



PROCLAMATION

- WHEREAS,** Music, the universal language of peace, is one of the great arts and an outstanding feature of our culture; and
- WHEREAS,** The National Federation of Music Clubs, having as a foremost objective, the promotion of American music, will stage its annual "Parade of American Music" throughout the month of November; and
- WHEREAS,** The Colorado Federation of Music Clubs and Loveland join in encouraging and stimulating interest in American music and the enjoyment and appreciation thereof; and
- WHEREAS,** The "Parade of American Music" is designed to give our own worthy United States composers recognition, encouragement and support, and to impress upon the public of the United States that it has creative as well as performing musical artists and a musical culture equal to that of other countries.

NOW, THEREFORE, we, the City Council of Loveland, in recognition of the American Composer and in order to encourage native creative musical art, do hereby proclaim November, 2011 as

AMERICAN MUSIC MONTH

and urge all our citizens to join in the observance and share the joy of music.

Signed this 15th day of November, 2011

Cecil A. Gutierrez, Mayor





PROCLAMATION

- WHEREAS,** More than 5 million Americans are now living with Alzheimer's disease, a figure that is expected to grow to as many as 16 million by mid-century if we don't take action today; and
- WHEREAS,** There are currently 72,000 people in the state of Colorado living with Alzheimer's; approximately 5000 people over the age of 65 diagnosed with Alzheimer's disease in Larimer County; and
- WHEREAS,** Alzheimer's disease is not a normal part of aging; and
- WHEREAS,** Because 80% of those with Alzheimer's are cared for at home, we know there are 222,000 family members in Colorado providing \$3 billion in unpaid care; and
- WHEREAS,** Every 70 seconds someone is diagnosed with Alzheimer's disease therefore the number of people with Alzheimer's in Colorado is expected to increase to 140,000 by 2025; and
- WHEREAS,** You will never meet a survivor of Alzheimer's disease. There is no cure.
- WHEREAS,** There is hope with 25 medications currently in clinical trials and researchers making great strides in developing better treatments and eventually a cure for Alzheimer's disease.

NOW, THEREFORE, we, the City Council of the City of Loveland, do hereby proclaim November 2011 as

ALZHEIMER'S AWARENESS MONTH

in the City of Loveland.

Signed this 15th day of November, 2011

Cecil A. Gutierrez, Mayor





PROCLAMATION

- WHEREAS** The City of Loveland recognizes the importance of assisting Loveland families and individuals living in or near poverty in 2012; and
- WHEREAS** More than 50% of our homeless neighbors in Loveland are families and in need of emergency services throughout the year; and
- WHEREAS** Current funds available to help our neighbors in need just doesn't cover all these emergency needs; and
- WHEREAS** The generous people of Loveland take pride that the Loveland Salvation Army Red Kettle Campaign is an all volunteer effort that assists our local human service agencies in their efforts to reach out to those in greatest need; and
- WHEREAS** Our primary goal is to continue assisting local programs like the House of Neighborly Service, Neighbor to Neighbor Rental Assistance, Loveland Police Chaplains, Back to School backpacks, Christ's Church of the Rockies Front Porch Meal Ministry Boys and Girls Club, Disabled Resource Service, Alternatives to Violence, The Community Kitchen and Salvation Army Special Needs Request Fund

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim the 18th of November, 2011 as

Loveland Salvation Army Red Kettle Kickoff Day

in Loveland, Colorado, and in so doing, urge all citizens to join us by volunteering to ring bells for two hours in one of nine locations in a citywide effort to help us reach our goal of \$100,000 to aid and assist needy families and individuals in 2012.

