three phase planning project with the eventual goal being to give the City of Loveland the legal ability to have some control over development in the southeast quadrant of its Growth Management Area (GMA), which contains the State Highway 402 corridor as well as significant I-25 frontage.

Because of the conflicts between Loveland and Johnstown regarding their GMA boundaries, Larimer County has not been willing to consider extending their Loveland Growth Management Area Overlay Zoning District to include the southeast quadrant of Loveland's GMA. Without this Overlay Zoning District in place, the IGA between Loveland and Larimer County is not in effect. This means that Larimer County is able to rezone property to allow for new development without Loveland having an opportunity to annex the property.

The proposed IGA represents a new level of agreement and cooperation between Loveland and Johnstown that will go a long way towards convincing Larimer County that the conflict between the two communities has been resolved. The amendment to the GMA boundaries will be before City Council for consideration soon, and is the next important piece of this project.

With our conflicts with Johnstown resolved, we will be able to confidently approach Larimer County to reopen the conversation about extending the Overlay Zoning District. Without the Overlay Zoning District in place the future development along Loveland's southeast gateway may end up occurring with minimal input from the City.

Development Services Current Planning

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



Planning Commission Staff Report

July 8, 2013

Agenda #: Regular Agenda - ?

Title: Intergovernmental Agreement with the Town of Johnstown *and*

Comprehensive Plan Future Land Use Plan Growth Management Area Boundary Amendment

Applicant: City of Loveland

Request: Consideration of Resolutions concerning an Intergovernmental Agreement and a City of Loveland Future Land Use Plan Amendment

Location: Generally the southeast quadrant of Loveland's Growth Management Area, north from State Highway 60 up to the Big Thompson River on both sides of I-25.

Staff Planner: Karl Barton

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

Recommended Motions: Move to make the findings listed in Section VII of this Planning Commission staff report dated July 8, 2013 and, based on those findings, adopt A MOTION RECOMMENDING THAT CITY COUNCIL ADOPT THE PROPOSED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND AND TOWN OF JOHNSTOWN

and
A MOTION RECOMMENDING THAT CITY COUNCIL AMEND THE CITY OF LOVELAND "2005 COMPREHENSIVE PLAN" BY THE AMENDMENT OF SECTION 4.7 – FUTURE LAND USE PLAN MAP AS NEEDED FOR THE ANTICIPATED INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF JOHNSTOWN AND AS PROPOSED TO "CLEAN UP" LOVELAND'S GMA BOUNDARIES

Summary of Analysis

This is a public hearing to consider two separate but related items that are part of a larger strategy of cooperation with the Town of Johnstown in the handling of annexation and planning matters in the area where the two communities are adjacent.

First, an Intergovernmental Agreement (IGA) between the City of Loveland and Town of Johnstown. This IGA establishes a process for cooperation between the two municipalities when processing annexations in an area (referred to as the Overlap Area) generally -being bounded by I-25 on the east, Larimer County Road 7 on the west and State Highway 60 on the south, extending north for approximately one and one half miles and defined in the IGA as the Overlap Area. Please see Figure 1 for a depiction.

Second, an amendment to Loveland's Growth Management Area boundaries so as to remove certain properties located on the west and east sides of I-25, north of State Highway 402 and primarily south of the Big Thompson River. This amendment is being proposed as a clean-up of the GMA boundaries as it is unlikely that Loveland would be able to annex or serve any of the property being removed from the GMA. Please see Figures 2 and 3 for a depiction.

Figure 1
Depiction of Overlap Area

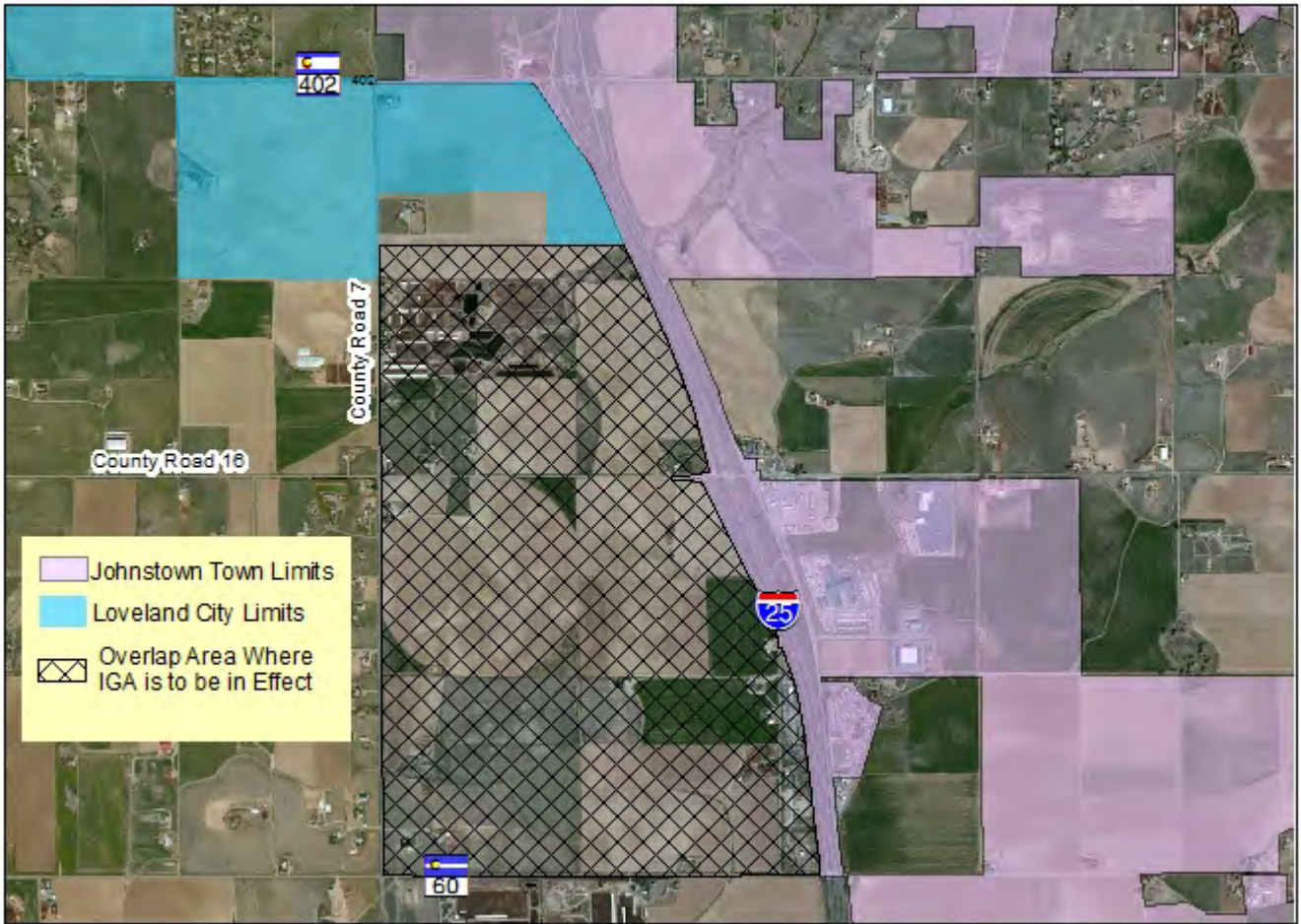


Figure 2

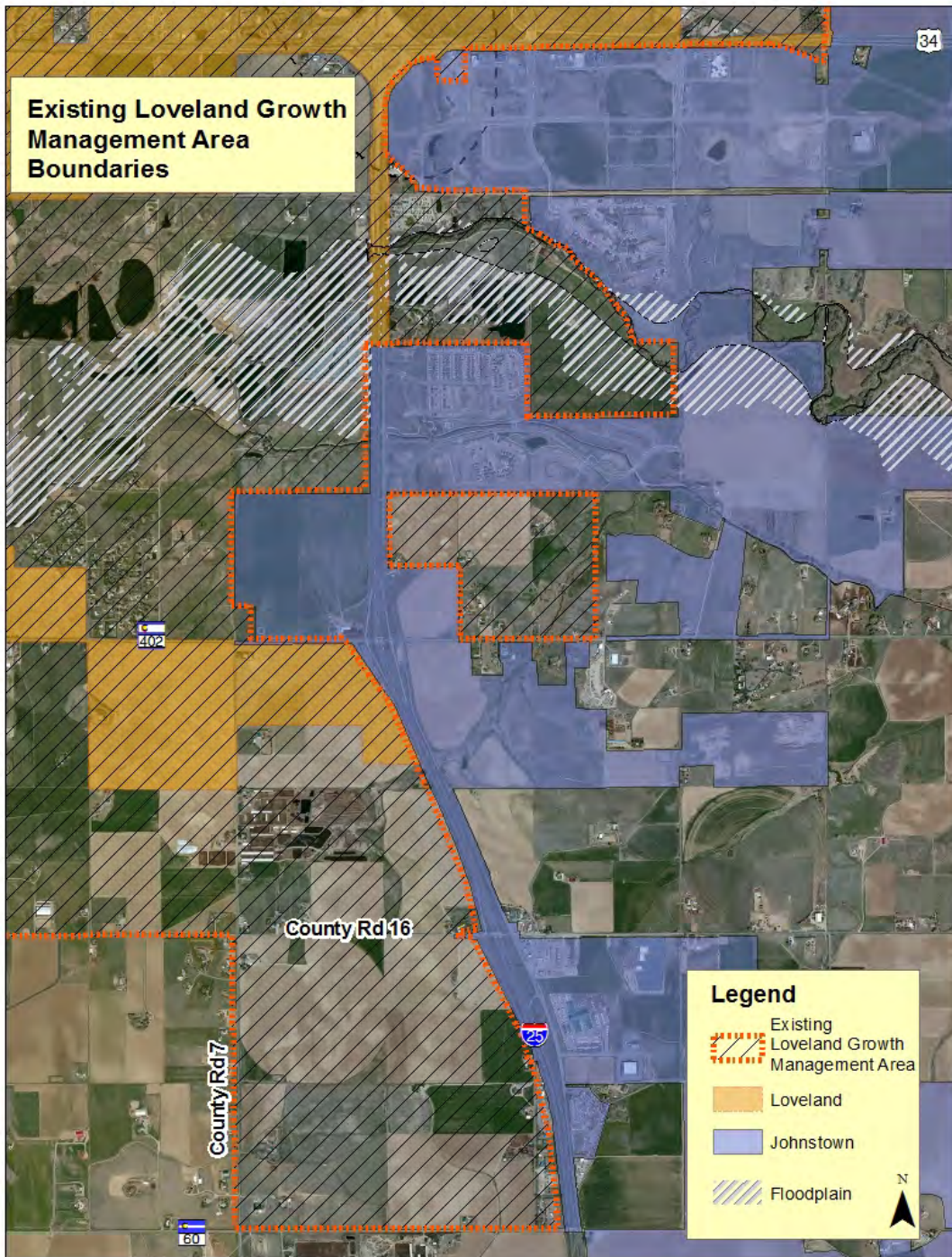
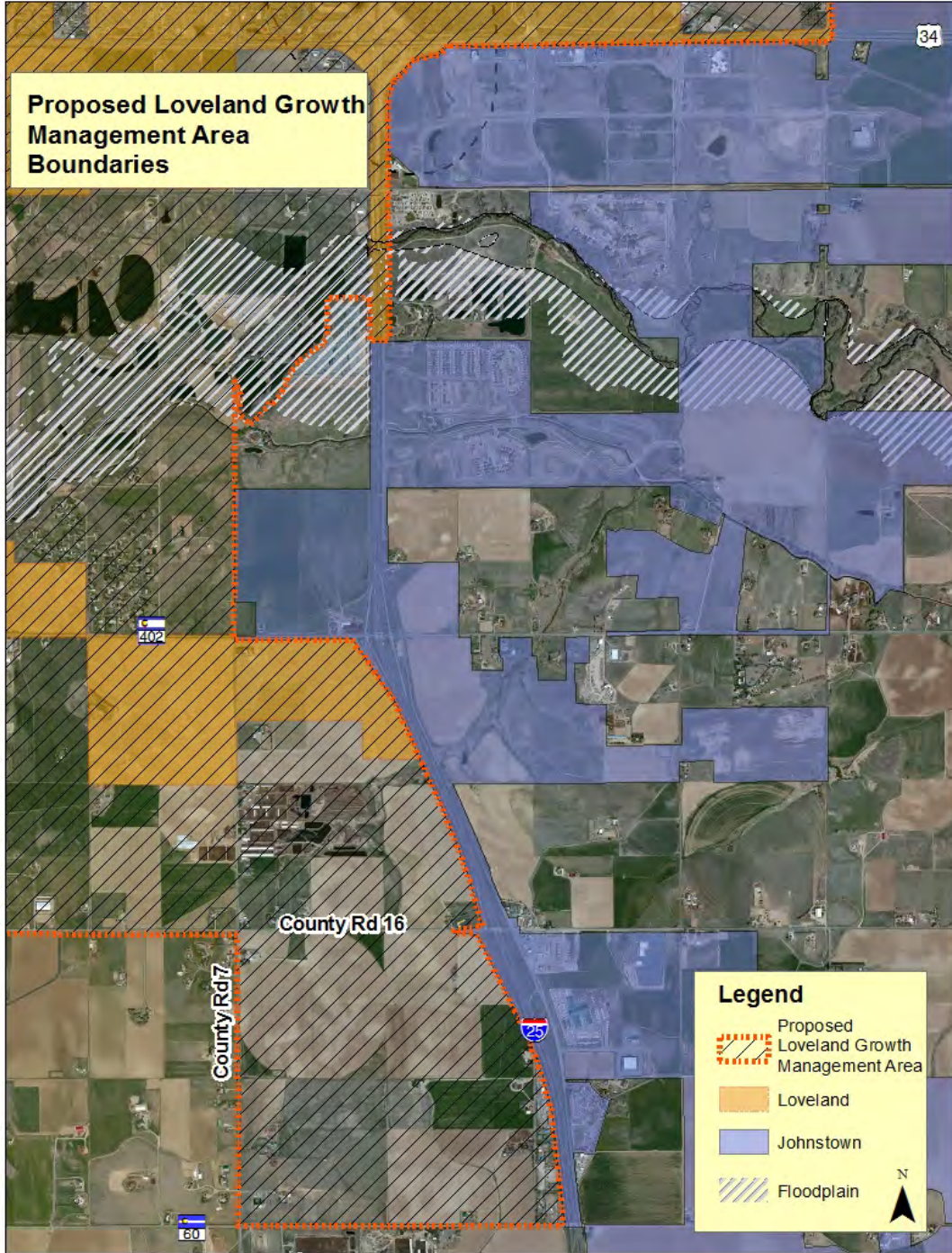


Figure 3



I. SUMMARY

As the Northern Colorado region has grown and municipalities have annexed property to accommodate development and generate tax revenue to support it, there have been a few conflicts amongst adjacent municipalities. However, when communities are able to work together when planning for growth, there can be multiple benefits that accrue to their citizens and the region. These benefits can include harmonious land use patterns, and more efficient service and utility provision.

The Intergovernmental Agreement included here seeks to realize these benefits by creating a process of cooperation between the City of Loveland and Town of Johnstown for the processing annexation and zoning applications in what is defined in the Agreement as the Overlap Area. The Overlap Area is depicted in Figure 1 and is where the GMAs of the two communities will overlap after the proposed GMA boundary amendments.

The IGA requires meetings designed to facilitate discussion between the two communities and make a determination as to which municipality it makes the most sense for a particular property to annex into. The cooperation process begins when a landowner approaches either Loveland or Johnstown with a serious inquiry regarding annexation or an annexation petition is submitted. The decision to pursue annexation rests solely with the property owner. The IGA also contains some language that has the two communities agreeing to cooperate on other planning efforts in the Overlap Area.

The changes to Loveland's Growth Management Area are being proposed as a complementary project to the IGA. The changes to the amendments are shown by Figure 2, which has the current GMA boundaries and Figure 3 which shows the boundaries as proposed by this amendment. These changes are essentially a "clean up" amendment as the property being removed from Loveland's GMA could in the most likely scenarios not be annexed by Loveland due to previous annexations by Johnstown. Furthermore, it would be very difficult for Loveland to provide services to these properties. Also, some the property is in the floodplain of the Big Thompson River and therefore has limited development potential. Johnstown is proposing an amendment to its GMA boundary based on similar principles about which municipality it makes the most sense for a property to annex into.

Both the IGA and the GMA boundary amendments have been developed through over a year's worth of collaboration between staff and managers from Loveland and Johnstown. At this time, the IGA has been reviewed by Johnstown staff and agreement is in place on the version that is presented here. Johnstown must go through an approval process similar to Loveland's.

II. ATTACHMENTS

1. Draft Intergovernmental Agreement between the City of Loveland and Town of Johnstown
2. City of Loveland Future Land Use Map
3. City of Loveland Future Land Use Plan showing proposed amendment

Attachment 2 is the complete, current Loveland Future Land Use Plan while **Attachment 3** is the complete Future Land Use Plan with the proposed amendment included.

III. SUBSTANCE OF INTERGOVERNMENTAL AGREEMENT AND GROWTH MANAGEMENT AREA BOUNDARY AMENDMENT

Intergovernmental Agreement

The Intergovernmental Agreement establishes a process for Loveland and Johnstown to cooperate when processing annexations in the Overlap Area. **Attachment 1** is the full text of the IGA, below is a summary that contains the main points.

The Overlap Area is shown in Figure 1 and consists of those properties that will be within both the GMAs of Loveland and Johnstown after the GMA amendment proposed here and the planned Johnstown GMA amendment are approved.

The IGA is implemented when either municipality either receives a substantive inquiry regarding annexation or an annexation petition from a property owner in the Overlap Area. Per the IGA, the receiving municipality has a duty to contact the other municipality within 7 days (“Initiating Notice”) to set up a meeting between the two municipalities to occur within thirty (30) days. At this meeting staff would discuss which municipality it makes the most sense for the property to be annexed into and any other agreements that may be appropriate in regards to the annexation. Within sixty (60) days of the Initiating Notice, a Three Way Meeting is to be held between the two municipalities and the property owner / Applicant. At this meeting the three parties discuss the results of the meeting between the two municipalities and how they relate to the Applicant’s Plans as well as any other relevant issues.

Whichever municipality processes the annexation application shall provide notice of the public hearing to consider the application to the other municipality and shall provide opportunity for written comment.

No rights regarding annexation or land use planning, as provided by the state of Colorado, are given up by either municipality under this IGA. The municipality receiving and processing an application for annexation and zoning has the sole discretion as to whether or not to approve the application. Nor are property owners’ rights impacted. The decision to apply for annexation and zoning rests solely with the property owner.

The IGA also contains agreements that Loveland and Johnstown will work together with Larimer County to establish a Growth Management Area Overlay Zoning District on properties in the Overlap Area or other areas that are within Loveland’s Growth Management Area but not currently covered by said zoning district.

There are also statements that the two communities will cooperate on other planning efforts in the Overlap Area on issues such as land use plan amendments, zoning code amendments, and transportation and infrastructure.

Growth Management Area Boundary Amendment

The amendments proposed to Loveland’s Growth Management Area consist of removing property from Loveland’s GMA that Loveland cannot annex due to lack of contiguity to Loveland city limits or that Loveland would be highly unlikely to annex due to previous annexations by Johnstown locations unlikely to be accessed for annexation or floodplain location. In this way, this proposed amendment is functionally a “clean-up” of Loveland’s GMA boundaries in preparation for cooperating with Johnstown and implementing the IGA.

See Figure 2 for a depiction of Loveland's existing Growth Management Area Boundaries and Figure 3 for a depiction of the GMA boundaries as proposed by this amendment.

Johnstown has agreed, at the staff level, to process an amendment to their Growth Management Area boundaries to remove the Ehrlich property, which has already been annexed by Loveland, and a parcel that, due to its location, is mostly likely to annex into Loveland if it ever goes through the annexation process. Johnstown's current GMA boundary is depicted in Figure 4 while the proposed amendment is depicted in Figure 5. It is intended that the Resolution that Loveland's City Council will use to approve the amendment will contain language that makes the approval contingent on Johnstown approving theirs within a certain date.

