

**CALL TO ORDER**

Mayor Gutierrez called the Special meeting of the Loveland City Council to order on the above date at 6:23 PM.

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

Roll was called and the following responded: McEwen, Solt, Klassen, Rice, Heckel, McKean, Johnson and Gutierrez. Councilor Shaffer was absent.

a) Business from Mayor  
Gutierrez

Mayor Gutierrez mentioned the Larimer Humane Society 21st Annual Fire Hydrant 5K Walk/Run and Pet Expo scheduled for June 11, 2011 at Edora Park in Fort Collins. The United Way luncheon on June 9, 2011 will be attended by Councilors Heckel, Klassen and Solt.

**2. CITY MANAGER**

**Agilent Property Purchase Appropriation**

Administrative Action: City Manager Cahill introduced this item to Council. The City has competed successfully to be named as the candidate site for the ACE project. The City has entered into a Purchase and Sale Agreement to purchase the subject Agilent property for \$5.5 million, in order to transfer the property for ACE. This action appropriates for the purchase, as well as for environmental insurance, closing costs and short-term operations. The Mayor asked if anyone in the audience wished to speak. Neil Spooner, 633 Harrison, spoke in opposition to the ordinance.

a) **Ordinance #5586**

Councilor Johnson made a motion to approve and ordered published on second reading "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 CITY OF LOVELAND BUDGET FOR THE PURCHASE OF REAL ESTATE AND WATER RIGHTS (FORMER AGILENT PROPERTY). Councilor Heckel seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

b) **Resolution #R-37-2011**

Councilor Johnson made a motion to approve Resolution #R-37-2011 approving Agilent Purchase and Sale Agreement and providing authorization and direction to City Manager concerning closing of the City's purchase of the Agilent Property. Councilor Heckel seconded the motion and a roll call vote was taken with all Councilors present voting in favor thereof.

**RESOLUTION #R-37-2011**

A RESOLUTION APPROVING AGILENT PURCHASE AND SALE AGREEMENT AND PROVIDING AUTHORIZATION AND DIRECTION TO CITY MANAGER CONCERNING CLOSING OF THE CITY'S PURCHASE OF THE AGILENT PROPERTY

WHEREAS, the City of Loveland ("City") and Agilent Technologies, Inc. ("Agilent") have entered into that certain Purchase and Sale Agreement dated April 18, 2011, a copy of which is attached as Exhibit A and incorporated by reference ("the Agreement"); and

WHEREAS, the City has agreed under the Agreement to purchase from Agilent approximately three hundred (300) acres of land, certain water rights associated with the land, certain identified personal property, four (4) buildings consisting of approximately eight hundred thousand (800,000) square feet of finished space, and numerous outbuildings, structures and improvements, all located at 815 14<sup>th</sup> Street Southwest, Loveland, Colorado (collectively, "the Property"); and

WHEREAS, the City's obligation in the Agreement to purchase the Property is subject to three contingencies; and

WHEREAS, under the first contingency in Section 4 of the Agreement the City has until May 31, 2011, in which to inspect and conduct its due diligence concerning the condition of the Property; and

WHEREAS, if the City, in its sole and absolute discretion, determines any condition of the Property is unsatisfactory to the City, it may give to Agilent, pursuant to Section 4.2, a written "Due Diligence Termination Notice" on or before May 31, 2011 of the City's election to terminate the Agreement ("Termination Notice"); and

WHEREAS, under the second contingency in Section 5.2 the City will have until as late as June 14, 2011, in which to provide the Termination Notice to Agilent for any objections the City has to any defect in the Property's title that Agilent has not agreed to remove on or before the closing date (June 23, 2011); and

WHEREAS, under the third contingency in Section 18 of the Agreement the City Council has until May 31, 2011, in which to appropriate the needed funds for the City's purchase of the Property; and

WHEREAS, if the City Council decides not to appropriate the needed funds, the City may terminate the Agreement by giving Agilent the Termination Notice on or before May 31, 2011; and