Signed this 15th day of November, 2011

Cecil A Gutierrez,
Mayor

Loveland City Council
Board, Commission,
Ad Hoc Committee
Liaisons

	Meeting Location	Meeting Date	Time	Council Liaisons				Staff Liaison
				Liaison	Liaison	Liaison	Alternate	
Board or Commission								
1 Affordable Housing Commission	City Mgr Conf Rm	2nd Thurs	5:15 PM	John Fogle				John Hartman Betsey Hale Tom Hawkinson Betsey Hale Susan Ison Bettie Greenberg Randy Mirowski Steve Southard Bethany Clark Ted Schmidt Ralph Mullinix Brian Hayes Gary Havener Luke Hecker Keven Aggers Keith Reester Susan Ison Jenni Dobson
2 Citizen's Finance Advisory Commission	City Council Chambers	2nd Wed	6:00 PM	Ralph Trenary				
3 Community Marketing Commission	City Mgr Conf Rm	1st Thurs	6:00 PM	Cathleen McEwen				
4 Construction Advisory Board	City Council Chambers	4th Wed	6:00 PM	Ralph Trenary				
5 Creative Sector Development Advisory Board	City Mgr Conf Rm	3rd Thurs	5:30 PM	Phil Farley				
6 Cultural Services Board	Loveland Museum	4th Tues	4:30 PM	Cathleen McEwen				
7 Disabilities Advisory Commission	Gertrude Scott Mtg Rm-Lib	2nd Mon	6:00 PM	Chauncey Taylor				
8 Fire & Rescue Advisory Commission	Fire Station #1	2nd Wed	5:30 PM	Cecil Gutierrez				
9 Golf Advisory Board	Parks & Recreation Conf Rm	4th Wed	5:15 PM	Daryle Klassen				
10 Historic Preservation Commission	City Council Chambers	3rd Mon	6:00 PM	John Fogle				
11 Housing Authority	375 W. 37 St	4th Wed	7:00 PM	Joan Shaffer				
12 Human Services Commission	City Mgr Conf Rm	4th Thurs	6:00 PM	Ralph Trenary				
13 Library Board	Library	3rd Thurs	5:00 PM	Chauncey Taylor				
14 Loveland Utilities Commission	Service Center Board Rm	3rd Wed	4:00 PM	Daryle Klassen				
15 Open Lands Advisory Commission	Parks & Recreation Conf Rm	2nd Wed	5:30 PM	Hugh McKean				
16 Parks & Recreation Commission	Parks & Recreation Conf Rm	2nd Thurs	4:30 PM	Hugh McKean				
17 Police Pension Board of Trustees	Police & Courts Bldg	Quarterly	2:00 PM	Cecil Gutierrez				
18 Police Dept Citizen Advisory Board	Police & Courts Bldg	1st Mon	5:30 PM	Hugh McKean				
19 Senior Advisory Board	Gertrude Scott Mtg Rm-Lib	1st Wed	10:30 AM	Chauncey Taylor				
20 Transportation Advisory Board	City Council Chambers	1st Mon	4:00 PM	Joan Shaffer				
21 Visual Arts Commission	Loveland Museum	2nd Thurs	5:00 PM	Phil Farley				
22 Youth Advisory Commission	Loveland Museum	1st Wed	5:00 PM	Cathleen McEwen				
Ad Hoc Committees				Member	Member	Member	Member	Member
23 Airport Steering Committee				Cecil Gutierrez				
24 Chamber of Commerce				Daryle Klassen				
25 Economic Development				Cecil Gutierrez	Cathleen McEwen	Hugh McKean	Daryle Klassen	John Fogle
26 I-25 Corridor Plan				Joan Shaffer				Phil Farley
27 Larimer County Open Lands Board				Hugh McKean			Brian Hayes (staff)	
28 Legislative Review Committee				Joan Shaffer	Chauncey Taylor	Ralph Trenary		
29 Loveland Center for Business Development				Phil Farley				
30 North Front Range MPO				Joan Shaffer			Cecil Gutierrez	
31 Platte River Power Authority				Cecil Gutierrez				
32 Police Seizure Committee				Cecil Gutierrez				
33 COLT Task Force				Joan Shaffer				
34 Loveland Downtown Team				Cecil Gutierrez	Joan Shaffer	Phil Farley	John Fogle	
35 Engaging Loveland				John Fogle				
36 Title 18 Committee				Cecil Gutierrez	Ralph Trenary			
37 LETA Board				Bill Westbrook				
38 Fire Authority				Cecil Gutierrez	John Fogle			
	11/10/11 1:49 PM							
				No. of Boards & Commission's 2010				
				Individual	Liaison/Member	Alternate	Total	
			Mayor	Cecil Gutierrez	10	0	10	
			Ward 1	Daryle Klassen	4	0	4	
			Ward 1	Chauncey Taylor	4	0	4	
			Ward 2	Phil Farley	4	0	4	
			Ward 2	Joan Shaffer	7	0	7	
			Ward 3	John Fogle	5	0	5	
			Ward 3	Hugh McKean	5	0	5	
			Ward 4	Ralph Trenary	5	0	5	
			Ward 4	Cathleen McEwen	4	0	4	
				Total Liaisons	48	0	48	