Figure 4

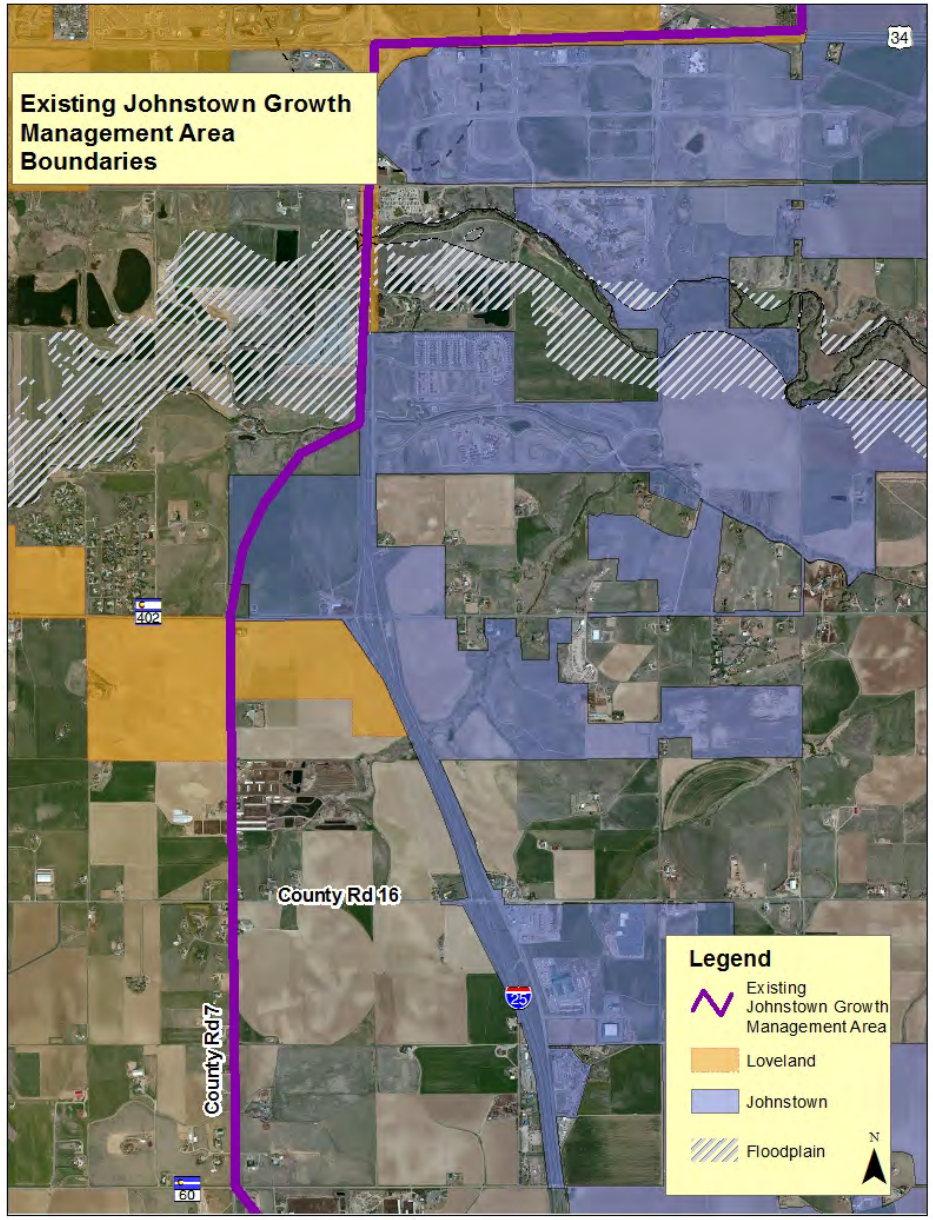
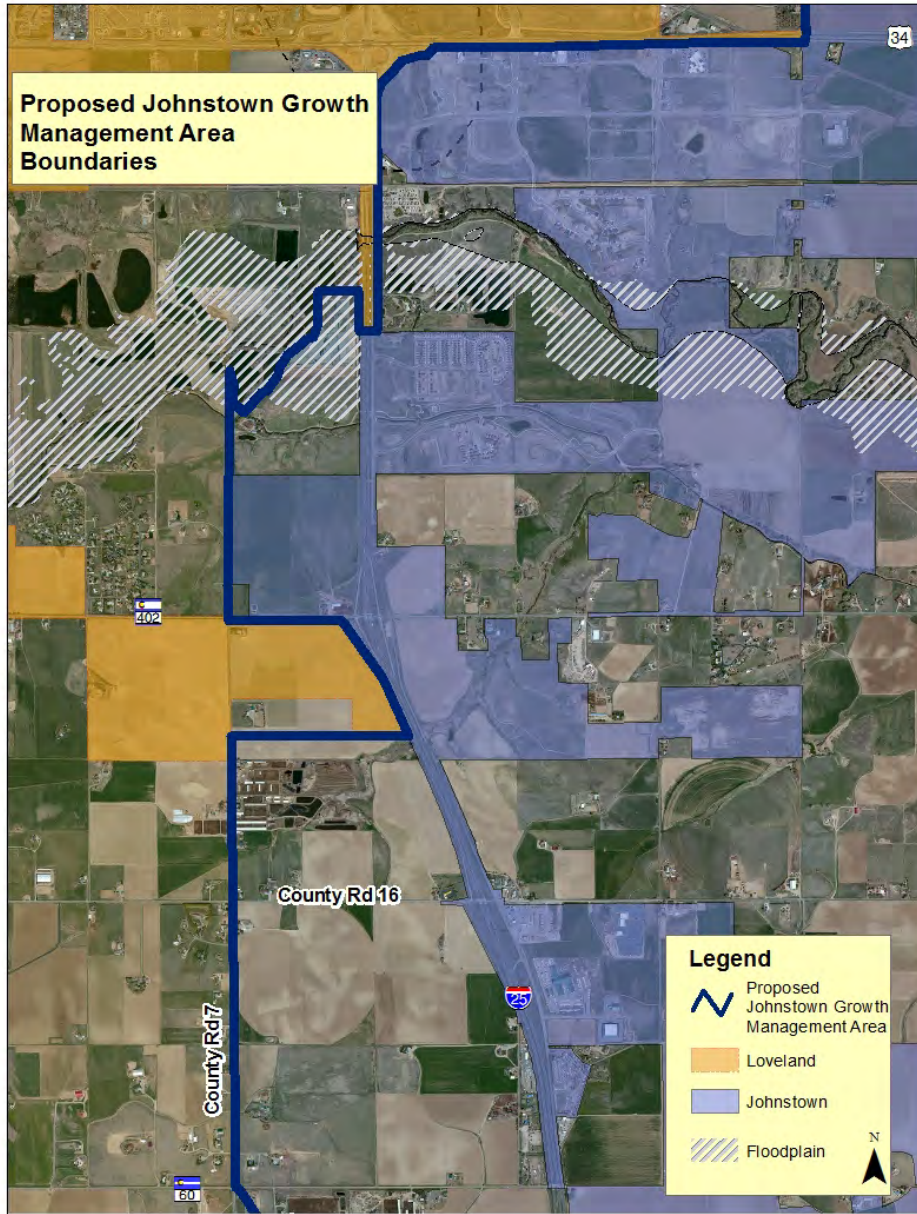


Figure 5



IV. KEY ISSUES

City staff believes that all key issues have been addressed in the amendment proposal.

V. BACKGROUND

The Intergovernmental Agreement is part of a larger suite of planning projects focused on the southeastern quadrant of Loveland’s Growth Management Area and the State Highway 402 corridor. Here, Loveland and Johnstown are cooperating to address growth management issues, specifically in the area where the GMAs of the two communities

overlap (Overlap Area as defined in the IGA), but also generally where the two communities are adjacent. The first part of this suite was before you earlier this year in the form of an amendment to the Future Land Use Plan that more closely aligned Loveland's Land Use Plan with that of Johnstown. This IGA and GMA boundary amendment are the next phase.

Following this, we will be working with Johnstown and Larimer County to explore the possibility of extending the Larimer County Loveland Growth Management Area Overlay Zoning District onto properties in this area and along the 402 corridor. This zoning district sits on properties under Larimer County jurisdiction and is the mechanism by which the IGA between Loveland and Larimer County is implemented. When properties with this zoning designation approach Larimer County with a land use application that requires discretionary action on the part of the County, they are referred to Loveland to explore if annexation is possible. Previously, Larimer County has not been willing to entertain extending the Overlay Zoning District in part because the Loveland and Johnstown GMAs overlapped. With this conflict resolved through the IGA it is hopeful, though not guaranteed, that Larimer County will look more favorably on extending the Zoning District.

The final piece of this larger planning effort will for the two municipalities to collaborate in the development of a corridor plan for State Highway 402. It is essential that the question regarding the extension of the Overlay Zoning District is resolved prior to the corridor planning effort.

VI. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

1. **Notification:** All owners of property within the area of the proposed land use amendment were notified by letter sent on June 24, 2013 of this public hearing and a notice was published in the Reporter Herald on June 22, 2012.
2. **Neighborhood Outreach:** A public open house was held on June 20 with property owners to present the proposed land use amendment. The open house was held at the RV America store and property owners within the Overlap Area as well as those that were affected by the amendment to the GMA boundaries were invited. At the open house City of Loveland staff were available to present the content of the IGA and GMA boundary amendment and answer questions. The open house was attended by approximately 5 property owners. Additionally, staff has reached out to property owners, via phone and email, to see if they have any questions regarding the IGA and invite them to this Planning Commission hearing.

This open house was not required by Chapter 6.0 - Amendment Process of the Comprehensive Plan. City staff felt it was necessary to adequately informing property owners of the IGA and GMA boundary amendment and getting their feedback.

VII. FINDINGS AND ANALYSIS FOR GROWTH MANAGEMENT AREA BOUNDARY AMENDMENT

This section contains information as the basis for making the findings required under Chapter 6 of the 2005 Comprehensive Plan to approve the proposed amendment to the Growth Management Area boundaries.

1. Does the amendment request implement, or further, one or more of the philosophies, goals, policies, and strategies of the 2005 Comprehensive Plan? The following Goals and Objectives relate specifically to the proposed amendment:

- a. *Growth Management 2: Continually monitor, and revise as necessary, the Growth Management Plan to ensure that it is accomplishing the community's vision through managed growth while giving particular attention to the future community character, open space, financial, and natural resources aspects of the community.*

The amendment being proposed is a revision to Loveland's Future Land Use Plan that has resulted from the process of monitoring the land use plan and the City's growth. Therefore, it fulfills this philosophy by addressing and accommodating anticipated change while accomplishing the community vision.

- b. *Growth Management 3: Provide appropriate areas within the GMA with a full range of urban level services within a 20 year time frame by meeting the goals and objectives of Loveland's Growth Management Plan and associated Comprehensive Master Plan philosophies (policies) and principles.*

This amendment proposes to remove areas from Loveland's Growth management Area. However, due to circumstances such as previous annexations, likely access points, and the floodplain of the Big Thompson River these properties would not be likely to annex into Loveland and it is unlikely that Loveland could provide the necessary services. However, in the overall scope of Loveland's Growth Management Area the properties proposed for removal are not a significant portion and there remains within Loveland's GMA sufficient land for growth in the 20 year timeframe.

- c. *Growth Management 5: Engage in joint strategic planning efforts as appropriate, in identified Cooperative Planning Areas (CPA) with residents, landowners, adjoining municipalities and Larimer County.*

Although the area of this proposed amendment is not located within a CPA, planners and other officials from the City of Loveland and the Town of Johnstown have been engaged for over a year in a collaboration process to create the IGA and agree to GMA boundary modifications. An open house was conducted for the owners of property within the Overlap Area and for those property owners affected by the proposed amendment to Loveland's GMA boundary. Later steps in the strategy will involve collaboration with Larimer County and broader public outreach.

- d. *Growth Management 9: Support Larimer County Government in its effort to apply a Growth Management Area (GMA) Overlay Zoning District and supplementary regulations to the Loveland GMA.*

Larimer County has not been willing to examine expanding the area covered by the Loveland GMA Overlay Zoning District as long as Loveland and Johnstown have not reached agreement about how to handle the overlap of their respective GMAs. The IGA and the amendment to the GMA boundaries represent the achievement of the required agreement between Loveland and Johnstown to allow them to approach Larimer County about extending the Overlay Zoning District.

- e. *Intergovernmental Agreement 2: Maintain and enhance areas of urban development in a thoughtful and deliberate way through cooperation in land use and transportation planning, implementation of growth management policies, and the identification and preservation of open lands and natural areas.*

The IGA and GMA boundary amendment proposed amendment is a step in a larger strategy to promote a cooperative planning effort between the City of Loveland and the Town of Johnstown regarding land use planning, annexation, and growth management. This strategy will result in a more thoughtful, efficient and deliberate urban growth pattern.

*f. **Intergovernmental Agreement 3: Concentrate urban development in areas designated for such development.***

By promoting a cooperative planning effort with the Town of Johnstown, the IGA and GMA amendment will help to concentrate anticipated urban development in an appropriate area.

2. **Will the amendment request interfere with the existing, emerging, proposed or future land use patterns and / or densities / intensities of the surrounding neighborhood as depicted on the Land Use Plan Map and as contained within the 2005 Comprehensive Plan.**
The amendment request will not interfere with the existing, emerging, proposed or future land use patterns. While this amendment does propose removing property from Loveland's Growth Management Area, the properties will still be within the GMA of Johnstown and are therefore likely to develop in a manner that is consistent with the existing and proposed land use pattern as the future land use plans of Loveland and Johnstown are closely aligned in this area. Furthermore, the IGA creates a forum for the two communities to cooperate in the making of planning decisions. Actual development consistent with future land use plans will not occur until land owners in this area decide to annex into either the City of Loveland or the Town of Johnstown and there is a market for such development.
3. **Will the amendment request interfere with, prevent, or implement the provision of any of the area's existing, planned, or previously committed services or proposals for community facilities, or other specific public or private actions contemplated within the 2005 Comprehensive Plan?**
This amendment will not interfere with the provision of any services or community facilities. The GMA amendment and IGA will promote efficiency in planning for urban infrastructure necessary to provide services to this area in the future.
4. **Will the amendment request interfere with, prevent, or implement the provision of any of the area's existing or planned transportation system services as contemplated by the 2030 Transportation Plan?**
The amendment would allow development consistent with the 2035 Transportation Plan.

**Intergovernmental Agreement for Growth Management
by and between
The City of Loveland and Town of Johnstown**

This Intergovernmental Agreement for Growth Management (“Agreement”) is entered into as of the ___ day of _____, 2013, by and between the City of Loveland, Colorado, a home rule municipality (“**Loveland**”) and the Town of Johnson, Colorado, a home rule municipality (“**Johnstown**”).

RECITALS

WHEREAS, the management of growth is important to ensure that the benefits are realized and the negative consequences are minimized;

WHEREAS, changes that accompany growth and development in one community necessarily have impacts on adjacent communities;

WHEREAS, when nearby (adjacent) communities cooperate in the planning of urban growth there are benefits in the more efficient provision of public services to both communities for harmonizing land use arrangements;

WHEREAS, the geographical area covered by this Agreement is likely to face growth and development pressure due to its location in proximity to a major transportation corridor and planned future development by both Johnstown and Loveland;

WHEREAS, the geographical area covered by this Agreement is located within the growth management areas of both Loveland and Johnstown;

WHEREAS, growth management areas allow municipalities, landowners, community residents and developers to prepare for growth by signaling that a municipality is willing and preparing to extend urban level services;

WHEREAS, future land use plans benefit municipalities, landowners, community residents and developers by providing a framework for decision making related to future growth and development;

WHEREAS, future land use plans benefit landowners by providing options for the long-term use of their property and it is the goal of this agreement to provide land owners with options regarding into which municipality they will annex;

WHEREAS, cooperation between municipalities in the planning of utilities and infrastructure can create efficiencies and reduce costs;

WHEREAS, the goals of this intergovernmental agreement are to:

- Implement the Comprehensive Plans and Future Land Use Plans of the City of Loveland and Town of Johnstown;
- Establish effective means of joint planning and management of urbanization within the Overlap Area of the Growth Management Areas of the City of Loveland and Town of Johnstown (as hereinafter defined);

- Establish procedures for the processing of development applications for annexation and zoning in the Overlap Area including rules for the referral of applications between municipalities and the facilitation of meeting between municipalities and landowners / applicants;
- Provide a mechanism for cooperation and coordination between the Loveland and Johnstown in the arenas of land use and infrastructure planning;
- Establish programs designed to provide benefit to both Loveland and Johnstown when property is annexed into either municipality; and
- Prevent annexation conflicts between Loveland and Johnstown;

WHEREAS, pursuant to state law, local jurisdictions are authorized to: regulate the location of activities and developments; phase development of services and facilities; regulate development on the basis of its impact on the community or surrounding areas; plan for and regulate the use of land so as to provide for planned and orderly use of land and protection of the environment; and to cooperate or contract with other units of government for the purpose of planning and regulating the development of land including but not limited to, the joint exercise of planning, zoning, subdivision, building; and related regulations and annexations of property, all in a manner consistent with constitutional rights and statutory procedures;

WHEREAS, planning and regulation of land use within the northern Colorado region is the responsibility of local jurisdictions; and

WHEREAS, any provisions in this Agreement may be implemented only to the extent legally permitted by Colorado law.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and obligations set forth herein, the parties agree as follows:

1.0 Definitions

As used herein, the following words, terms, and phrases shall be given the following meanings:

Annexation: Annexation means the incorporation of a land area into an existing municipality with a resulting change in the boundaries of that municipality.

Overlap Area: The area where the Loveland and Johnstown GMAs overlap, which is depicted on **Map 1** attached hereto and incorporated herein by reference, and which is bounded on the east by the I-25 right of way, on the south by the Colorado Highway 60 right of way, on the west by the Larimer County Road 7 right of way, and on the north by the north line of the parcel described as Bounded on the east by the right-of-way of I-25, on the south by the right-of-way of Colorado State Highway 60, on the west by the right-of-way of Larimer County Road 7 and having its north boundary as the north lot line of the parcel described as:

PAR LOC NW 27-5-68; COM AT W 1/4 COR SEC 27-5-68; TH S 89 51' 50" E 30 FT TPOB; N 00 02' 18" W 442.45 FT; TH N 89 40' 58" E 3243.65 FT; S 23 41' 05" E 511.7 FT; TH N 89 51' 50" W 852.47 FT; TH N 89 51' 50" W 2596.39 FT TPOB (PER 98004450)

as such parcel exists on the date of this Agreement.

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Loveland and Johnstown may amend land use designations in their respective Comprehensive Plans at their sole discretion

4.0 Amendments to Growth Management Area Boundaries

Loveland and Johnstown shall provide notice to and meet with the other municipality to discuss any proposal to extend their Growth Management Area into an area within the Growth Management Area of the other municipality.

Nothing in this Agreement shall prevent either municipality from modifying their Growth Management Area boundaries as they see fit.

5.0 Relationship between Intergovernmental Agreement and Other Plans

5.1 Loveland Comprehensive Plan and Future Land Use Plan

The Loveland Comprehensive Plan and Future Land Use Plan will be the plan that guides land use decisions for any property annexed into the City of Loveland

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The Johnstown Comprehensive Plan and Future Land Use Plan will be the plan that guides land use decisions for any property annexed into the Town of Johnstown

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The Larimer County Master Plan and Larimer County Land Use Code will continue to guide land use decisions for properties in unincorporated Larimer County.

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This Agreement is intended to further the goals of Loveland and Johnstown Comprehensive Plans and is not intended to conflict with any other plans.

6.0 Growth Management Area Overlay Zoning District

The municipalities agree to work with Larimer County to establish a Growth Management Overlay Zoning District on the properties located within the Overlap Area

7.0 Process for Annexations within Overlap Area

7.1 Process Initiation

The process set forth in this Section 7 shall be initiated by each municipality giving notice to the other municipality within seven (7) days after receipt of an inquiry regarding annexation of property within the Overlap Area that appears likely to proceed to a petition for annexation. If no such inquiry is received prior to receipt of a petition, each municipality shall initiate this process by notice to the other municipality within seven (7) days after receipt of an annexation petition for annexation of property within the Overlap Area. Notice initiating the process set forth in this Section 7 shall be given in writing and shall include such information, including but not limited to a copy of the petition for annexation, as the notifying municipality may have regarding the potential annexation (the "Initiating Notice").

7.2 Meetings between Municipalities

Loveland and Johnstown shall meet to discuss such an annexation proposal in an effort to agree upon which municipality it would make the most sense for the property to annex into considering factors including but not limited to previous annexations, access, and land owner plans. The meeting shall be initiated by staff of the municipality receiving the inquiry or petition for annexation. At least one meeting shall include the Loveland Director of Development Services or his designee and Johnstown _____. This meeting shall occur no later than thirty (30) days from the date of the Initiating Notice.

7.3 Three-Way Meetings

Loveland and Johnstown shall provide an opportunity to the applicant / property owner who made the inquiry or filed the petition (“Applicant”) to meet and discuss the annexation and development proposal with the two municipalities jointly. If, notwithstanding reasonable efforts by the municipalities to facilitate and schedule such a meeting, the Applicant does not participate in the meeting with Loveland and Johnstown within sixty (60) days after the Initiating Notice, the municipalities may proceed to implement their agreement as to which municipality should annex the property within the Overlap Area in question.

7.4 Further Annexation Proceedings and Opportunity for Municipality Comment

Loveland and Johnstown shall complete the process set forth in this Section 7, including the meetings contemplated in Sections 7.2 and 7.3 above, with respect to a petition seeking annexation of property within the Overlap Area prior to scheduling for consideration by their respective governing bodies a resolution determining substantial compliance of an annexation petition as required by C.R.S. §31-12-107(1)(f) and setting the date, time and place of a public hearing on the proposed annexation as required by C.R.S. §31-12-108(1), under the Colorado Municipal Annexation Act (C.R.S. §31-12-101 et. seq) (the “Act”). Prior to holding any public hearings regarding a petition for annexation of property in the Overlap Area and after completing the notification and meeting processes set forth in this Section 7, the municipality in receipt of a petition for annexation of property in the Overlap Area shall provide the other municipality with written notice of the date, time and place of the public hearing on the proposed annexation and the other municipality shall have an opportunity provide written comments on the petition prior to the scheduled public hearing.

7.5 Annexation Agreements

The municipality annexing property in the Overlap Area shall, in good faith, consider placing any applicable conditions generated through the municipality comment process detailed in Section 7.4 into any annexation agreements adopted.

7.6 Final Approval Authority

The municipality receiving an annexation and zoning application has the final authority on whether or not to approve the application and annex the property. Nothing in this

Agreement shall prohibit a municipality from annexing property at its discretion in accordance with State law.

8.0 Rights and Responsibilities of Municipalities and Property Owners

8.1 Decision to Pursue Annexation

The decision to apply for annexation and zoning shall rest solely with the property owner.

8.2 Ultimate Approval Authority for Annexation and Development Applications

The municipality receiving and processing an application for annexation and zoning has the sole discretion as to whether or not to approve the application.

8.3 Amendment of IGA

Either party may request amendment of this Agreement. No amendment of this Agreement shall be effective unless such amendment is set forth in writing, approved by the Loveland City Council and Johnstown Town Council and signed by the authorized representative of both municipalities.

9.0 Collaborative Planning Efforts

In order to achieve both the goals and purposes of this Agreement, as well as the region's broader planning goals, Loveland and Johnstown agree to participate in cooperative and regional planning efforts with other agencies in the region.

9.1 Further Planning Efforts in the Overlap Area and SH 402 Corridor

Within the Overlap Area, the municipalities agree to cooperate with each other on any planning efforts, including but not limited to, future land use plan amendments, zoning code amendments specific to the Overlap Area, transportation planning, and design guidelines.

The municipalities agree to cooperate with each other in planning efforts in the State Highway 402 Corridor.

9.2 Infrastructure

The municipalities agree to cooperate with each other and all other infrastructure providers in the planning of infrastructure in the Overlap Area with the goal of avoiding unnecessary duplication and providing services to current and future residents and businesses with the greatest level of efficiency, service efficacy, and cost savings possible.

9.3 Preserve Development Opportunities

The municipalities agree to cooperate in the consideration of ways to preserve development opportunities in the Overlap Area in accordance with their respective Comprehensive Plans.

10.0 Implementation of Agreement

10.1 Amendment of Codes and Plans

Each municipality shall initiate amendments to their respective plans, policies, procedures, and codes necessary to implement the terms and provisions of this Agreement within three hundred and sixty – five (365) days of the adoption of the Agreement.