WHEREAS, if the City provides Agilent with the Termination Notice under either the first or third contingencies on or before May 31, 2011, or the second contingency on or before June 14, 2011, the City would be entitled to a refund of its one hundred thousand dollars (\$100,000) earnest money deposit that it has paid under Section 2.2 of the Agreement; and

WHEREAS, if the City does not provide the Termination Notice to Agilent on or before May 31, 2011, and on or before June 14, 2011, the City's \$100,000 earnest money deposit becomes nonrefundable; and

WHEREAS, under Section 3.3 of the Agreement the current closing date for the City's purchase of the Property from Agilent is June 23, 2011; and

WHEREAS, if the City does not elect to terminate the Agreement on or before May 31, 2011, and on or before June 14, 2011, it could still decide for any reason not to close on the purchase of the Property on June 23, 2011; and

WHEREAS, if the City decides not to close on the purchase of the Property on June 23, 2011, under Section 12.1 of the Agreement Agilent's sole and exclusive legal remedy against the City would be to retain the City's \$100,000 earnest money deposit; and

WHEREAS, by the adoption of this Resolution and adoption of an ordinance for the appropriation of the funds needed to purchase the Property, it is the Council's intention and desire that the City Manager proceed with completing this transaction in accordance with the direction hereinafter provided in this Resolution.

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

Section 1. That the City Council hereby approves the Agreement.

Section 2. That the City Manager is directed to complete the City's due diligence for the purchase of the Property and, if on or before May 31, 2011, no condition of the Property has been discovered or identified or on or before June 14, 2011, no defect in the Property's title will exist at closing that would, in the judgment of the City Manager, result in any undue risk of liability or cost to the City in proceeding with the transaction beyond May 31, 2011, the City Manager is directed and authorized to not give the Termination Notice to Agilent, with the understanding that the City's \$100,000 earnest money deposit will be forfeited to Agilent in the event the City does not close on the purchase of the Property on June 23, 2011. If, however, a condition of the Property is discovered or identified on or before May 31, 2011, or a defect in the Property's title will exist at closing that would, in the City Manager's judgment, result in any undue risk of liability or cost to the City in proceeding with this transaction beyond May 31, 2011, or June 14, 2011, as the case may be, the City Manager may, after consultation with the City Attorney, provide the Termination Notice to Agilent and seek the immediate refund of the City's \$100,000 earnest money deposit, all as provided under the Agreement.

Section 3. That in the event the City Manager elects, as provided in Section 2 above, to continue with this transaction beyond May 31, 2011, and June 14, 2011, the City Manager shall not proceed with the City's purchase of the Property at the June 23, 2011 closing, or at such earlier or later closing date as may be agreed to by the City and Agilent, without first receiving from City Council, by motion or resolution, express authorization to proceed with the closing on the City's purchase of the Property from Agilent.

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

ADOPTED this 24th day of May, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

## **1. CITY MANAGER**

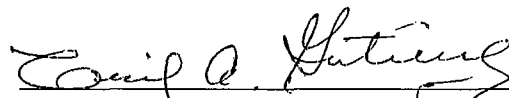
**Executive Session for the purpose of discussing the City Manager's six month evaluation**

At 7:05 p.m. Councilor Johnson moved that the City Council go into executive session as authorized in CRS 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 the City Manager's six-month evaluation and, in connection with this purpose, to receive and discuss documents not subject to public inspection under the Colorado Open Records Act, such as work-product documents. Councilor Heckel seconded the motion and a roll call vote was taken with seven Councilors present voting in favor thereof and Councilor Solt voting against. Councilor Solt did not participate in the executive session. Council reconvened at 7:35 p.m.

**ADJOURNMENT**

Having no further business to come before Council, the May 24, 2011 Special Meeting was adjourned at 7:36 p.m.

  
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Teresa G. Andrews, City Clerk

  
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Cecil A. Gutierrez, Mayor