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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

AGENDA ITEM: 1
MEETING DATE: 11/15/2011
TO: City Council
FROM: Bill Cahill, City Manager
PRESENTER: Bill Cahill

TITLE:
Appointment to Construction Advisory Board

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion appointing Blaine Rappe to the Construction Advisory Board for a full term effective until June 30, 2014

OPTIONS:

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

DESCRIPTION:

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

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible
-

SUMMARY:

The Construction Advisory Board ("CAB") has had one term vacancy since the Spring bi-annual recruiting cycle. Blaine Rappe was interviewed and is recommended for appointment to CAB for a full term effective until June 30, 2014.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

None


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BUDGET OFFICE

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AGENDA ITEM: 2
MEETING DATE: 11/15/2011
TO: City Council
FROM: Bonnie Steele, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to the City of Loveland, Colorado 2011 budget

RECOMMENDED CITY COUNCIL ACTION:

Approve 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

DESCRIPTION:

This is an administrative action. The ordinance is necessary to resolve several year-end issues and finalize the 2011 Budget. Several of the issues are new and the remainder we have been following through the year and have waited until now in order to provide the best forecast for the cost to the end of the year.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Nearly all of the additional appropriations are funded by unanticipated revenues and reserves set aside for a specific purpose, therefore there is no budget impact. The appropriation for the Vehicle Maintenance Fund is funded by unrestricted fund balance and is necessary due to higher than anticipated fuel prices during the year, reducing the flexibility within the fund to use the balance for other purposes leading to the negative impact designation.

SUMMARY:

The Ordinance is necessary to make adjustments in several departments. Staff has been monitoring many of these issues throughout the year to arrive at a single more accurate forecast. The details of the adjustments are as follows:

- Funding is appropriated (\$25,000) in the Library Department for a mural or other art project to be displayed permanently on the curved wall on the second floor of the Library's new construction between the Administrative Offices and the iExplore public computer lab. The funding source is reserves from the balance in the Kroh Charitable Trust Account.
- Appropriation of the PRPA contribution for economic development in 2011 (\$14,270).
- Appropriation of donations received for the Business Appreciation event to offset the cost of the food for the event (\$10,000).
- Funding is included in the Development Services department for a reimbursement related to the asbestos cleanup at the Leslie the Cleaners building.
- Funding is appropriated (\$13,500) in the Development Services Department for the final payment on the Lincoln Hotel redevelopment project. This appropriation is to receive funds from the State Historical Fund to reimburse the costs the City paid for the preparation and recording of a conservation easement for the Lincoln Hotel Rehabilitation Grant. This appropriation will allow the grant to be finalized and closed out. The funding source is a reimbursement from a State Historical Grant.
- Funding for the purchase of bulletproof vests (\$2,600) and for supplies (\$16,760) in the Police Department. The funding source is a Federal Bureau of Justice Assistance Grant.
- Funding for overtime (\$9,350) is appropriated in the Police Department. The funding source is a State DUI Enforcement Grant.
- Funding is appropriated for the renovation and expansion of the Dispatch Communications Center (\$916,000). The funding sources are reserves in the General Fund (\$616,000) and Police CEF fees (\$300,000). The project will be completed in 2012 and the final funding for the total project of \$1.2 million is included in the 2012 adopted budget.
- The Fire Department receives reimbursements for Wildland fire response outside our jurisdiction to cover overtime and equipment use associated with the response. The department has also received rental fees for use of the training facility. These revenues are appropriated for overtime (\$25,000), training center repair and maintenance (\$9,730), and replacement of air compressor to fill breathing apparatus (\$42,680).
- Funding is appropriated to begin the design of the expansion of Fire Station 6 (\$25,000). The funding source is Fire CEF funds.
- Federal Grant funding for Transit operations is appropriated for an upgrade to the Paratransit scheduling software (\$36,730).
- Funding for a development agreement that allows generated sales tax to pay for deferred Capital Expansion Fees is appropriated based on actual sales tax generated. The funding source is General Fund reserves.
- Funding for fuel purchases is appropriated in the Public Works Department (\$175,000) due to higher than anticipated fuel prices. The funding source is Vehicle Maintenance Fund Unrestricted Fund Balance.