10.2 Inform and Train Employees

The parties will notify newly elected officials, new managers, and key staff of the existence of this Agreement and conduct any necessary training to ensure it is implemented

11.0 Term and Termination

11.1 Term

This Agreement shall remain in force and effect for a period of ten (10) years from the date of its execution, subject to any earlier termination as may result from the provisions of Section 11.2 below. At the end of ten (10) years from the date of its execution, and on each five-year anniversary thereafter, the term of the Agreement shall be automatically extended for five years beyond its then stated expiration date, unless at least three hundred and sixty-five days (365) days prior to any five year anniversary, either party notifies the other in writing of its intention that the Agreement shall not be extended beyond its then stated expiration date.

11.2 Termination

Either party may terminate this Agreement for any reason and at any time upon three hundred and sixty-five (365) days written notice to other party. Prior to exercising any termination permitted by this Agreement, the governing body of the party seeking termination shall meet, in good faith, with governing body of non-terminating party in an attempt to resolve or explain the reasons for termination.

12.0 General Provisions

12.1 Amendment of Agreement

Either party may request an amendment of this Agreement at any time. Such request shall be in writing to the other party, and shall be considered without unreasonable delay and within no more than sixty (60) days of receipt.

12.2 Notice

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail, return receipt requested, postage and fees prepaid, addressed to the party to whom such notice is to be given at the addresses set forth below or at such other address as has been previously furnished in writing to the other party. Such notice shall be deemed given three (3) days after so deposited in the United States mail.

If to Loveland:

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

With a copy to:

City Attorney
City of Loveland
500 E. Third Street, Suite 300
Loveland, Colorado 80537

If to Johnstown:

With a copy to:

12.3 Application and Interpretation of Other Provisions

Whenever a provision of Loveland’s Zoning Code or the Johnstown’s Land Use Code are inconsistent with a specific provision of this Agreement, the party with the inconsistent code shall evaluate its regulations and initiate the process to amend its codes to be consistent with this Agreement and/or negotiate in good faith with the other party to amend this Agreement to be consistent with the applicable code and/or any amendment to the code. However, the decision of Loveland or Johnstown to so amend its code or to agree to amend this Agreement shall remain subject to the sole discretion of Loveland’s and Johnstown’s respective councils.

12.4 Exhibits or Maps

Exhibits and maps referred to in this Agreement are incorporated herein for all purposes.

12.5 Captions

The captions of the paragraphs are set forth herein only for the convenience of reference by the parties and are not intended in any way to define, limit or proscribe the scope or intent of this Agreement.

12.6 Additional Documents or Action

The parties may execute any additional documents or take any additional action reasonably necessary to carry out this Agreement.

12.7 Waiver of Breach

A waiver by any party to this Agreement of the breach of any term or provision of the Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

12.8 No Third Party Beneficiaries

Any enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Loveland and Johnstown, and nothing contained in this Agreement shall give to or allow any such claim or right of action by any other third person. It is the express intention of the parties that there shall be no third party beneficiaries of this Agreement and any person or entity other than Loveland and Johnstown receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

12.9 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 Loveland and Johnstown by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the Loveland and Johnstown by their respective charters and municipal codes, 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.

13.0 Maps and Exhibits

Map 1 Overlap Area map

Map 2 Johnstown Land Use Plan (showing growth management area)

Map 3 Loveland Land Use Plan (showing growth management area)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

CITY OF LOVELAND, COLORADO

By: _____

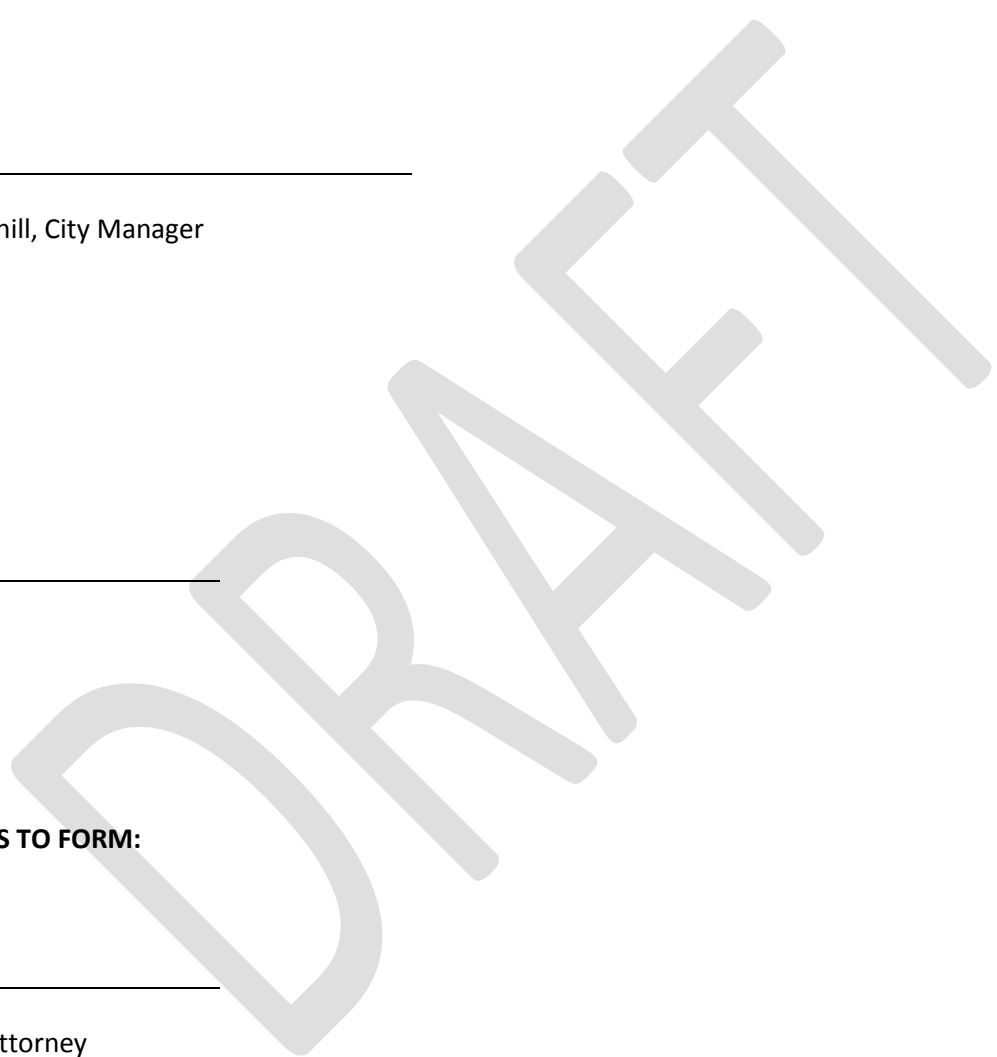
William D. Cahill, City Manager

ATTEST:

City Clerk

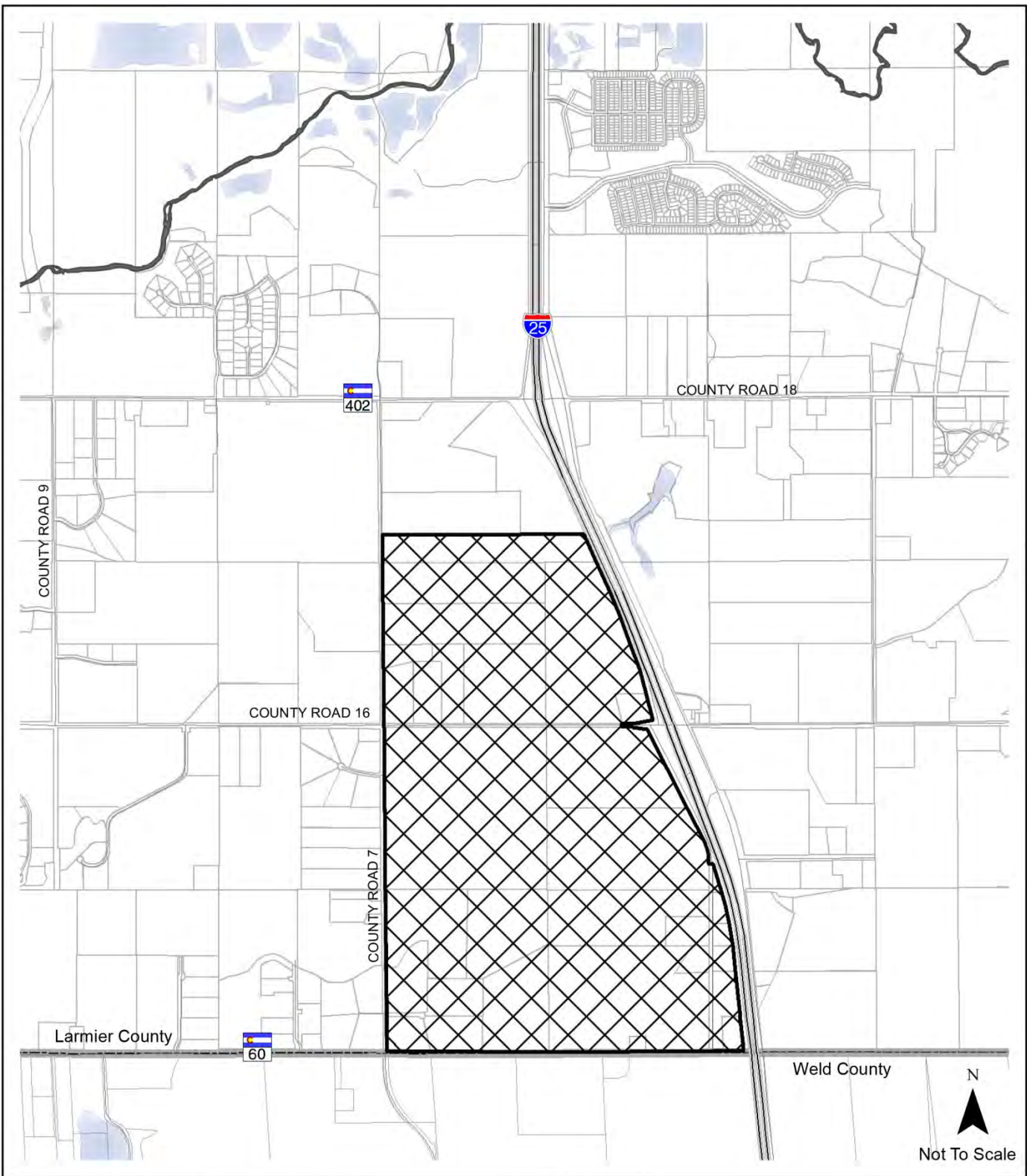
APPROVED AS TO FORM:

Deputy City Attorney



INSERT SIGNATURE PAGE FOR TOWN OF JOHNSTOWN






DRAFT

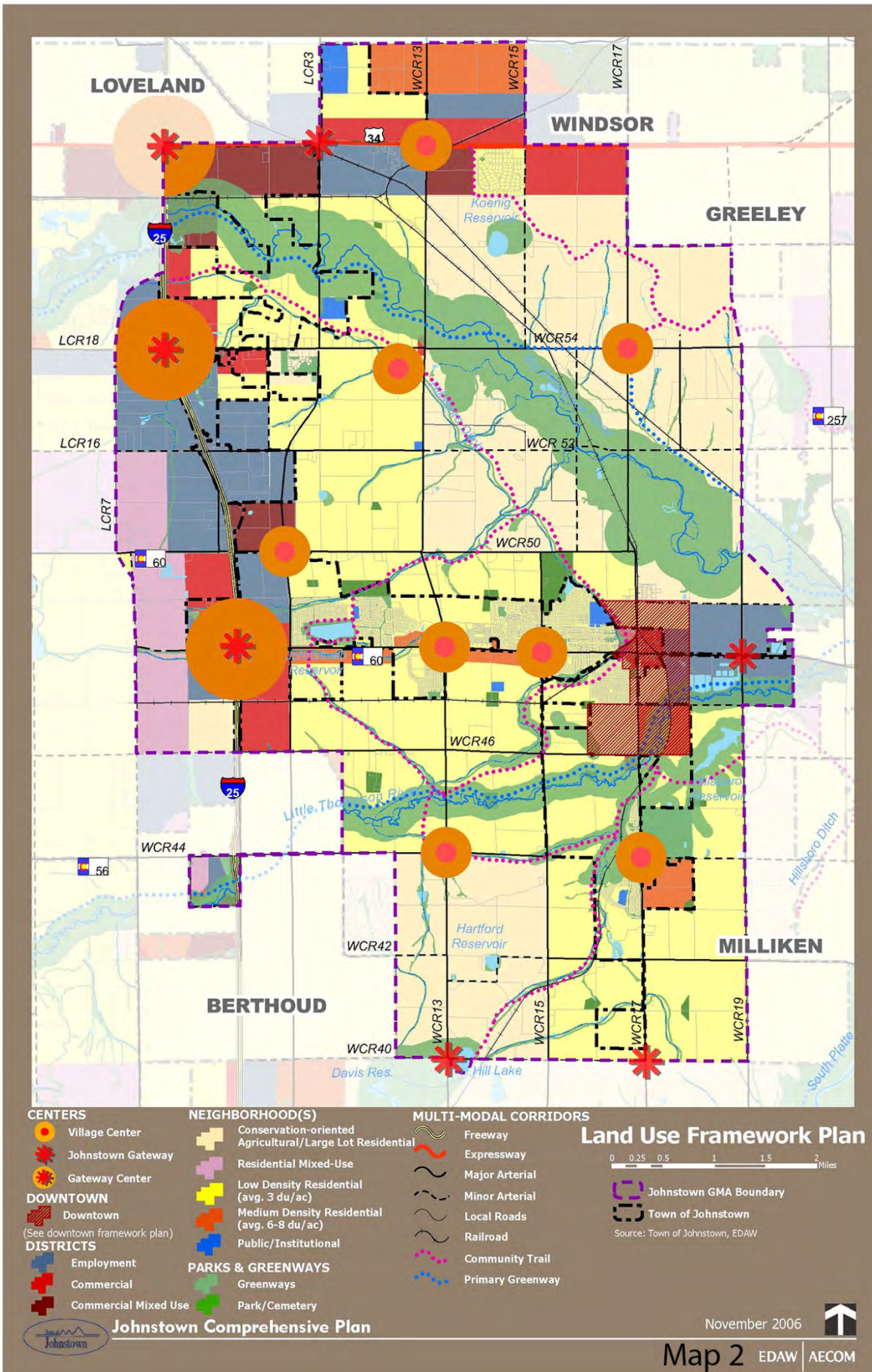


Overlap Area

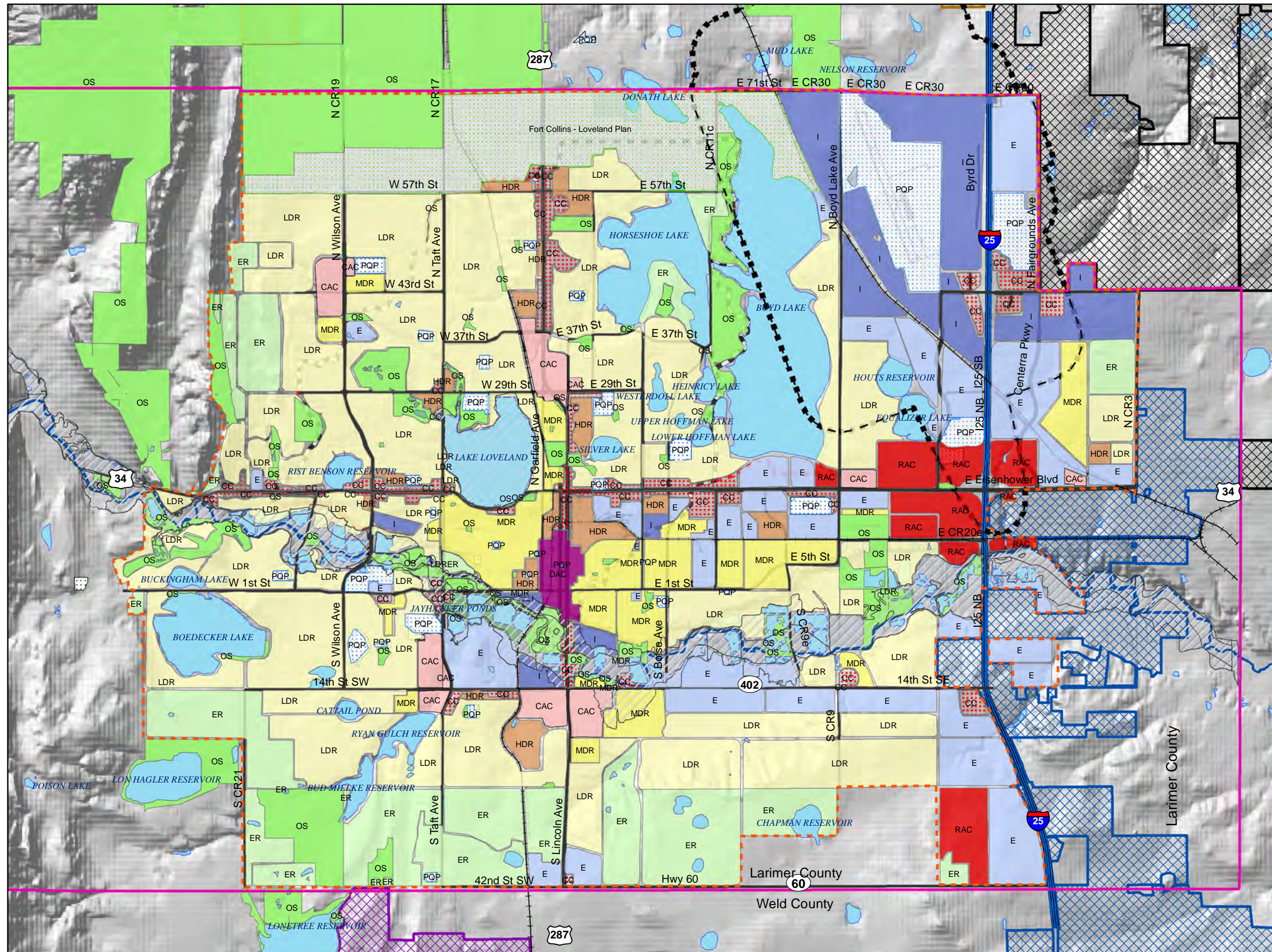
MAP 1

Legend

-  Overlap Area
-  Big Thompson River
-  Parcels
-  Lakes and Ponds
-  County Boundary



DRAFT



Land Use Categories

Residential Mixed-Use

- ER - Estate Residential
- LDR - Low Density Residential
- MDR - Medium Density Residential
- HDR - High Density Residential

Activity Center Mixed-Use

- RAC - Regional Activity Center
- DAC - Downtown Activity Center
- CAC - Community Activity Centers
- CC - Corridor Commercial
- E - Employment

Other Categories

- I - Industrial
- 100-Year Floodplain (FEMA)
- 100-Year Floodway (FEMA) (see note 3)
- Public Schools, Hospital, Public Facilities
- DR - Development Reserve
- Parks, Open Lands, Conservation Easements, Golf Courses and Cemeteries
- Fort Collins/Loveland Corridor Area Land Use generally north of 57th Street is guided by the document, "Plan for the Region Between Fort Collins and Loveland."

City Limits and Other Features

- Windsor City Limits
- Johnstown City Limits
- Berthoud City Limits
- Fort Collins City Limits
- Lakes and Ponds
- GMA - Growth Management Area
- CIA - Community Influence area
For westerly boundary of the CIA - refer to the Planning Boundaries Map
- Major Streets
- Big Thompson River
- Fort Collins/Loveland Airport Influence Area (see note 2)

(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized, recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development is subject to City standards for protection of environmentally sensitive areas, and other performance guidelines.

(2) For details regarding appropriate land uses within the Airport Influence Area refer to section 4.6, "Airport and Surrounding Areas" of the Comprehensive Master Plan.

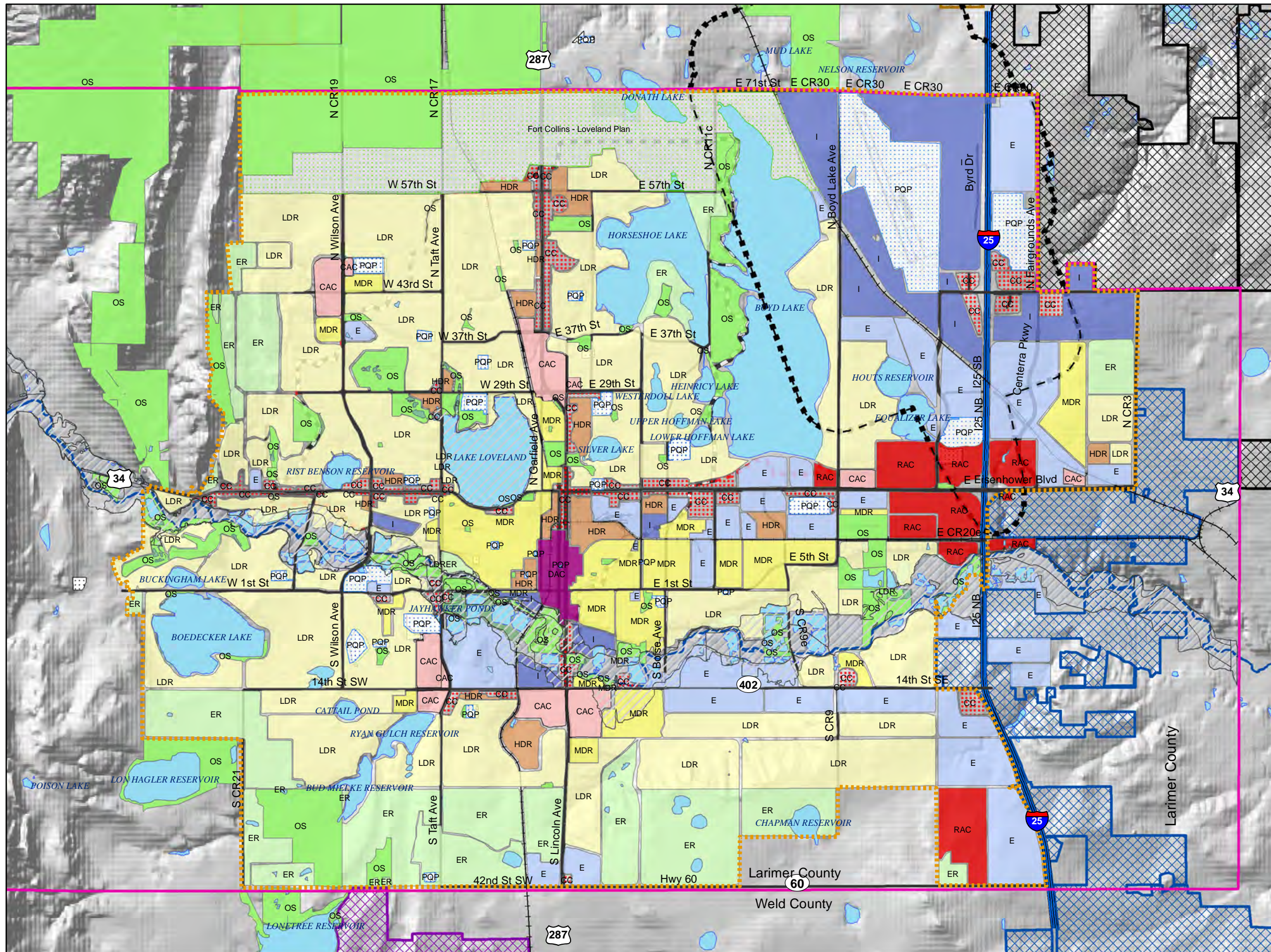
(3) The 100-year Floodway is displayed only within City Limits, awaiting further data.

City of Loveland

LOGIC System

0 0.5 1 2 Miles

**CITY OF LOVELAND
FUTURE LAND USE PLAN**



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Residential Mixed-Use

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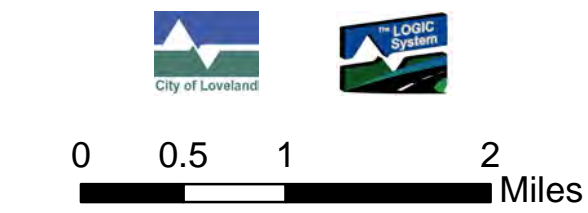
Map Symbols:

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**CITY OF LOVELAND
FUTURE LAND USE PLAN**

**Intergovernmental Agreement for Growth Management
by and between
The City of Loveland and Town of Johnstown**

This Intergovernmental Agreement for Growth Management (“Agreement”) is entered into as of the ___ day of _____, 2013, by and between the City of Loveland, Colorado, a home rule municipality (“**Loveland**”) and the Town of Johnson, Colorado, a home rule municipality (“**Johnstown**”).

RECITALS

WHEREAS, the management of growth is important to ensure that the benefits are realized and the negative consequences are minimized;

WHEREAS, changes that accompany growth and development in one community necessarily have impacts on adjacent communities;

WHEREAS, when nearby (adjacent) communities cooperate in the planning of urban growth there are benefits in the more efficient provision of public services to both communities for harmonizing land use arrangements;

WHEREAS, the geographical area covered by this Agreement is likely to face growth and development pressure due to its location in proximity to a major transportation corridor and planned future development by both Johnstown and Loveland;

WHEREAS, the geographical area covered by this Agreement is located within the growth management areas of both Loveland and Johnstown;

WHEREAS, growth management areas allow municipalities, landowners, community residents and developers to prepare for growth by signaling that a municipality is willing and preparing to extend urban level services;

WHEREAS, future land use plans benefit municipalities, landowners, community residents and developers by providing a framework for decision making related to future growth and development;

WHEREAS, future land use plans benefit landowners by providing options for the long-term use of their property and it is the goal of this agreement to provide land owners with options regarding into which municipality they will annex;

WHEREAS, cooperation between municipalities in the planning of utilities and infrastructure can create efficiencies and reduce costs;

WHEREAS, the goals of this intergovernmental agreement are to:

- Implement the Comprehensive Plans and Future Land Use Plans of the City of Loveland and Town of Johnstown;
- Establish effective means of joint planning and management of urbanization within the Overlap Area of the Growth Management Areas of the City of Loveland and Town of Johnstown (as hereinafter defined);

- Establish procedures for the processing of development applications for annexation and zoning in the Overlap Area including rules for the referral of applications between municipalities and the facilitation of meeting between municipalities and landowners / applicants;
- Provide a mechanism for cooperation and coordination between the Loveland and Johnstown in the arenas of land use and infrastructure planning;
- Establish programs designed to provide benefit to both Loveland and Johnstown when property is annexed into either municipality; and
- Prevent annexation conflicts between Loveland and Johnstown;

WHEREAS, pursuant to state law, local jurisdictions are authorized to: regulate the location of activities and developments; phase development of services and facilities; regulate development on the basis of its impact on the community or surrounding areas; plan for and regulate the use of land so as to provide for planned and orderly use of land and protection of the environment; and to cooperate or contract with other units of government for the purpose of planning and regulating the development of land including but not limited to, the joint exercise of planning, zoning, subdivision, building; and related regulations and annexations of property, all in a manner consistent with constitutional rights and statutory procedures;

WHEREAS, planning and regulation of land use within the northern Colorado region is the responsibility of local jurisdictions; and

WHEREAS, any provisions in this Agreement may be implemented only to the extent legally permitted by Colorado law.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and obligations set forth herein, the parties agree as follows:

1.0 Definitions

As used herein, the following words, terms, and phrases shall be given the following meanings:

Annexation: Annexation means the incorporation of a land area into an existing municipality with a resulting change in the boundaries of that municipality.

Overlap Area: The area where the Loveland and Johnstown GMAs overlap, which is depicted on **Map 1** attached hereto and incorporated herein by reference, and which is bounded on the east by the I-25 right of way, on the south by the Colorado Highway 60 right of way, on the west by the Larimer County Road 7 right of way, and on the north by the north line of the parcel described as Bounded on the east by the right-of-way of I-25, on the south by the right-of-way of Colorado State Highway 60, on the west by the right-of-way of Larimer County Road 7 and having its north boundary as the north lot line of the parcel described as:

PARCEL LOCATED IN THE NORTHWEST QUARTER OF SECTION 27 TOWNSHIP 5 NORTH 5 RANGE 68 WEST; COMMENCING AT THE WEST 1/4 CORNER OF SECTION 27 TOWNSHIP 5 NORTH 5 RANGE 68 WEST; THENCE S 89° 51' 50" E 30 FEET TO THE POINT OF BEGINNING; N 00° 02' 18" W 442.45 FEET; THENCE N 89° 40' 58" E 3243.65 FEET; S 23° 41' 05" E 511.7 FEET; THENCE N 89° 51' 50" W 852.47 FEET; THENCE N 89° 51' 50" W 2596.39 FEET TP THE POINT OF BEGINNING (PER 98004450)

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Loveland and Johnstown shall provide an opportunity to the applicant / property owner who made the inquiry or filed the petition (“Applicant”) to meet and discuss the annexation and development proposal with the two municipalities jointly. If, notwithstanding reasonable efforts by the municipalities to facilitate and schedule such a meeting, the Applicant does not participate in the meeting with Loveland and Johnstown within sixty (60) days after the Initiating Notice, the municipalities may proceed to implement their agreement as to which municipality should annex the property within the Overlap Area in question.

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Loveland and Johnstown shall complete the process set forth in this Section 7, including the meetings contemplated in Sections 7.2 and 7.3 above, with respect to a petition seeking annexation of property within the Overlap Area prior to scheduling for consideration by their respective governing bodies a resolution determining substantial compliance of an annexation petition as required by C.R.S. §31-12-107(1)(f) and setting the date, time and place of a public hearing on the proposed annexation as required by C.R.S. §31-12-108(1), under the Colorado Municipal Annexation Act (C.R.S. §31-12-101 et. seq) (the “Act”). Prior to holding any public hearings regarding a petition for annexation of property in the Overlap Area and after completing the notification and meeting processes set forth in this Section 7, the municipality in receipt of a petition for annexation of property in the Overlap Area shall provide the other municipality with written notice of the date, time and place of the public hearing on the proposed annexation and the other municipality shall have an opportunity provide written comments on the petition prior to the scheduled public hearing.

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The municipality annexing property in the Overlap Area shall, in good faith, consider placing any applicable conditions generated through the municipality comment process detailed in Section 7.4 into any annexation agreements adopted.

7.6 Final Approval Authority

The municipality receiving an annexation and zoning application has the final authority on whether or not to approve the application and annex the property. Nothing in this Agreement shall prohibit a municipality from annexing property at its discretion in accordance with State law.

8.0 Rights and Responsibilities of Municipalities and Property Owners

8.1 Decision to Pursue Annexation

The decision to apply for annexation and zoning shall rest solely with the property owner.

8.2 Ultimate Approval Authority for Annexation and Development Applications

The municipality receiving and processing an application for annexation and zoning has the sole discretion as to whether or not to approve the application.

8.3 Amendment of IGA

Either party may request amendment of this Agreement. No amendment of this Agreement shall be effective unless such amendment is set forth in writing, approved by the Loveland City Council and Johnstown Town Council and signed by the authorized representative of both municipalities.

9.0 Collaborative Planning Efforts

In order to achieve both the goals and purposes of this Agreement, as well as the region's broader planning goals, Loveland and Johnstown agree to participate in cooperative and regional planning efforts with other agencies in the region.

9.1 Further Planning Efforts in the Overlap Area and SH 402 Corridor

Within the Overlap Area, the municipalities agree to cooperate with each other on any planning efforts, including but not limited to, future land use plan amendments, zoning code amendments specific to the Overlap Area, transportation planning, and design guidelines.

The municipalities agree to cooperate with each other in planning efforts in the State Highway 402 Corridor.

9.2 Infrastructure

The municipalities agree to cooperate with each other and all other infrastructure providers in the planning of infrastructure in the Overlap Area with the goal of avoiding unnecessary duplication and providing services to current and future residents and businesses with the greatest level of efficiency, service efficacy, and cost savings possible.

9.3 Preserve Development Opportunities

The municipalities agree to cooperate in the consideration of ways to preserve development opportunities in the Overlap Area in accordance with their respective Comprehensive Plans.

10.0 Implementation of Agreement

10.1 Amendment of Codes and Plans

Each municipality shall initiate amendments to their respective plans, policies, procedures, and codes necessary to implement the terms and provisions of this Agreement within three hundred and sixty – five (365) days of the adoption of the Agreement.

10.2 Inform and Train Employees

The parties will notify newly elected officials, new managers, and key staff of the existence of this Agreement and conduct any necessary training to ensure it is implemented

11.0 Term and Termination**11.1 Term**

This Agreement shall remain in force and effect for a period of ten (10) years from the date of its execution, subject to any earlier termination as may result from the provisions of Section 11.2 below. At the end of ten (10) years from the date of its execution, and on each five-year anniversary thereafter, the term of the Agreement shall be automatically extended for five years beyond its then stated expiration date, unless at least three hundred and sixty-five days (365) days prior to any five year anniversary, either party notifies the other in writing of its intention that the Agreement shall not be extended beyond its then stated expiration date.

11.2 Termination

Either party may terminate this Agreement for any reason and at any time upon three hundred and sixty-five (365) days written notice to other party. Prior to exercising any termination permitted by this Agreement, the governing body of the party seeking termination shall meet, in good faith, with governing body of non-terminating party in an attempt to resolve or explain the reasons for termination.

12.0 General Provisions**12.1 Amendment of Agreement**

Either party may request an amendment of this Agreement at any time. Such request shall be in writing to the other party, and shall be considered without unreasonable delay and within no more than sixty (60) days of receipt.

12.2 Notice

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail, return receipt requested, postage and fees prepaid, addressed to the party to whom such notice is to be given at the addresses set forth below or at such other address as has been previously furnished in writing to the other party. Such notice shall be deemed given three (3) days after so deposited in the United States mail.

If to Loveland:

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

With a copy to:

City Attorney
City of Loveland
500 E. Third Street, Suite 300
Loveland, Colorado 80537

If to Johnstown:

With a copy to:

12.3 Application and Interpretation of Other Provisions

Whenever a provision of Loveland’s Zoning Code or the Johnstown’s Land Use Code are inconsistent with a specific provision of this Agreement, the party with the inconsistent code shall evaluate its regulations and initiate the process to amend its codes to be consistent with this Agreement and/or negotiate in good faith with the other party to amend this Agreement to be consistent with the applicable code and/or any amendment to the code. However, the decision of Loveland or Johnstown to so amend its code or to agree to amend this Agreement shall remain subject to the sole discretion of Loveland’s and Johnstown’s respective councils.

12.4 Exhibits or Maps

Exhibits and maps referred to in this Agreement are incorporated herein for all purposes.

12.5 Captions

The captions of the paragraphs are set forth herein only for the convenience of reference by the parties and are not intended in any way to define, limit or proscribe the scope or intent of this Agreement.

12.6 Additional Documents or Action

The parties may execute any additional documents or take any additional action reasonably necessary to carry out this Agreement.

12.7 Waiver of Breach

A waiver by any party to this Agreement of the breach of any term or provision of the Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by either party.

12.8 No Third Party Beneficiaries

Any enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Loveland and Johnstown, and nothing contained in this Agreement shall give to or allow any such claim or right of action by any other third person. It is the express intention of the parties that there shall be no third party beneficiaries of this Agreement and any person or entity other than Loveland and Johnstown receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

12.9 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 Loveland and Johnstown by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the Loveland and Johnstown by their respective charters and municipal codes, 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.

13.0 Maps and Exhibits

Map 1 Overlap Area map

Map 2 Johnstown Land Use Plan (showing growth management area)

Map 3 Loveland Land Use Plan (showing growth management area)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

CITY OF LOVELAND, COLORADO

By: _____

William D. Cahill, City Manager

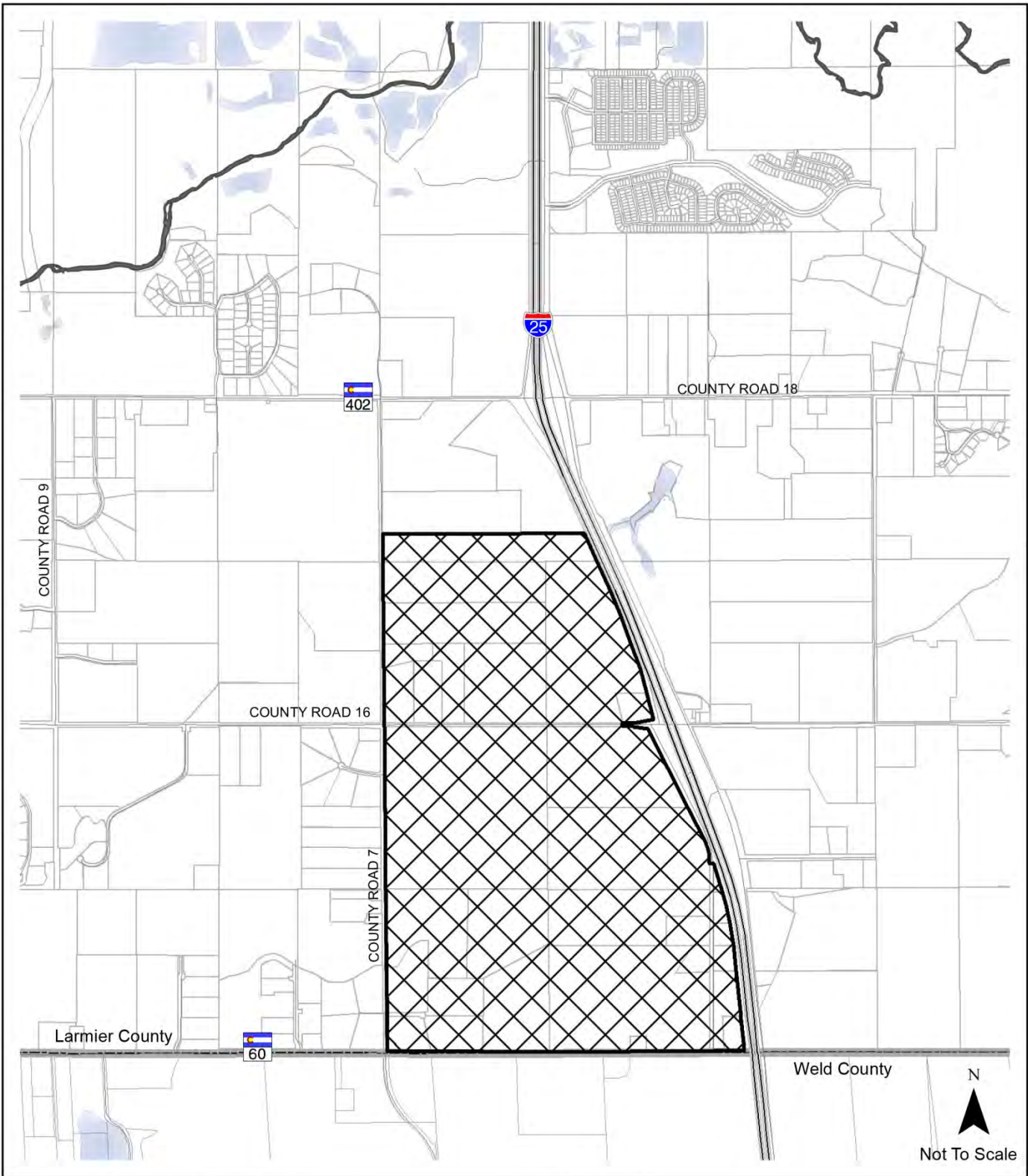
ATTEST:

City Clerk

APPROVED AS TO FORM:




Deputy City Attorney

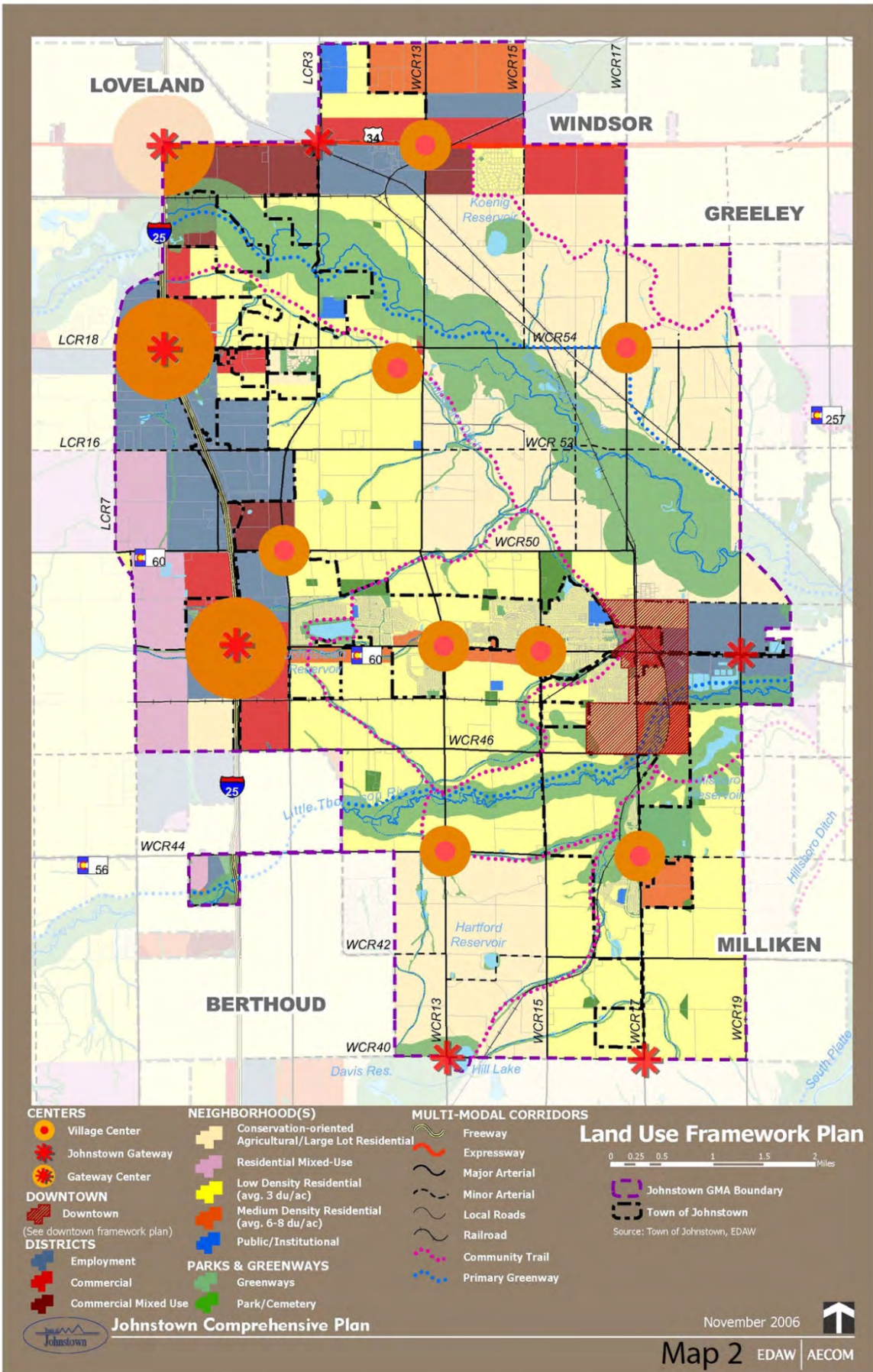
INSERT SIGNATURE PAGE FOR TOWN OF JOHNSTOWN



Overlap Area
MAP 1

Legend

-  Overlap Area
-  Big Thompson River
-  Parcels
-  Lakes and Ponds
-  County Boundary



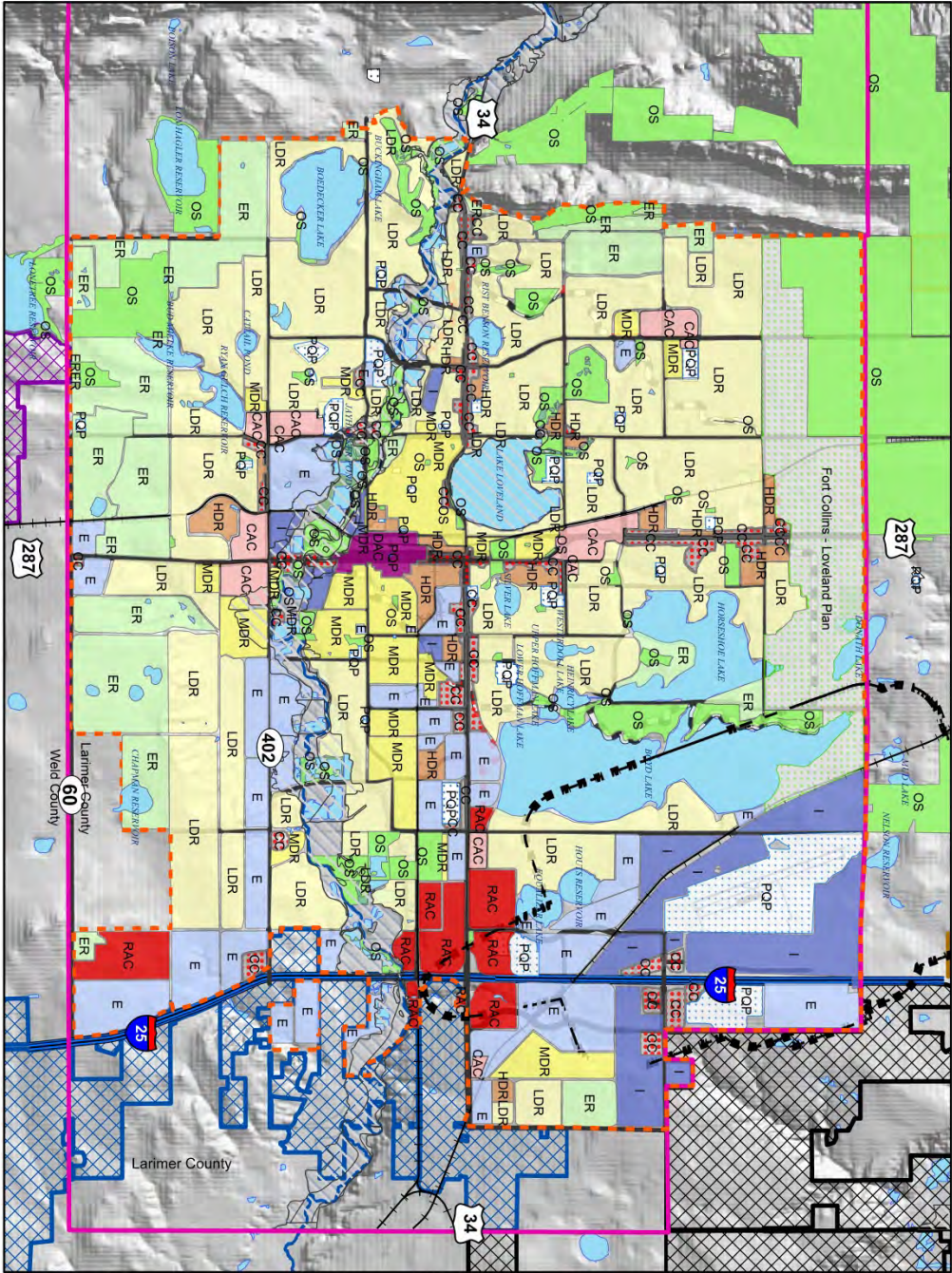
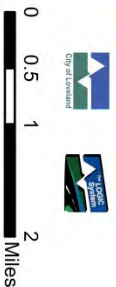


Figure Land Use Plan Map

| Land Use Categories | |
|---------------------|--|
| | Residential Mixed-Use |
| | ER - Estate Residential |
| | LDR - Low Density Residential |
| | MDR - Medium Density Residential |
| | HDR - High Density Residential |
| | Activity Center Mixed-Use |
| | RAC - Regional Activity Center |
| | DAC - Downtown Activity Center |
| | CC - Community Activity Centers |
| | CC - Corridor Commercial |
| | E - Employment |
| | Other Categories |
| | I - Industrial |
| | 100-Year Floodplain (FEMA) (see note 3) |
| | 100-Year Floodplain (FEMA) (see note 3) |
| | Public Schools, Hospitals, Public Facilities |
| | Open Development Reserve |
| | Open Development Reserve (Landscape Elements, Geot Courses and Corridors) |
| | Fort Collins-Loveland Corridor Area |
| | Land Use generally north of 57th Street is subject to the Fort Collins-Loveland Corridor Area Regional Planning Agreement between Fort Collins and Loveland. |
| | Windsor City Limits |
| | Benmore City Limits |
| | Fort Collins City Limits |
| | Lasere and Poole |
| | GMA - Growth Management Area |
| | GMA - For existing boundaries of the City. For future boundaries refer to the Planning Boundaries Map. |
| | Major Stream |
| | High Priority Stream |
| | Fort Collins-Loveland Airport Influence Area (see note 2) |

(1) This map is intended to serve as a guide for future land use patterns within Loveland's GMA and is advisory in nature. Land use patterns depicted on the map are generalized recognizing that development proposals may contain a mixture of land uses and density levels which achieve the intent of the Comprehensive Master Plan. All development.



CITY OF LOVELAND FUTURE LAND USE PLAN

Map 3



LOVELAND AND JOHNSTOWN INTERGOVERNMENTAL AGREEMENT

City Council

November 5, 2013

Agenda

- Background and Purpose
- Intergovernmental Agreement
- Larger Planning Effort
- Questions and Comments

Background and Purpose

Why We're Here

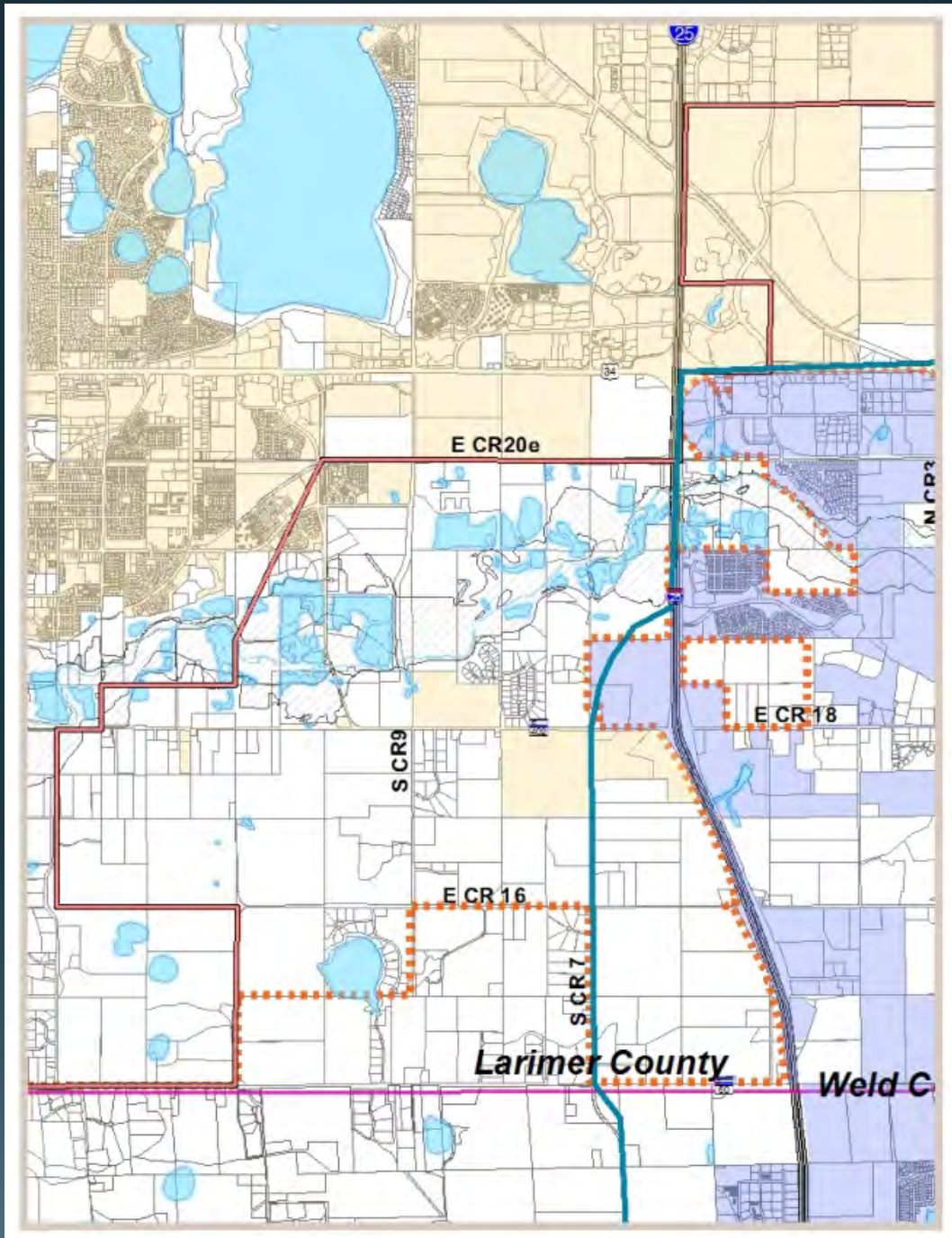
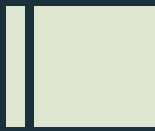
- Regional Growth
- Loveland and Johnstown Cooperation
- Loveland and Larimer County

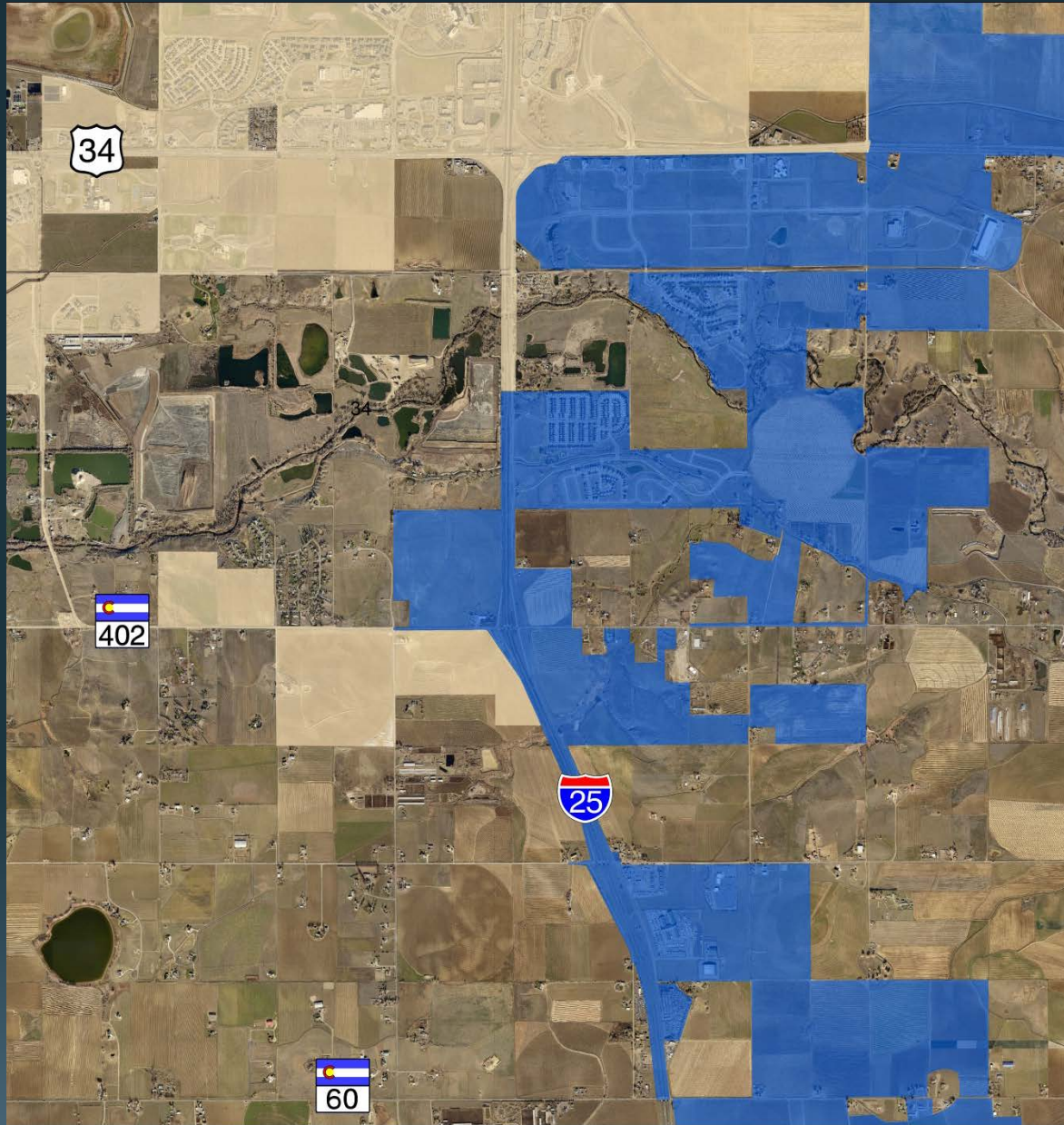
Here's The Situation

Adjacent
Borders

Overlapping
GMAs

Overlay
Zoning

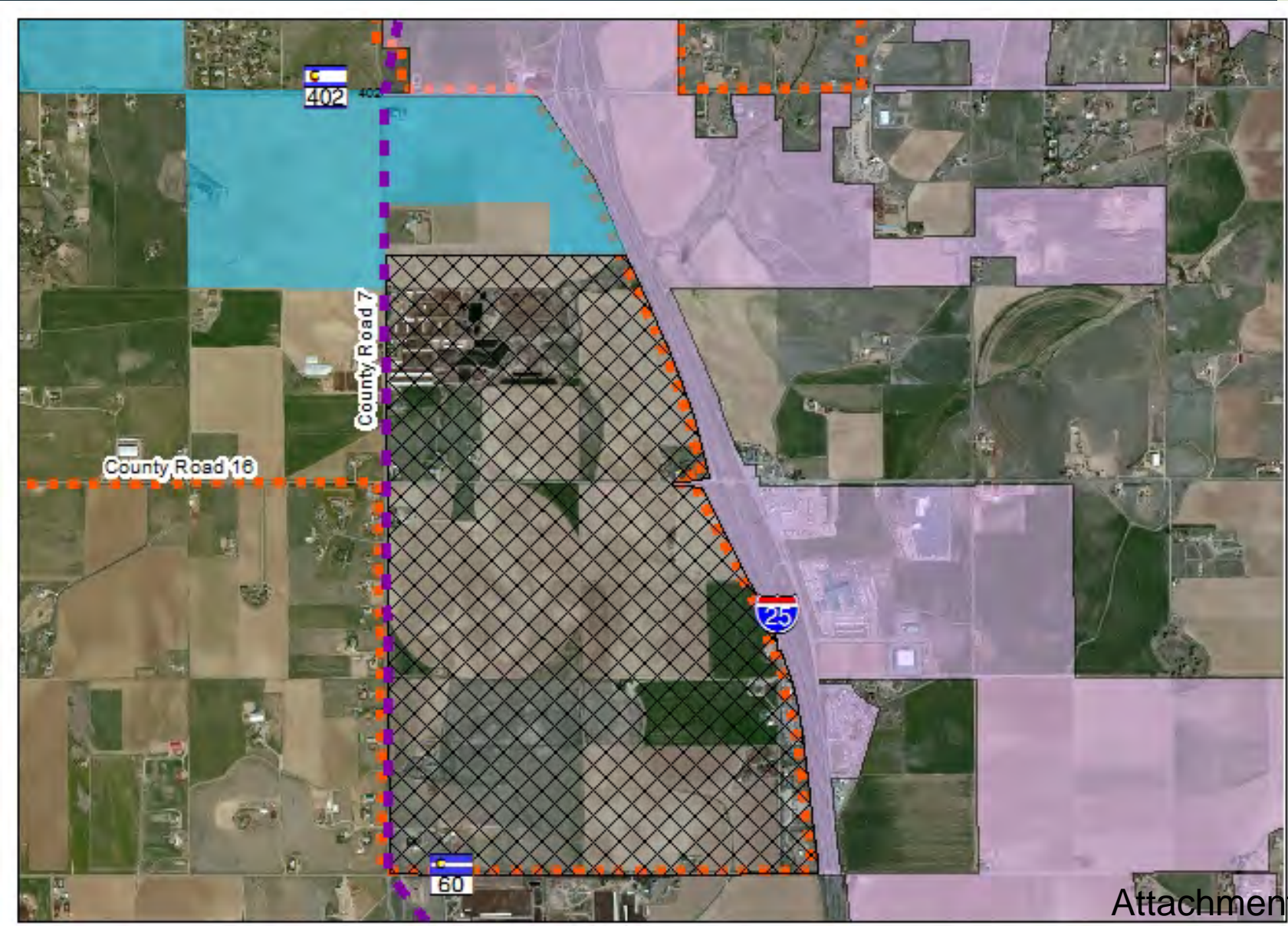




Intergovernmental Agreement

- Process for discussion
- Collaboration on other planning efforts
- Annexation is the choice of the property owner
- Neither municipality relinquishes any rights

Overlap Area



Larger Planning Effort

- Previous: Land Use Plan Amendment
- Now: IGA
- Next: GMA Amendment
- Future: Work with Larimer County
- Future: State Highway 402 Corridor Plan

Process

- Extensive Work With Managers and Staff
- Public open houses
- Planning Commission recommend approval on July 8

Next Steps

- IGA at Johnstown Town Council on Nov 18th or Dec 2nd
- GMA at Johnstown Planning Commission on Nov 23
- GMA at Loveland City Council on Nov 19th
- GMA at Johnstown Town Council on Dec 2nd

**CITY OF LOVELAND
PLANNING COMMISSION MINUTES
July 8, 2013**

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on July 8, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Dowding, and Crescibene. Members absent: Commissioners Molloy, Prior, Krenning and Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney, and Karl Barton, Strategic Planning.

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

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Bob Paulsen, Current Planning Manager**, thanked the Commission members who attended the 06/24/13 Planning Commission Meeting simply to approve the meeting minutes from the 06/24/13 meeting. It was much appreciated.

2. **Karl Barton, Strategic Planning**, addressed the Commission to inform them of several exciting new projects that will require the Commission's time and effort in the next years to come. First is a business development plan for the U.S. 287 Highway Corridor that extends North and South, but excludes the downtown area. A decision was made to hire a consultant for this project due to limited staffing resources, and because of the time and attention it will take to complete a project of this size and scope. The focus of the plan will be to look at the development conditions along U.S. 287, and come to a determination as to what can spur private investment along the corridor in order to make it more vital. The goal is to improve the aesthetic climate along this stretch of corridor, ensure the transportation system continues to function optimally, and that the codes in place are appropriate for the conditions and development potential on the corridor. A statement of qualifications request was issued and we received responses from 9 consultant teams. Staff is currently reviewing those bids and will select 3 teams to respond to more specific requests for proposals along with a precise budget amount. The planning effort is targeted to kick off prior to the end of 2013, and continue into mid-year 2014. The second project is the 2015 Comprehensive Plan. This project has also gone through the statement of qualification process. It is a brand new Comprehensive Plan and will contain a new land use map. The objective is to determine where Loveland is now and where it will go in the future. Staff anticipates a large public outreach process during the duration of this project, as it is critical to the success of this effort. The process for choosing consultants -for this work was similar to the 287 Corridor project, and Staff received proposals from 6 different planning teams. The aim is to interview the teams prior to the end of the year, and more detailed proposals will be requested once a budget has been finalized for this plan. The role of the Planning Commission will be to assist Staff and the consultant team in the creation of this plan. Staff is anticipating that the

implementation of this project will pave the way to a more useful and powerful tool in guiding the future growth of Loveland.

Mr. Paulsen assured the Commissioners that they would be kept updated with status as the projects move forward, either from himself or Karl.

3. **Mr. Paulsen** brought to the attention of the Commission that there are items on the agenda for the next two Planning Commission meetings to be held on July 22nd, and August 12th.
4. **Chair Meyers** asked Staff to prepare a ZBA update for the July 22nd or August 12th meeting.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

Commissioner Middleton thanked the City Council, Mayor, and the Loveland Fire Department for the great July 4th fireworks show over Lake Loveland. **Chair Meyers** noted that the 07/08/13 Planning Commission Meeting was the first to be streamed live online for public viewing.

APPROVAL OF THE MINUTES

Chair Meyers asked for a motion to approve the minutes from the 06/24/13 Planning Commission meeting. **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Dowding**, the meeting minutes were approved four to one with **Chair Meyers** abstaining since he was absent at the 06/24/13 Planning Commission meeting.

REGULAR AGENDA

1. Intergovernmental Agreement with Johnstown and GMA Boundary Amendment

This is a public hearing to consider two separate but related items that are part of a larger strategy of cooperation with the Town of Johnstown in the handling of annexation and planning matters in the area where the two communities are adjacent.

First, an Intergovernmental Agreement (IGA) between the City of Loveland and Town of Johnstown. This IGA establishes a process for cooperation between the two municipalities when processing annexations in an area generally described as being bounded by I-25 on the east, Larimer County Road 7 on the west, and State Highway 60 on the south, extending north for approximately one and one half miles and defined in the IGA as the Overlap Area. Second, an amendment to Loveland's Growth Management Area boundaries so as to remove certain properties located on the west and east sides of I-25, north of State Highway 402, and primarily south of the Big Thompson River. This amendment is being proposed as a clean-up of the GMA boundaries as it is unlikely that Loveland would be able to annex or serve any of the property being removed from the GMA.

Mr. Barton addressed the Commission and explained that Staff is asking for recommendation of both the Loveland and Johnstown Intergovernmental Agreement (IGA) and GMA Boundary Amendment (GMA) for City Council approval. The goal is to get final approval from City Council by the August 20th Council meeting. The IGA marks a new period of cooperation and agreement between the City of Loveland and the Town of Johnstown. Regional growth in Loveland and area communities has historically caused conflict during planning and annexation pursuits. This new growth also presents possibilities for neighboring communities to work together, and allows for more harmonious land use patterns, more proficient provision of infrastructure, and other services. **Mr. Barton** presented a map to the Commission indicating adjacent areas of Loveland and Johnstown as well as the existing Growth Management Overlay Areas. The map also illustrated the Larimer County Loveland GMA Overlay Zoning District. The district represents an agreement with the City of Loveland and Larimer County that states when a landowner comes to Larimer County for a discretionary land use approval, the property owner must contact Loveland to see if annexation is possible or desirable. The area along Highway 402, and to the west side of I-25, is not covered by the overlay zoning district. The biggest reason for this omission is due to the fact that Larimer County does not want to be involved in the conflict between Loveland and Johnstown regarding the GMA overlaps. Once an agreement is accomplished, Larimer County may entertain the idea of extending the zoning district into this area. Although there is no guarantee from Larimer County, it is the hope that an approved IGA will contribute to that effort. The ultimate goal is to forge a corridor plan for Highway 402, which has been indicated as a City Council priority. The IGA itself has a geographical affected area located west of I-25 to County Road 7, north of Highway 60, south of Highway 402, but not necessarily abutting Highway 402. Given the proximity to I-25, a planned interchange at Highway 16, I-25, and State Highway 60, growth pressure should be expected; land owners will want to develop their property. The IGA allows Loveland and Johnstown to work together with the annexation applicant to make the best decision possible in relation to annexation, planning, and zoning. The IGA has a process for discussion and collaboration on other planning efforts as well. Annexation is strictly the choice of the property owner and neither municipality relinquishes any rights. **Chair Meyers** questioned whether setbacks for mineral, oil, and gas right agreements would be included in the IGA. **Mr. Barton** assured the Commission that those good faith efforts are covered in the IGA; however neither community has control over the land uses of the other. **Mr. Barton** displayed two maps, one which revealed existing GMA boundaries; the other showed the proposed GMA boundaries. The new proposed boundaries would provide a “clean up” of the GMA’s and the surrounding areas by eliminating sections in the flood plains. It also would remove zones that would be too cost prohibitive for the City of Loveland to provide services to or that Loveland would not have the necessary contiguity to annex. The clean-up would provide a more accurate picture of areas that the City of Loveland expects to urbanize in the future. In return, the Town of Johnstown has agreed to relinquish the Ehrlich property from their GMA, as well as a rectangular parcel nearby. The Town of Johnstown is also presenting this IGA to their board for approval. The City of Loveland and Town of Johnstown currently has staff agreement for both the IGA and GMA’s. It should be noted that a public open house was held for affected property owners. Next step for the IGA is to go before the Loveland City Council on August 20th for approval. Johnstown will follow a similar approval process and it should be communicated that both the IGA and GMA are contingent on Johnstown approval. Staff recommends that the Commission ask the City Council for approval of both

these items.

Chair Meyers stated that he understood that the outreach that staff did with the open house and mailings were not required by law, but were done as a courtesy to the community. **Mr. Barton** confirmed there was no process for approving an IGA. The GMA does require a public hearing notice, and mailings and phone calls were sent to community members. In addition, a public hearing notice was published in the newspaper.

Mr. Massaro stated he understood there was a small turn out at the open house, but was curious if there was any negative feedback from the attendees. **Mr. Barton** stated that for the most part participants at the open house were curious about the IGA and GMA's, but he did not receive negative reactions.

Ms. Dowding asked what role Larimer County will play in the future process. **Mr. Barton** responded he was hopeful that Larimer County will work closely with Loveland on the overlay expansion. He explained the first step is to communicate that there is an agreement between Loveland and Johnstown, indicating that the conflict has been resolved. He acknowledged that Larimer County will be involved in any SH 402 corridor planning, and confirmed that Larimer County has been kept apprised of any planning that has already occurred.

Mr. Crescibene stated that he felt the IGA was long overdue and that it was good to see it come before the Commission. He wondered what would happen if a landowner wanted to annex their property into Loveland if their property was within the Johnstown GMA. **Mr. Barton** explained that if the landowner had contiguity, then technically Loveland would have the final decision whether to annex a property but noted that the goal of the IGA is to create a culture of cooperation between the two communities. **Mr. Paulsen** added that based on state statutory requirements, 1/6th of a property proposed for annexation must have contiguity with existing property in Loveland in order for annexation to be considered.

Mr. Middleton thanked **Mr. Barton** for his effort and hard work that went into the creation of the IGA. He asked for the record to show that this is a public hearing; however there are no community members in the audience. He also asked if there was a shelf life for the IGA. The IGA specifically states that either community can opt out of the agreement. **Ms. Schmidt** explained that there are two provisions in the IGA; first, either party can terminate the agreement, but they must provide a year's notice. Second, the agreement is intended to run for a 10 year period and will automatically start to roll in 5 year increments unless one city or the other provides notice that they don't want it to go forward. That notice also requires a year's notice. **Mr. Middleton** clarified the question and asked how long it would take to get the agreement finalized. He said he wouldn't like to see the process drag out for 2 or 3 years. **Mr. Barton** stated that the City Council would most likely propose a timeframe for Johnstown to approve the agreement, however if it gets into a situation where it is not getting approved by Johnstown in a relatively timely fashion, it might indicate that Johnstown isn't interested in entering the IGA. **Mr. Barton** felt that was very unlikely. **Ms. Schmidt** added that IGA's typically don't contain a provision as to when it must be approved.

Chair Meyers stated he felt that in the spirit of good faith, having an expiration date in the IGA probably wouldn't be a good idea.

Mr. Massaro asked **Mr. Barton** if the IGA is on the Town of Johnstown agenda for approval. **Mr. Barton** explained that he didn't know when it would be on the Johnstown agenda, but he had been in contact with **John Franklin, Town of Johnstown Planner**, who indicated he still needed to speak with his manger regarding timing of the approval.

Mr. Massaro shared that he would be voting in favor of the IGA.

Mr. Middleton agreed that the IGA was needed and is pleased with the work done so far. He stated that he would be voting in favor of the IGA and would like to see it finalized in 120 days.

Ms. Dowding shared that she felt the IGA and GMA boundary clean-up was long overdue, and stated that both looked very solid and clean and she appreciated the effort that went into creating them.

Chair Meyers stated that the IGA demonstrated great effort on behalf of City Staff, City Managers, and City Council from both cities. He stated he was in strong support of the IGA and GMA and would be voting in support of both.

Commissioner Middleton made a motion to recommend that the City Council adopt the proposed Intergovernmental Agreement between the City of Loveland and Town of Johnstown. Upon a second from **Commissioner Dowding** the motion was unanimously approved.

Commissioner Middleton made a motion to recommend that the City Council amend the City of Loveland "2005 Comprehensive Plan" by the amendment of Section 4.7—Future land use plan map as needed for the anticipated Intergovernmental Agreement with the Town of Johnstown and as proposed to "clean up" Loveland's GMA Boundaries. Upon a second from **Commissioner Dowding** the motion was unanimously approved.

ADJOURNMENT

Vice-Chair Middleton asked for a motion to adjourn. **Commissioner Crescibene** made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by: _____
Buddy Meyers, Planning Commission Chairman

Kimber Kreutzer, Planning Commission Secretary



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: 18
MEETING DATE: 11/5/2013
TO: City Council
FROM: John Duval, City Attorney
PRESENTER: John Duval

TITLE:

A Resolution of the Loveland City Council Approving the Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement for the Addition of Two Regional Improvements

RECOMMENDED CITY COUNCIL ACTION:

Approve the resolution.

OPTIONS:

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

SUMMARY:

This is an administrative action. It is a resolution to approve a Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement to add two new "Regional Improvements" to the five Regional Improvements currently identified in the Centerra MFA.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The Fifth Amendment does not change in any way the current or future amount of revenues collected and disbursed under the Centerra MFA. It only expands by two the number of Regional Improvements for which these revenues can be spent.

BACKGROUND:

On January 20, 2004, the City of Loveland (the "City") and the Loveland Urban Renewal Authority ("LURA") entered into the Centerra Master Financing and Intergovernmental Agreement with Centerra Metropolitan District No. 1 (the "District"), together with other parties, (the "MFA"). Since then, the MFA has been amended four times. A fifth amendment to the MFA is being proposed (the "Fifth Amendment").

The MFA requires the establishment of the "Regional Fund," which is a segregated account held by LURA, in which is to be deposited annually the "Regional Allocation." The MFA requires LURA to use the Regional Fund to contribute to the payment of the costs for the construction of the "Regional Improvements." The MFA currently defines the Regional Improvements to include five different identified Regional Improvements, which include the Interim I-25 and U.S. 34 Interchange Improvements and the Centerra Parkway/Crossroads Extension, both of which have been completed. The MFA also provides that other public improvements may be classified as Regional Improvements under the MFA upon the agreement of the City, LURA, and the District.

On July 9, 2013, a presentation was made to City Council at its study session concerning a proposed amendment to the MFA to allow the designation of two additional Regional Improvements. The first of these new Regional Improvements is Boyd Lake Avenue from U.S. 34 north to Kendall Parkway (37th Street) (the "Boyd Lake Improvements"). The second new Regional Improvement is the Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast including an underpass at Kendall Parkway and I-25 (the "Kendall Parkway Underpass"). This proposed amendment to the MFA would allow funds from the Regional Fund to be used in the future for both these improvements. The proposed Fifth Amendment making this amendment to the MFA is attached as Exhibit A to the Resolution.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Resolution with the Fifth Amendment attached as Exhibit A

RESOLUTION #R-96-2013

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING
THE FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT FOR THE ADDITION OF TWO REGIONAL
IMPROVEMENTS**

WHEREAS, on January 20, 2004, the City of Loveland (the “City”) and the Loveland Urban Renewal Authority (“LURA”) entered into that certain Centerra Master Financing and Intergovernmental Agreement (the “MFA”), dated January 20, 2004, with Centerra Properties West, LLC (“CPW”), Centerra Metropolitan District No. 1 (the “Service District”), Centerra Public Improvement Collection Corporation (the “PIC”), and Centerra Public Improvement Development Corporation (the “PID”); and

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereafter referred to collectively as “the Parties”; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 (“First Amendment”) to include the Centerra Parkway / Crossroads Extension within the definition of “Regional Improvements” as defined in MFA Section 1.43, which First Amendment was approved by the City Council in Resolution #R-114-2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 (“Second Amendment”) to address various issues associated with the Mixed Use Village Center Project and to include certain parking improvements within the definition of “Local Improvements” as defined in MFA Section 1.54, which Second Amendment was approved by the City Council in Resolution #R-75-2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 (“Third Amendment”) to address the addition of certain real property to the URA Project Area, as defined in the MFA, and to set forth the terms and conditions pursuant to which the URA Project Area, as amended, shall benefit from property tax increment revenues generated from within the URA Project Area, which Third Amendment was approved by the City Council in Resolution #R-101-2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 (“Fourth Amendment”) to address the formation of a new metropolitan district located within the URA Project Area, known as Centerra Metropolitan District No. 5, which Fourth Amendment was approved by the City Council in Resolution #R-32-2009; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the MFA requires the establishment of the Regional Fund, which is a segregated account held by LURA, into which is deposited annually the Regional Allocation; and

WHEREAS, MFA Section 11.4 requires LURA to disburse to the Service District the Regional Fund to pay the cost of the construction of the Regional Improvements, to the extent the Regional Improvements meet the requirements of MFA Section 11.2 and are not constructed pursuant to MFA Section 11.3; and

WHEREAS, the Regional Improvements required to be constructed pursuant to MFA Section 11.3 have been completed; and

WHEREAS, MFA Section 1.93 defines the Regional Improvements to include: (1) the I-25 and Crossroads Boulevard Interchange Improvements; (2) the Interim I-25 and U.S. 34 Interchange Improvements; (3) the County Road 5 and U.S. 34 Structure; (4) the County Road 3E and U.S. 34 Structure; (5) the Final I-25 and U.S. 34 Interchange Improvements; and (6) the Centerra Parkway/Crossroads Extension; and

WHEREAS, MFA Section 1.93.6 provides that other Public Improvements (as defined in the MFA) may be classified as Regional Improvements under the MFA upon the agreement of the City, the LURA, and the Service District; and

WHEREAS, the Parties desire to amend the MFA to expand the list of Regional Improvements to include: (1) Boyd Lake Avenue from U.S. 34 north to Kendall Parkway (37th Street); and (2) Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast (including an underpass at Kendall Parkway and I-25); and

WHEREAS, the Parties have negotiated the “Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement” attached hereto as Exhibit “A” and incorporated herein by reference (the “Fifth Amendment”); and

WHEREAS, after reviewing the Fifth Amendment, and receiving information from City staff and others, the City Council has determined that the Fifth Amendment will be in the best interests of the City and its citizens.

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

Section 1. That the City Council hereby finds that the Fifth Amendment is in the best interests of the public and will serve the public purposes of (1) providing social and economic benefits to the City; (2) furthering the City’s economic goals as established in the City’s economic development plan; and (3) generally benefiting the public’s health, safety and welfare.

Section 2. That the Fifth Amendment is hereby approved and the Mayor is authorized and directed to execute it on behalf of the City.

Section 3. That the City Manager is authorized, as he deems necessary and in consultation with the City Attorney, to agree to minor amendments to the Fifth Amendment on behalf of the City provided that such amendments are consistent with the purposes of this Resolution and protect the City's interests.

Section 4. This Resolution shall take effect on the date and at the time of its adoption.

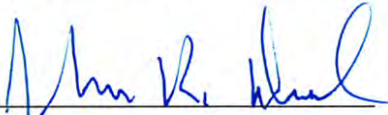
ADOPTED this 5th day of November, 2013.

Cecil Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney

EXHIBIT "A"

**FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

**FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

THIS FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT (the “Fifth Amendment”) is entered into this ____ day of _____, 2013, by and among the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the “City”); the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic (“LURA”); **CENTERRA PROPERTIES WEST, LLC**, a Colorado limited liability company (“CPW”); **CENTERRA METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “Service District”); **CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION**, a Colorado non-profit corporation (the “PIC”); and the **CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION**, a Colorado non-profit corporation (the “PID”).”

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereinafter referred to collectively as the “Parties”; and

WHEREAS, the Parties have entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, (together with the First, Second, Third, and Fourth Amendments described below, referred to herein collectively as “the MFA”) to provide, among other things, for the financing of “Public Improvements” and “Regional Improvements” related to the development of Centerra, as these terms in quotes are defined in the MFA; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 (“First Amendment”); and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 (“Second Amendment”); and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 (“Third Amendment”); and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 (“Fourth Amendment”); and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the MFA; and

WHEREAS, the MFA requires the establishment of the Regional Fund, which is a segregated account held by LURA, into which is deposited annually the Regional Allocation; and

WHEREAS, MFA Section 11.4 requires LURA to disburse to the Service District the Regional Fund to pay the cost of the construction of the Regional Improvements, to the extent the Regional Improvements meet the requirements of MFA Section 11.2 and are not constructed pursuant to MFA Section 11.3; and

WHEREAS, the Regional Improvements required to be constructed pursuant to MFA Section 11.3 have been completed; and

WHEREAS, MFA Section 1.93 defines the Regional Improvements to include: (1) the I-25 and Crossroads Boulevard Interchange Improvements; (2) the Interim I-25 and U.S. 34 Interchange Improvements; (3) the County Road 5 and U.S. 34 Structure; (4) the County Road 3E and U.S. 34 Structure; (5) the Final I-25 and U.S. 34 Interchange Improvements; and (6) the Centerra Parkway/Crossroads Extension; and

WHEREAS, MFA Section 1.93.6 provides that additional Regional Improvements may be classified upon the agreement of the City, the LURA, and the Service District; and

WHEREAS, the Parties desire to amend the MFA to expand the list of Regional Improvements to include: (1) Boyd Lake Avenue from U.S. 34 north to Kendall Parkway (37th Street); and (2) Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast (including an underpass at Kendall Parkway and I-25); and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the Loveland City Council approved this Agreement in Resolution _____ and also approved it sitting as the LURA’s governing body in Resolution _____.

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

DEFINITIONS

1. That unless the context clearly indicates otherwise, all capitalized terms used in this Fifth Amendment shall have the meaning given to them in the MFA.

2. That for purposes of this Fifth Amendment, the term “Boyd Lake Avenue” shall mean a public roadway running from U.S. Highway 34 north to Kendall Parkway (37th Street), together with all underground utilities located within the public right-of-way which also qualify as Local Improvements, as generally depicted on **Exhibit A** to this Fifth Amendment, attached hereto and incorporated herein by reference.

3. That for purposes of this Fifth Amendment, the term “Kendall Parkway” shall mean a public roadway running from U.S. Highway 34 northwest to Boyd Lake Avenue (including an underpass at Kendall Parkway and I-25), together with all underground utilities located within the public right-of-way which also qualify as Local Improvements, as generally depicted on **Exhibit B** to this Fifth Amendment, attached hereto and incorporated herein by reference.

REGIONAL IMPROVEMENT DESIGNATION

4. That Section 1.93 of the MFA shall be amended by the addition of the following:

1.93.8 Boyd Lake Avenue, which may be constructed in its entirety in one phase or in multiple phases; and

1.93.9 Kendall Parkway, which may be constructed in its entirety in one phase or in multiple phases; and

5. The designation herein of Boyd Lake Avenue and Kendall Parkway as Regional Improvements shall not relieve any adjacent or benefitted land owner, other than CPW and its Affiliates, from the land owner’s obligation to fund a portion of such improvements as required by City Regulations.

MISCELLANEOUS

6. That the City, LURA, and the Service District each finds and determines that the execution of this Fifth Amendment is in the best interest of the public health and general welfare of the City, LURA, and the Service District respectively, and that it will serve the public purposes of providing significant social and economic benefits to the City, LURA, and the Service District.

7. That except as expressly provided in this Fifth Amendment, all other terms and conditions of the MFA shall remain unchanged and in full force and effect.

(Remainder of page intentionally left blank)

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

CITY OF LOVELAND, COLORADO, a Colorado municipal coporation

By: _____
Cecil Gutierrez, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LOVELAND URBAN RENEWAL AUTHORITY,
a Colorado body corporate and politic

By: _____
Cecil Gutierrez, Chairman

ATTEST:

By: _____
_____, Secretary

APPROVED AS TO FORM:

City Attorney

CENTERRA METROPOLITAN DISTRICT NO. 1,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Kim L. Perry, President

ATTEST:

By: _____
Tom Hall, Secretary

CENTERRA PUBLIC IMPROVEMENT
COLLECTION CORPORATION, a Colorado non-
profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PUBLIC IMPROVEMENT
DEVELOPMENT CORPORATION, a Colorado
non-profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PROPERTIES WEST, LLC
a Colorado Limited Liability Corporation

By: McWhinney Real Estate Services, Inc.,
a Colorado Corporation, Manager

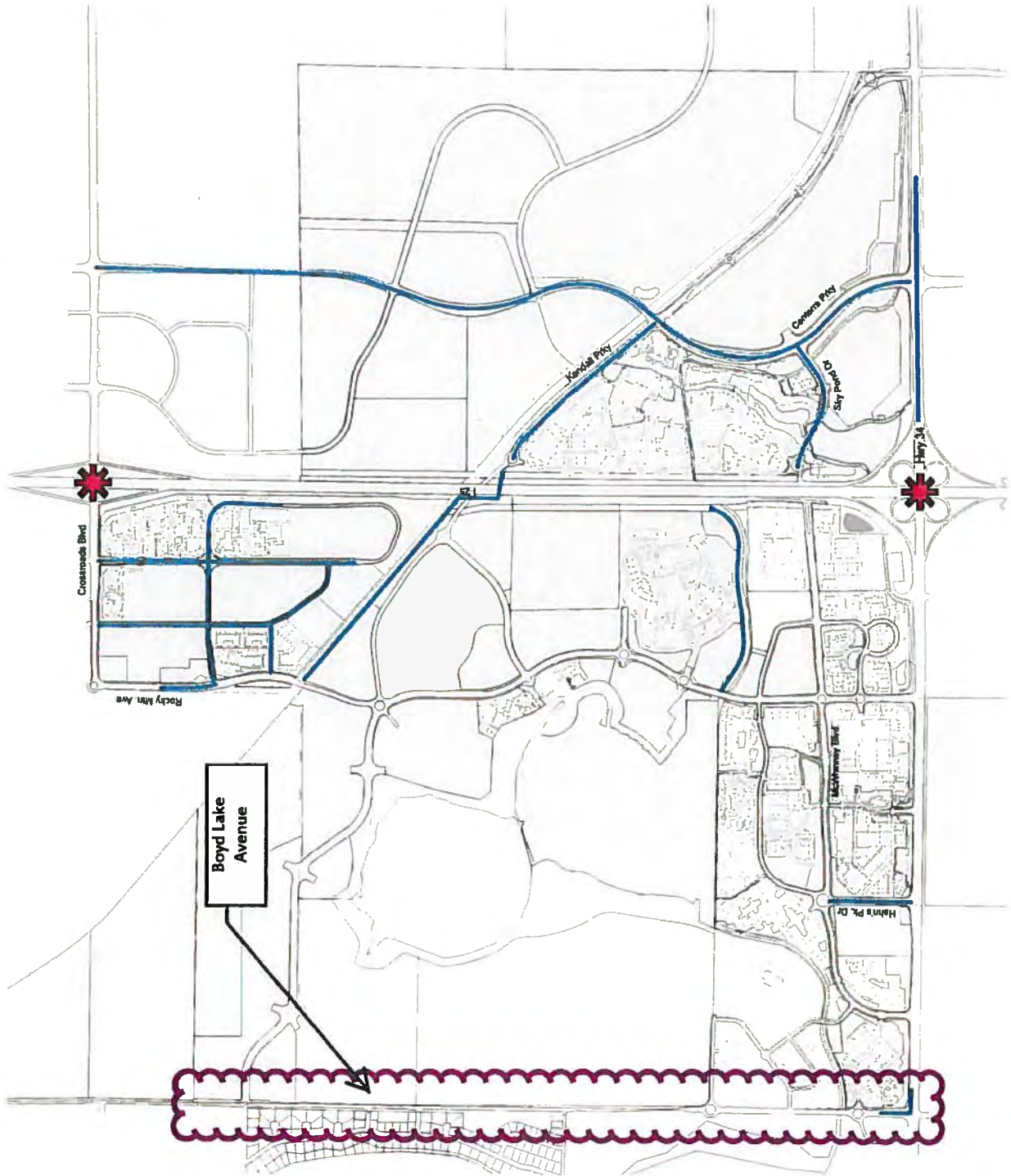
By: _____
Douglas L. Hill, Executive Vice President

EXHIBIT A





Depiction of Boyd Lake Avenue



Boyd Lake Avenue Regional Improvement



LEGEND

-  Metro District Boundary
-  Constructed Public Roads, Water, and Sanitary Sewer
-  Public Trails
-  Interchange - Interim Safety Improvements Completed

Note: The information on this document is intended to be used as a conceptual or future and McWhinney works in addition to make no warranties to its accuracy. The information shown here is subject to change at any time.

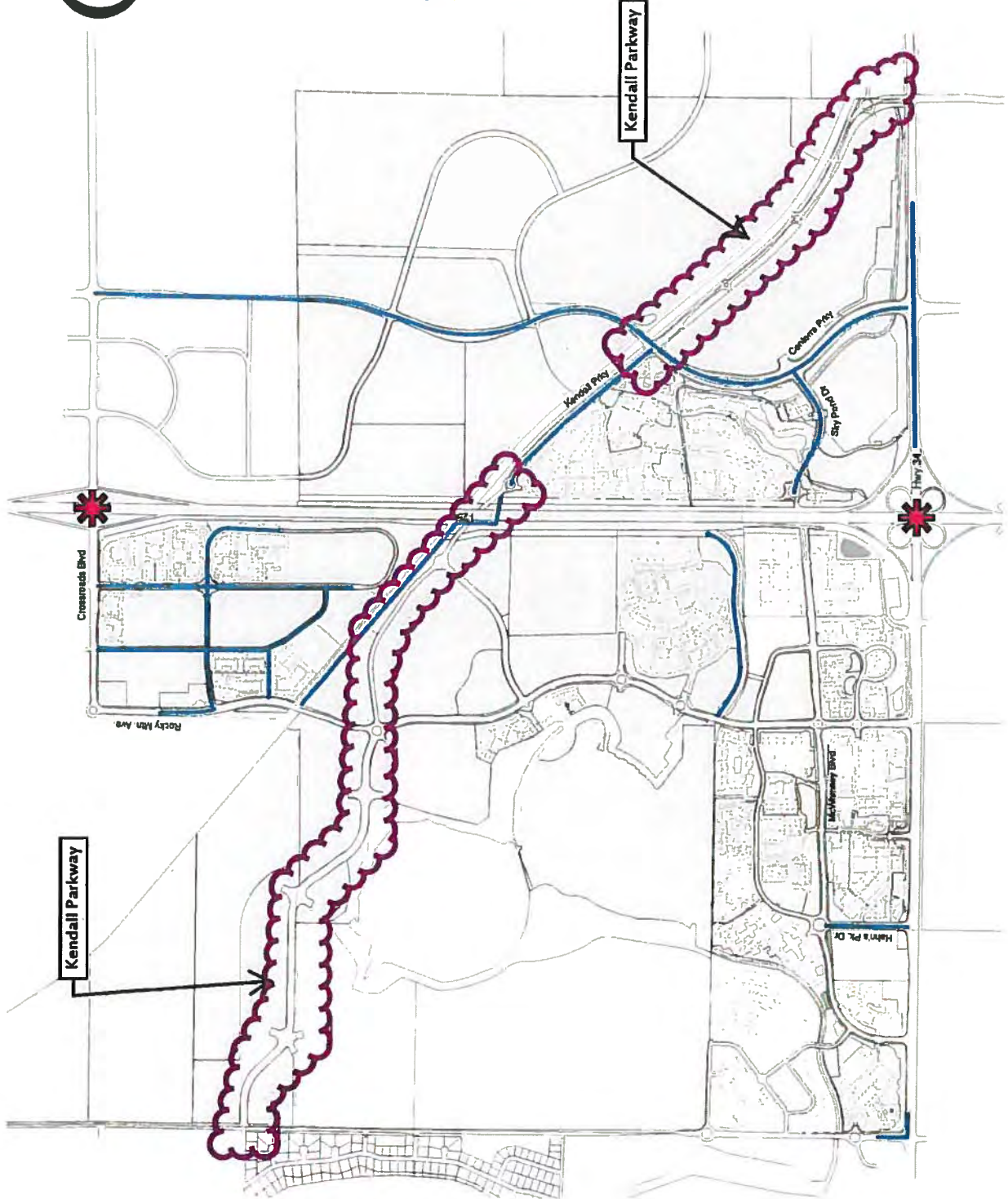


EXHIBIT B

Depiction of Kendall Parkway



Kendall Parkway Regional Improvement



- LEGEND**
- Metro District Boundary
 - Constructed Public Roads, Water, and Sanitary Sewer
 - Public Trails
 - Interchange-Interim Safety Improvements Completed

Note: This information is for informational purposes only and is not intended to be used as a legal document. The information shown here is subject to change at any time.





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: 19
MEETING DATE: 11/5/2013
TO: City Council
FROM: John Duval, City Attorney
PRESENTER: John Duval

TITLE:

A Resolution of the Loveland Urban Renewal Authority Approving the Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement for the Addition of Two Regional Improvements

RECOMMENDED CITY COUNCIL ACTION:

Approve the resolution.

OPTIONS:

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

SUMMARY:

This is an administrative action. It is a resolution to approve a Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement to add two new "Regional Improvements" to the five Regional Improvements currently identified in the Centerra MFA.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The Fifth Amendment does not change in any way the current or future amount of revenues collected and disbursed under the Centerra MFA. It only expands by two the number of Regional Improvements for which these revenues can be spent.

BACKGROUND:

On January 20, 2004, the City of Loveland (the "City") and the Loveland Urban Renewal Authority ("LURA") entered into the Centerra Master Financing and Intergovernmental Agreement with Centerra Metropolitan District No. 1 (the "District"), together with other parties, (the "MFA"). Since then, the MFA has been amended four times. A fifth amendment to the MFA is being proposed (the "Fifth Amendment").

The MFA requires the establishment of the "Regional Fund," which is a segregated account held by LURA, in which is to be deposited annually the "Regional Allocation." The MFA requires LURA to use the Regional Fund to contribute to the payment of the costs for the construction of the "Regional Improvements." The MFA currently defines the Regional Improvements to include five different identified Regional Improvements, which include the Interim I-25 and U.S. 34 Interchange Improvements and the Centerra Parkway/Crossroads Extension, both of which have been completed. The MFA also provides that other public improvements may be classified as Regional Improvements under the MFA upon the agreement of the City, LURA, and the District.

On July 9, 2013, a presentation was made to City Council at its study session concerning a proposed amendment to the MFA to allow the designation of two additional Regional Improvements. The first of these new Regional Improvements is Boyd Lake Avenue from U.S. 34 north to Kendall Parkway (37th Street) (the "Boyd Lake Improvements"). The second new Regional Improvement is the Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast including an underpass at Kendall Parkway and I-25 (the "Kendall Parkway Underpass"). This proposed amendment to the MFA would allow funds from the Regional Fund to be used in the future for both these improvements. The proposed Fifth Amendment making this amendment to the MFA is attached as Exhibit A to the Resolution.

REVIEWED BY CITY MANAGER:


LIST OF ATTACHMENTS:

1. Resolution with the Fifth Amendment attached as Exhibit A

RESOLUTION #R-97-2013**A RESOLUTION OF THE LOVELAND URBAN RENEWAL AUTHORITY
APPROVING THE FIFTH AMENDMENT TO THE CENTERRA MASTER
FINANCING AND INTERGOVERNMENTAL AGREEMENT FOR THE ADDITION
OF TWO REGIONAL IMPROVEMENTS**

WHEREAS, on January 20, 2004, the City of Loveland (the “City”) and the Loveland Urban Renewal Authority (“LURA”) entered into that certain Centerra Master Financing and Intergovernmental Agreement (the “MFA”), dated January 20, 2004, with Centerra Properties West, LLC (“CPW”), Centerra Metropolitan District No. 1 (the “Service District”), Centerra Public Improvement Collection Corporation (the “PIC”), and Centerra Public Improvement Development Corporation (the “PID”); and

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereafter referred to collectively as “the Parties”; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 (“First Amendment”) to include the Centerra Parkway / Crossroads Extension within the definition of “Regional Improvements” as defined in MFA Section 1.43, which First Amendment was approved by the City Council in Resolution #R-114-2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 (“Second Amendment”) to address various issues associated with the Mixed Use Village Center Project and to include certain parking improvements within the definition of “Local Improvements” as defined in MFA Section 1.54, which Second Amendment was approved by the City Council in Resolution #R-75-2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 (“Third Amendment”) to address the addition of certain real property to the URA Project Area, as defined in the MFA, and to set forth the terms and conditions pursuant to which the URA Project Area, as amended, shall benefit from property tax increment revenues generated from within the URA Project Area, which Third Amendment was approved by the City Council in Resolution #R-101-2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 (“Fourth Amendment”) to address the formation of a new metropolitan district located within the URA Project Area, known as Centerra Metropolitan District No. 5, which Fourth Amendment was approved by the City Council in Resolution #R32-2009; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the MFA requires the establishment of the Regional Fund, which is a segregated account held by LURA, into which is deposited annually the Regional Allocation; and

WHEREAS, MFA Section 11.4 requires LURA to disburse to the Service District the Regional Fund to pay the cost of the construction of the Regional Improvements, to the extent the Regional Improvements meet the requirements of MFA Section 11.2 and are not constructed pursuant to MFA Section 11.3; and

WHEREAS, the Regional Improvements required to be constructed pursuant to MFA Section 11.3 have been completed; and

WHEREAS, MFA Section 1.93 defines the Regional Improvements to include: (1) the I-25 and Crossroads Boulevard Interchange Improvements; (2) the Interim I-25 and U.S. 34 Interchange Improvements; (3) the County Road 5 and U.S. 34 Structure; (4) the County Road 3E and U.S. 34 Structure; (5) the Final I-25 and U.S. 34 Interchange Improvements; and (6) the Centerra Parkway/Crossroads Extension; and

WHEREAS, MFA Section 1.93.6 provides that other Public Improvements (as defined in the MFA) may be classified as Regional Improvements under the MFA upon the agreement of the City, the LURA, and the Service District; and

WHEREAS, the Parties desire to amend the MFA to expand the list of Regional Improvements to include: (1) Boyd Lake Avenue from U.S. 34 north to Kendall Parkway (37th Street); and (2) Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast (including an underpass at Kendall Parkway and I-25); and

WHEREAS, the Parties have negotiated the “Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement” attached hereto as Exhibit “A” and incorporated herein by reference (the “Fifth Amendment”); and

WHEREAS, after reviewing the Fifth Amendment, and receiving information from City staff and others, the governing body of the LURA has determined that the Fifth Amendment will be in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE LOVELAND URBAN RENEWAL AUTHORITY:

Section 1. That the Fifth Amendment is in the best interests of LURA and will be consistent with and further the goals and purposes of the U.S. 34/Crossroads Corridor Renewal Plan approved by Resolution #R-8-2004 adopted by the City Council on January 20, 2004, as the same has been subsequently modified by City Council action.

Section 2. That the Fifth Amendment is hereby approved and the Mayor, as Chairman of LURA, and the City Clerk, as the Assistant Secretary of LURA, are hereby authorized and directed to execute it on behalf of LURA.

Section 3. That the Loveland City Manager is authorized, as he deems necessary and in consultation with the Loveland City Attorney, to approve minor amendments to the Fifth Amendment on behalf of LURA provided that such amendments are consistent with the purposes of the Resolution and protect LURA's interests. The Chairman of LURA is authorized to agree on behalf of LURA to any minor amendments to the Fifth Amendment approved by the City Manager under this Section.

Section 4. This Resolution shall take effect on the date and at the time of its adoption.


ADOPTED this 5th day of November, 2013.

Cecil Gutierrez, Chairman

ATTEST:

Secretary

APPROVED AS TO FORM:



City Attorney

EXHIBIT "A"

**FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

**FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

THIS FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT (the “Fifth Amendment”) is entered into this ____ day of _____, 2013, by and among the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the “City”); the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic (“LURA”); **CENTERRA PROPERTIES WEST, LLC**, a Colorado limited liability company (“CPW”); **CENTERRA METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “Service District”); **CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION**, a Colorado non-profit corporation (the “PIC”); and the **CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION**, a Colorado non-profit corporation (the “PID”).”

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereinafter referred to collectively as the “Parties”; and

WHEREAS, the Parties have entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, (together with the First, Second, Third, and Fourth Amendments described below, referred to herein collectively as “the MFA”) to provide, among other things, for the financing of “Public Improvements” and “Regional Improvements” related to the development of Centerra, as these terms in quotes are defined in the MFA; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 (“First Amendment”); and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 (“Second Amendment”); and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 (“Third Amendment”); and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 (“Fourth Amendment”); and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the MFA; and

WHEREAS, the MFA requires the establishment of the Regional Fund, which is a segregated account held by LURA, into which is deposited annually the Regional Allocation; and

WHEREAS, MFA Section 11.4 requires LURA to disburse to the Service District the Regional Fund to pay the cost of the construction of the Regional Improvements, to the extent the Regional Improvements meet the requirements of MFA Section 11.2 and are not constructed pursuant to MFA Section 11.3; and

WHEREAS, the Regional Improvements required to be constructed pursuant to MFA Section 11.3 have been completed; and

WHEREAS, MFA Section 1.93 defines the Regional Improvements to include: (1) the I-25 and Crossroads Boulevard Interchange Improvements; (2) the Interim I-25 and U.S. 34 Interchange Improvements; (3) the County Road 5 and U.S. 34 Structure; (4) the County Road 3E and U.S. 34 Structure; (5) the Final I-25 and U.S. 34 Interchange Improvements; and (6) the Centerra Parkway/Crossroads Extension; and

WHEREAS, MFA Section 1.93.6 provides that additional Regional Improvements may be classified upon the agreement of the City, the LURA, and the Service District; and

WHEREAS, the Parties desire to amend the MFA to expand the list of Regional Improvements to include: (1) Boyd Lake Avenue from U.S. 34 north to Kendall Parkway (37th Street); and (2) Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast (including an underpass at Kendall Parkway and I-25); and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the Loveland City Council approved this Agreement in Resolution _____ and also approved it sitting as the LURA’s governing body in Resolution _____.

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

DEFINITIONS

1. That unless the context clearly indicates otherwise, all capitalized terms used in this Fifth Amendment shall have the meaning given to them in the MFA.

2. That for purposes of this Fifth Amendment, the term “Boyd Lake Avenue” shall mean a public roadway running from U.S. Highway 34 north to Kendall Parkway (37th Street), together with all underground utilities located within the public right-of-way which also qualify as Local Improvements, as generally depicted on **Exhibit A** to this Fifth Amendment, attached hereto and incorporated herein by reference.

3. That for purposes of this Fifth Amendment, the term “Kendall Parkway” shall mean a public roadway running from U.S. Highway 34 northwest to Boyd Lake Avenue (including an underpass at Kendall Parkway and I-25), together with all underground utilities located within the public right-of-way which also qualify as Local Improvements, as generally depicted on **Exhibit B** to this Fifth Amendment, attached hereto and incorporated herein by reference.

REGIONAL IMPROVEMENT DESIGNATION

4. That Section 1.93 of the MFA shall be amended by the addition of the following:

1.93.8 Boyd Lake Avenue, which may be constructed in its entirety in one phase or in multiple phases; and

1.93.9 Kendall Parkway, which may be constructed in its entirety in one phase or in multiple phases; and

5. The designation herein of Boyd Lake Avenue and Kendall Parkway as Regional Improvements shall not relieve any adjacent or benefitted land owner, other than CPW and its Affiliates, from the land owner’s obligation to fund a portion of such improvements as required by City Regulations.

MISCELLANEOUS

6. That the City, LURA, and the Service District each finds and determines that the execution of this Fifth Amendment is in the best interest of the public health and general welfare of the City, LURA, and the Service District respectively, and that it will serve the public purposes of providing significant social and economic benefits to the City, LURA, and the Service District.

7. That except as expressly provided in this Fifth Amendment, all other terms and conditions of the MFA shall remain unchanged and in full force and effect.

(Remainder of page intentionally left blank)

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

CITY OF LOVELAND, COLORADO, a Colorado municipal coporation

By: _____
Cecil Gutierrez, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LOVELAND URBAN RENEWAL AUTHORITY,
a Colorado body corporate and politic

By: _____
Cecil Gutierrez, Chairman

ATTEST:

By: _____
_____, Secretary

APPROVED AS TO FORM:

City Attorney

CENTERRA METROPOLITAN DISTRICT NO. 1,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Kim L. Perry, President

ATTEST:

By: _____
Tom Hall, Secretary

CENTERRA PUBLIC IMPROVEMENT
COLLECTION CORPORATION, a Colorado non-
profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PUBLIC IMPROVEMENT
DEVELOPMENT CORPORATION, a Colorado
non-profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PROPERTIES WEST, LLC
a Colorado Limited Liability Corporation

By: McWhinney Real Estate Services, Inc.,
a Colorado Corporation, Manager

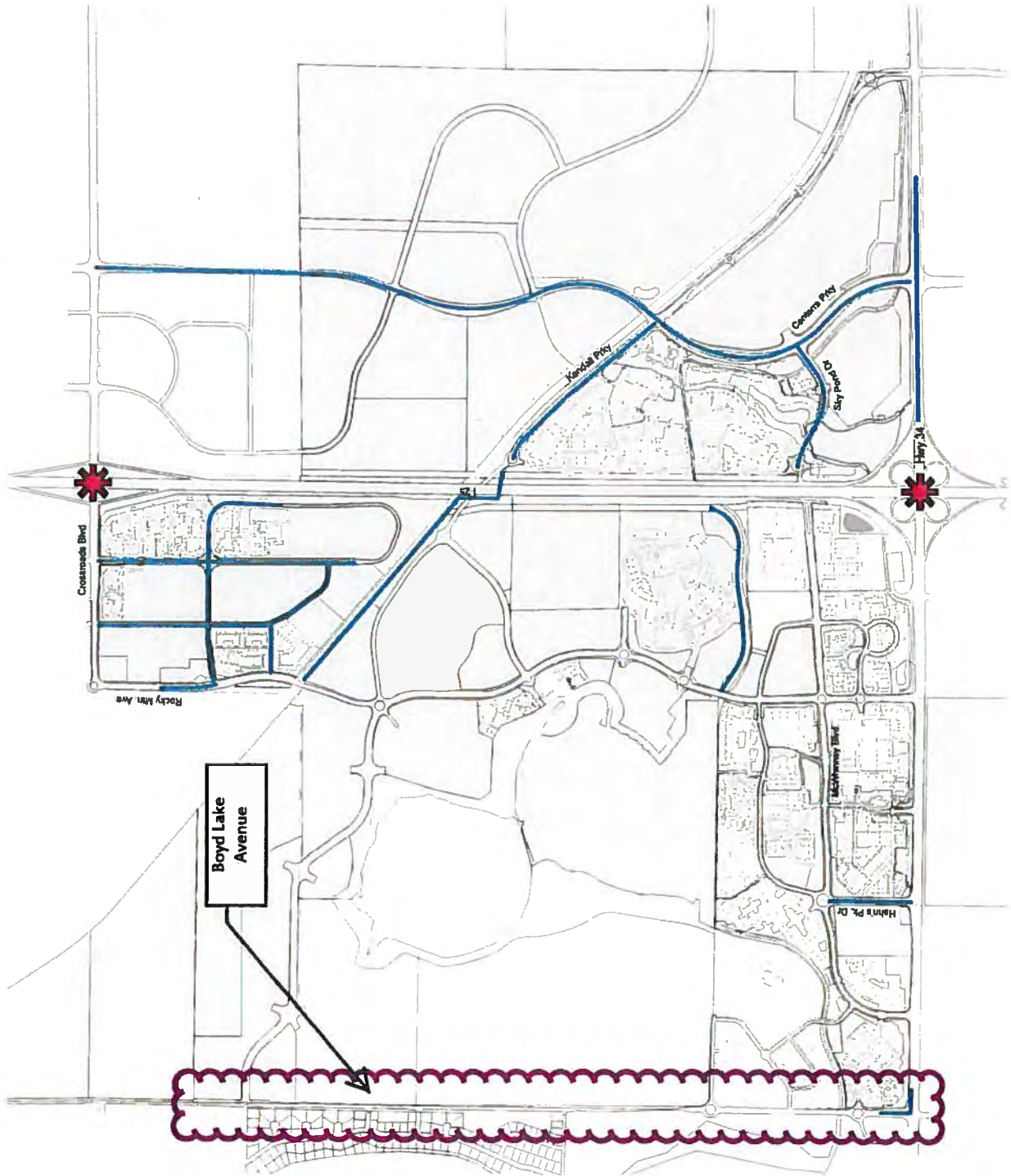
By: _____
Douglas L. Hill, Executive Vice President

EXHIBIT A





Depiction of Boyd Lake Avenue



Boyd Lake Avenue Regional Improvement



LEGEND

-  Metro District Boundary
-  Constructed Public Roads, Water, and Sanitary Sewer
-  Public Trails
-  Interchange - Interim Safety Improvements Completed

Note: The information on this document is for informational purposes only and is not intended to be used as a contract or warranty. The information shown here is subject to change without notice.







EXHIBIT B

Depiction of Kendall Parkway

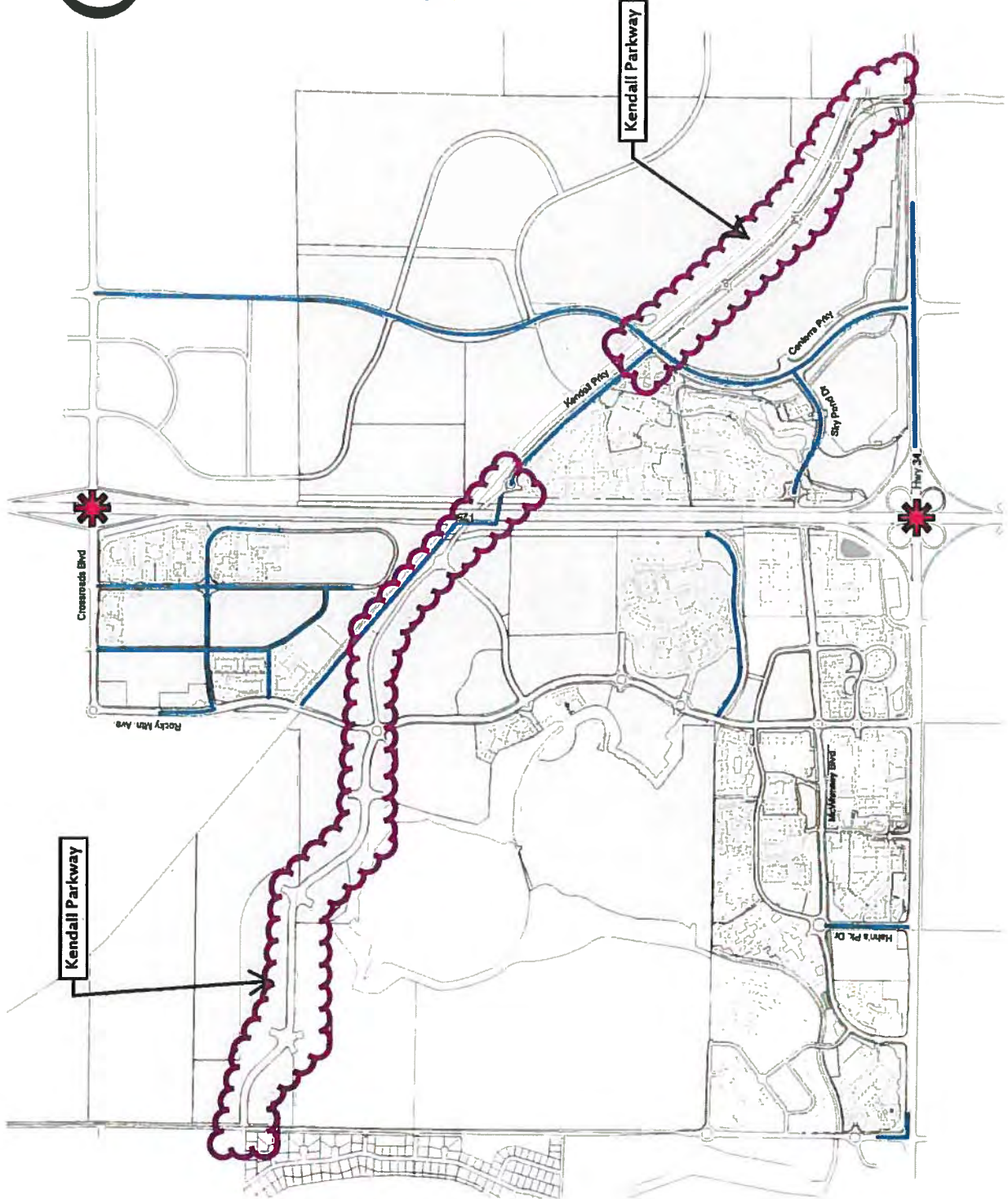


Kendall Parkway Regional Improvement

LEGEND

-  Metro District Boundary
-  Constructed Public Roads, Water, and Sanitary Sewer
-  Public Trails
-  Interchange - Interim Safety Improvements Completed

Note: This information was derived from the best available data and is not intended to be used as a substitute for a professional engineering or architectural drawing. The information shown here is subject to change at any time.





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

AGENDA ITEM: 20
MEETING DATE: 11/5/2013
TO: City Council
FROM: Julia Holland, Human Resources Director
PRESENTER: Julia Holland

TITLE:

1. A Resolution of the Loveland City Council Regarding the Compensation of the City Manager
2. A Resolution of the Loveland City Council Regarding the Compensation of the City Attorney

RECOMMENDED CITY COUNCIL ACTION:

Adopt the resolutions and include any motion for a compensation change.

OPTIONS:

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

SUMMARY:

These are administrative actions regarding compensation of the City Attorney and the City Manager. As a result of the Executive Session and completion of evaluations of the City Manager and City Attorney, City Council may consider a merit increase and approve resolutions regarding compensation for the City Manager and City Attorney.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

BACKGROUND:

On October 15, 2013, City Council concluded its annual evaluation process for the City Manager and City Attorney who are directly appointed by City Council. Any consideration of compensation changes for the City's appointed positions must be approved through a resolution by City Council.

REVIEWED BY CITY MANAGER:

A handwritten signature in black ink, reading "William D. Cahill", enclosed in a thin black rectangular border.

LIST OF ATTACHMENTS:

1. A Resolution of the City Council Regarding the Compensation of the City Attorney
2. A Resolution of the City Council Regarding the Compensation of the City Manager

RESOLUTION #R-98-2013

**A RESOLUTION OF THE LOVELAND CITY
COUNCIL REGARDING THE COMPENSATION
OF THE CITY MANAGER**

WHEREAS, on September 14, 2010, the City of Loveland (“the City”) and William D. Cahill entered into an Agreement appointing William D. Cahill (“Cahill”) as Loveland’s City Manager effective November 1, 2010 (the “Agreement”); and

WHEREAS, on November 1, 2011, City Council adopted Resolution #R-71-2011 increasing the compensation of Cahill for 2012 based on its annual evaluation of Cahill in his capacity as City Manager; and

WHEREAS, on November 6, 2012, City Council adopted Resolution #R-72-2012 increasing the compensation of Cahill for 2013 based on its annual evaluation of Cahill in his capacity as City Manager; and

WHEREAS, on October 8, 2013, pursuant to the terms of the Agreement and Loveland City Charter Section 8-1(d), City Council conducted its annual evaluation of the Cahill for 2013.

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

Section 1. Cahill’s compensation for 2013 shall be increased by _____ percent (_____%) of Cahill’s current annual base salary.

Section 2. Except as amended by this Resolution, Cahill’s compensation and benefits as set forth in the Agreement shall remain unchanged and in full force and effect.

Section 3. The Agreement is hereby reaffirmed and ratified.

Section 4. Adequate cash reserves have been and shall be placed irrevocably in the City budget to be held for any severance payment made necessary pursuant to the terms of the Agreement.

Section 5. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this ___ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A RESOLUTION OF THE LOVELAND CITY COUNCIL REGARDING THE COMPENSATION OF THE CITY MANAGER 2014

RESOLUTION #R-99-2013**A RESOLUTION OF THE LOVELAND CITY
COUNCIL REGARDING THE COMPENSATION
OF THE CITY ATTORNEY**

WHEREAS, on April 23, 2001, the City of Loveland (“the City”) and John Duval entered into an Agreement appointing John Duval (“Duval”) as Loveland’s City Attorney effective May 8, 2001 (the “Agreement”); and

WHEREAS, on March 2, 2004, the City and Duval entered into that certain “First Addendum to Employment Agreement” (the “First Addendum”) in which paragraph 6.B. of the Agreement was amended to provide a severance payment after Duval’s initial three years of employment with the City; and

WHEREAS, in January of 2005, the City and Duval entered into that certain “Second Addendum to Employment Agreement” (the “Second Addendum”) in which paragraph 4.B. of the Agreement was amended to provide that the City’s contribution to Duval’s 401a plan was increased from two and one-half percent (2.5%) of Duval’s annual salary to three percent (3%) of Duval’s annual salary; and

WHEREAS, on March 3, 2009 City Council adopted Resolution #R-20-2009 increasing the compensation of Duval for 2009 based on its annual evaluation of Duval in his capacity as City Attorney; and

WHEREAS, on November 3, 2009, City Council adopted Resolution #R-107-2009 that decreased the compensation of Duval for 2010 through the use of four furlough days based on the economic downturn and to be consistent with the 2010 budget which reduced pay to most city employees through the implementation of four furlough days; and

WHEREAS, on December 7, 2010, City Council adopted Resolution #R-69-2010 that increased Duval’s vacation benefits by 5 days annually, increased the annual maximum vacation accrual carryover from 480 hours to 520 hours, as reflected in the “Third Addendum to Employment Agreement” (the “Third Addendum”) and excluded furlough days from Duval’s 2011 compensation; and

WHEREAS, on May 17, 2011, City Council adopted Resolution #R-35-2011 that increased Duval’s compensation for 2011 with a one-time, merit-based payment of 2.5 percent (2.5%) of Duval’s current annual base salary as reflected in the “Fourth Addendum to Employment Agreement” (the “Fourth Addendum”); and

WHEREAS, on November 1, 2011, City Council adopted Resolution #R-72-2011 increasing the compensation of Duval for 2012 based on its annual evaluation of Duval in his capacity as City Attorney; and

WHEREAS, on November 6, 2012, City Council adopted Resolution #R-71-2012 increasing the compensation of Duval for 2013 based on its annual evaluation of Duval in his capacity as City Attorney; and

WHEREAS, on October 8, 2013, pursuant to the terms of the Agreement and Loveland City Charter Section 9-1(g), City Council conducted its annual evaluation of Duval for 2013.

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

Section 1. Duval’s compensation for 2014 shall be increased by _____ percent (_____%) of Duval’s current annual base salary.

Section 2. Except as amended by this Resolution and the First Addendum, Second Addendum, Third Addendum and Fourth Addendum, Duval’s compensation and benefits as set forth in the Agreement shall remain unchanged and in full force and effect.

Section 3. The Agreement, as amended by the First Addendum, Second Addendum, Third Addendum and Fourth Addendum is hereby reaffirmed and ratified.

Section 4. Adequate cash reserves have been and shall be placed irrevocably in the City budget to be held for any severance payment made necessary pursuant to the terms of the Agreement.

Section 5. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this ____ day of November, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



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

AGENDA ITEM: 21
MEETING DATE: 11/5/2013
TO: City Council
FROM: Steve Adams, Water & Power Department
PRESENTER: Larry Howard, Water & Power Department

TITLE:

A Motion Directing the City Manager to Negotiate and Enter into an Agreement with the Consolidated Home Supply Irrigating & Reservoir Company (“Home Supply”), in Consultation with the City Attorney and on Terms Favorable to the City, Pursuant to Which the City Will Provide Financing to the Home Supply in an Amount not to Exceed \$400,000 to be Applied Toward the Cost of Repairing the Home Supply’s Diversion Structure on the Big Thompson River

RECOMMENDED CITY COUNCIL ACTION:

Adopt the motion.

OPTIONS:

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

SUMMARY:

Consolidated Home Supply Irrigating & Reservoir Company (Home Supply) sustained significant damage in the September 13, 2013 Flood Disaster at its diversion structure shared diversion point on the Big Thompson River for the Home Supply and City of Loveland. This dam structure is used by the City under the terms of a December 19, 1895 Agreement with Home Supply to divert water directly from the Big Thompson River through Loveland’s diversion structure and into a pipeline that flows into the water treatment plant at Chasteen Grove. In an effort to allow timely diversions of historic water rights, Home Supply is working to get the dam repaired, and has requested financial assistance from the City of Loveland. At the October 15, 2013 City Council meeting, City Staff presented information and then City Council received comments from the Home Supply regarding the status of repairs and the amount of financial assistance they would like to receive. City Council directed Staff to work on a contract document that would evaluate options while considering City Council’s comments and return with a recommendation. At this time City Staff is requesting permission to work with Home Supply to negotiate an agreement with the Home Supply Company for repairs.

BUDGET IMPACT:

- Positive
- Negative –
- Neutral or negligible

It covers flood damages not included in the budget.

BACKGROUND:

During the flooding on the Big Thompson River which began on September 12, 2013, the historic 1895 stone diversion dam on the Big Thompson River belonging to the Consolidated Home Supply Irrigating and Reservoir (Home Supply) Company was damaged. Repairs to the dam are necessary to allow decreed diversions for both Home Supply and the city to be made on a consistent and reliable basis.

Below are ways of sharing repair costs that staff has considered:

- **1895 Agreement**
In an 1895 Agreement between Loveland and Home Supply, the city is liable for approximately 11.36% of any repair cost to the dam.
- **Split Costs According to Diversions**
In the past five years, the city's diversions have accounted for an average of 25% of the total amount diverted at the dam. Based on usage, the City would then pay for 25% of the repair costs.
- **Fifty-Fifty Split**
Due to Home Supply and the City of Loveland both diverting the river at this check structure, it can be argued that both entities should cover half the costs of repairs and maintenance. The City has a considerable amount of native water rights that are routinely diverted from this location. This is the alternative that was favored by Home Supply at the October 15, 2013 City Council meeting.

The attached staff memo provides additional detail and background regarding the alternatives considered by Staff.

On Tuesday, October 29, 2013, Staff met with a representative of the Home Supply board to discuss how to move forward together with the work on the damaged structure. The Discussion Points and Agreement Terms from that meeting (as amended) are shown below:

Discussion Points

1. The 1895 Contract obligates the City to 11.36% of the costs for repair and modifications.
2. Use of the structure is currently about 25% by Loveland, 75% by Home Supply, as shown in the following table:

3. Agreement Terms:

- a. The Agreement shall address the diversion structure flood repair only (the City and Home Supply may agree to address deferred and future Diversion Structure O&M costs at a later date by separate agreement, but those costs will not be addressed in this Agreement).
- b. Home Supply shall comply to the best of its abilities notice and bid the work and award the contract to the lowest responsive and responsible contractor in compliance with FEMA requirements.
- c. The City shall reimburse Home Supply for 50% of all "eligible costs" up to a total not-to-exceed amount of \$400,000. Said amount shall include the City's 11% contribution under the 1895 Agreement. No additional charges for flood repair shall be made against the City. Eligible costs shall mean those costs incurred by Home Supply during the term of the Agreement.
- d. The City may hire, at its cost, a third-party inspector to observe the work and represent the City's interests at the project site. The City and its inspector shall have full and timely access to the site, construction drawings, and all technical and other reports incidental to the work, as well as, any and all cost documentation. The City, at its own cost, will also participate in the design review process with its own engineering consultant.
- e. Home Supply shall cooperate with the City and FEMA to ensure maximum FEMA reimbursement to the City, to the fullest extent possible.
- f. Home Supply shall grant the City access to Home Supply's property for the purpose of performing any work required by the City to repair its facilities at the Diversion Structure site.
- g. The Agreement shall be effective from the date signed until June 1, 2014.

On October 31, 2013 the City was informed that Home Supply was in agreement with these terms as presented. Staff would seek City Council's approval to move forward with this approach and develop an agreement using the above Agreement Terms.

REVIEWED BY CITY MANAGER:



LIST OF ATTACHMENTS:

1. Staff Memo

Staff Memo

Home Supply Ditch and Big Dam

Prepared for: Bill Cahill, Loveland City Manager
 Through: Steve Adams, Director, Loveland Water & Power
 Prepared by: City of Loveland Water Resources Group
 Date: October 28, 2013

Introduction:

During the Big Thompson Flood of 2013 (“the flood”), the Consolidated Home Supply Irrigating & Reservoir Company diversion structure (“the “Big Dam”) was severely damaged. Since 1895, this structure has checked the river and allowed the City of Loveland to divert water from the Big Thompson River into Loveland’s Water Treatment Plant. To assess and repair the dam, the City has allowed the ditch company to direct the flow of the river to their intake structure. The combination of the diverted river and the damage to the dam is currently preventing the City from diverting any water from the Big Thompson River. The purpose of this paper is to discuss the value of the City’s capability to divert from the river and reasons for restoring this capability.

Options for Home Supply Dam Flood Repair Cost Split

As of October 24, 2013, the Home Supply Company has been awarded a \$1.6 million low interest loan by the Colorado Water Conservation Board (CWCB). This will help the Company to meet the immediate need for financing repairs. CWCB loans offer considerable flexibility on the amount borrowed even after a loan is approved and on the structure of repayments, so the Home Supply Company had continued with its request for City funds. Below are ways of sharing repair costs staff has considered, which are discussed in more detail further in this document.

- **1895 Agreement** – 11.36% of flood repair cost to City
- **Split Costs According to Diversions** – 25% of flood repair cost to City
- **Fifty-Fifty Split** – 50% of flood repair cost to City

The city depends upon this structure for diversion of much of its water. At the time of the 1895 Agreement the Town of Loveland numbered only a few hundred people. It can be argued that with the growth of the City, a percentage higher than 11.36% would be appropriate. Splitting costs according to diversions is an attractive approach to maintenance and repairs. However, this damage represents an exceptional circumstance. Splitting half of the cost with the Company for flood related repairs protects the City’s ability to manage its critical raw water resources as efficiently as possible.

Value of the City’s River Diversion

- The City’s diversion on the Big Thompson River is its most reliable delivery point, and in a typical year about a quarter of the city’s raw water supply is delivered through it. The river diversion does not rely on Colorado-Big Thompson (C-BT) facilities, which can be unavailable due to maintenance, repair, or limited capacity. In addition to the city’s decreed native river water, its C-BT and Windy Gap supplies may also be delivered via the river diversion.

- Treated water quality is potentially affected by the loss of this delivery point. During normal operations, water treatment operators blend water from the river diversion with water from Green Ridge Glade Reservoir to optimize the treatment process.

Reasons for Reestablishing the Diversion

- Reestablishing the Diversion would give the city a secondary location to receive raw water allocations and allow for redundancy in the system.
- A reestablished river diversion would allow the water treatment plant to blend Big Thompson River water with Green Ridge Glade water for an optimal-quality treated water supply.
- The C-BT system has been unable to deliver west slope water since the flood. With mid-December 2013 as the best estimate for the C-BT system to restart deliveries, Northern Water is planning to run the system full all winter. Carriage of the city's native river rights are on a 'space available' basis after C-BT and Windy Gap water have been carried; this means the city may be unable to divert any of its native flow rights without a separate river diversion.

Home Supply Dam Repair – Home Supply's consultant

Deere & Ault Consultants produced a letter report for the Home Supply Company, assessing damage and identifying proposed repairs and estimated costs to restore the dam:

- **Damage** – Included are the loss of the top five feet of the crest along 60 linear feet of the dam crest, damage to the left abutment, and loss of mortar between masonry blocks on the downstream face.
- **Proposed Repair** – The repair consists of rebuilding the downstream face utilizing matching quartzite. Concrete will be placed over the blocks in a mass reinforced block and crest cap. Small drain pipes will be placed in the mortar joints to allow for drainage. Special care is required in working with the rock / masonry contact.
- **Cost** – Total estimated cost of repair is \$1.536 million, which include an engineering cost of \$174,590 and a 20 percent contingency. The total work is split into two phases, with each phase representing half of the overall work. Phase 1 is primarily repair of flood related damages, which must be performed prior to the 2014 irrigation season. Phase 2 is necessary dam maintenance not related to the flood which Home Supply plans to perform in the fall of 2014.

Home Supply Dam Repair – City's Consultant

CH2M Hill Engineers, Inc. (Hill) produced a technical memorandum for the City of Loveland, summarizing their geotechnical observation of the Home Supply Dam and reviewing Deere & Ault (D&A) Consultant's recommended repairs as well as associated costs:

- **Proposed Repair** – Hill agrees with the D&A recommendations and believes the costs are reasonable, however the D&A repairs address other maintenance and restoration issues as well as flood damage. Hill pointed out that to allow the City to better evaluate the recommended flood related repairs it was be helpful to consider the work separately for each of the two phases, with Phase I primarily related to flood repairs and Phase II dealing with dam maintenance and restoration. Also each phase will require engineering and construction observation. D&A has undertaken further site evaluation work to more clearly define the actual construction work needed to repair the flood damage.

- **Cost** – The cost represents an engineer’s estimate of a conceptual design and uncertainty is inherent.

Separate Municipal Diversion

A question was asked: Can the City separate itself from the Home Supply Company and not rely on the Big Dam? Staff has reviewed this alternative with its consultant CH2MHill, and determined at this time that it is not a timely and feasible alternative.

Big Dam Historical Outline:

1880 – Home Supply Ditch hired John H. Nelson to construct a log dam (i.e. Big Dam).

1881 – Home Supply Company began diversions.

1887 – Loveland began diversions from the river at the Home Supply dam.

1894 – Flood washed out the original log structure.

1895 – John H. Nelson designed a stone dam to take its place.

1895 – Loveland signed an agreement allowing it to use the new dam, and paid \$1250 to Home Supply Company. Total cost of the stone dam was \$11,000. City agreed to pay existing proportion (11.36%) of future costs on the dam.

1924 – City improved its intake structure.

1976 – Flood washed out parts of City’s intake structure.

1980 – Intake and inlet structure rebuilt (post 1976 flood).

1986 – Dedicated as a Colorado Civil Engineering historical Landmark in 1986 by the American Society of Civil Engineers.

2013 – Flood damaged portion of Big Dam as well as City’s intake structure and the Home Supply Ditch Company’s intake structure.

City of Loveland – Property Ownership

City Staff overlaid an aerial photo with the property lines from the County Assessor GIS. Independently plotted were parcels’ metes and bounds surveys. This shows definitively that the City’s diversion structure is on City property; the City did not have to obtain permission from the Home Supply Ditch Company to do repairs or modifications.

Home Supply

Home Supply is not listed as the owner of record on or near where the Big Dam or the Home Supply Ditch in that vicinity is located. It is presumed the Company has an implied easement.

Options for Home Supply Dam Repair Cost Split

The Home Supply Company was awarded a \$1.6 million low interest loan by the Colorado Water Conservation Board on October 24, 2013. This addresses the immediate concern for financing repairs, but the Home Supply Company has continued with its request for City assistance. Below are some justifiable ways to split the costs:

- **1895 Agreement**
Per an 1895 agreement between Loveland and Home Supply, the city is liable for approximately 11.36% of any repair cost to the dam. The city paid Home Supply \$1,250 for the right to divert through a 6” pipe from the dam, which Home Supply paid \$11,000 to build.

- **Diversión Usage Split**

In the past five years, the city’s diversion has accounted for an average of 25% of the total amount diverted at the dam, as shown in the below table. Based on usage, the city would then pay for 25% of the repair costs.

| Water Year | Home Supply Diversión | Loveland Pipeline Diversión | Combined Diversión | Loveland's Share of Combined Diversión |
|---------------|-----------------------|-----------------------------|--------------------|--|
| 2008 | 29,687 | 14,618 | 44,305 | 33% |
| 2009 | 24,984 | 12,130 | 37,114 | 33% |
| 2010 | 22,236 | 4,507 | 26,744 | 17% |
| 2011 | 23,989 | 4,768 | 28,757 | 17% |
| 2012 | 19,272 | 4,367 | 23,639 | 18% |
| Totals | 120,168 | 40,390 | 160,558 | 25% |

in acre-ft

- **Fifty-Fifty Split**

Due to Home Supply and the City of Loveland simultaneously diverting critical supplies at this check structure, it can be reasonably argued that both entities cover half the cost of the flood related repairs.

Recommendation

- Share the costs with Home Supply on a 50:50 basis for the repair of flood related damages which must be performed prior to the 2014 irrigation season. This is currently expected to represent about \$350,000 to \$400,000 for the city.
- Direct staff to negotiate over the next several months the method for sharing costs for currently needed dam maintenance not related to the flood. Home Supply plans to perform significant maintenance in the fall of 2014, with a total expected cost of \$800,000. The 11.36% rate for the city’s share may be appropriate for this, or 25% for the city based on usage, or some other sharing arrangement could be discussed.
- Direct staff to negotiate over the next several months the method for sharing costs for ongoing future maintenance and repair of the dam.