- The Police Department receives revenues from forfeited property and seizures (\$50,160). These revenues are appropriated to fund part of the expenses associated with the Regional Drug Task Force, primarily for overtime costs associated with investigations.
-

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. An Ordinance on second reading enacting a supplemental budget and appropriation to the City of Loveland, Colorado 2011 budget.

FIRST READING November 1, 2011

SECOND READING November 15, 2011

ORDINANCE #5651

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE CITY OF LOVELAND, COLORADO 2011 BUDGET

WHEREAS, the City of Loveland has reserved funds on hand not appropriated at the time of the adoption of the City budget for 2011; and

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2011; 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 2011, 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 reserves are available for appropriation and/or transfer from the following sources: donations, contributions, state and federal grants and reserves. In the Forfeiture Fund revenues from forfeitures are appropriated for overtime and other costs. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
General Fund 001**

Revenues

Fund Balance		676,520
001-1822-363-00-00	Contributions	24,270
001-1903-341-04-00	Code Abatement	1,200
001-1914-334-24-00-SP0501	State Historical Grant	13,500
001-2102-338-30-00-PDBULL	Federal Grant	2,600
001-2102-338-30-00-PDJAG0	Federal Grant	16,760
001-2113-334-02-00	State Grant - DUI Enforcement	9,350
001-2202-337-44-00	Wildland Fire Reimbursements	59,900
001-2202-341-25-00	Fire Academy Fees	17,510
001-2303-338-90-00	Federal Transit Authority Grant	36,730

Total Revenue **858,340**

Appropriations

001-1410-409-03-50	Professional Services	25,000
001-1822-409-03-76	Incentives	14,270
001-1822-414-02-22	Food/Special Events	10,000
001-1903-409-03-75	Code Abatement	1,200
001-1914-409-04-86-SP0501	Developer Reimbursement - Lincoln Hotel	13,500
001-2102-409-02-25-PDBULL	Clothing	2,600
001-2112-409-02-32-PDJAG0	Parts & Supplies	16,760
001-2113-409-01-21	Overtime	9,350
001-2202-409-01-21	Overtime	25,000
001-2202-409-03-69	Repair & Maintenance	9,730
001-2202-409-09-99	Other Capital	42,680
001-2304-409-02-15	Computer Software	36,730
001-5502-473-07-02	Transfer to Capital Project Fund	616,000
001-5502-473-07-41	Transfer to Water Enterprise Fund	200
001-5502-473-41-01	Transfer to Water SIF Fund	5,190
001-5502-473-07-42	Transfer to Wastewater Enterprise Fund	5,680
001-5502-473-07-43	Transfer to Storm Water Enterprise Fund	2,150
001-5502-473-07-46	Transfer to Raw Water Enterprise Fund	690
001-5502-473-22-04	Transfer to Fire CEF Fund	660
001-5502-473-22-05	Transfer to Police CEF Fund	790
001-5502-473-22-08	Transfer to General Government CEF Fund	920
001-5502-473-22-09	Transfer to Street CEF Fund	19,240

Total Appropriations **858,340**

**Supplemental Budget
Capital Projects Fund 002**

Revenues

002-2107-363-01-00	Transfer from General Fund	616,000
002-2107-363-22-05	Transfer from Police CEF Fund	300,000

Total Revenue **916,000**

Appropriations

002-2107-409-09-47-PDDISP	Office Furniture & Equipment	9,790
002-2107-409-09-48-PDDISP	Computer Equipment	906,210

Total Appropriations **916,000**

**Supplemental Budget
Vehicle Maintenance Fund 081**

Revenues

Fund Balance	175,000
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Total Revenue **175,000**

Appropriations

081-2362-409-02-30	Motor Fuel	175,000
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Total Appropriations **175,000**

**Supplemental Budget
Fire CEF Fund 224**

Revenues

Fund Balance	25,000
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Total Revenue **25,000**

Appropriations

224-2202-409-09-55-GF1106	Fire Station 6 Expansion Design	25,000
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Total Appropriations **25,000**

**Supplemental Budget
Police CEF Fund 225**

Revenues		
Fund Balance		300,000
Total Revenue		300,000
Appropriations		
225-2102-473-02-00	Transfer to Capital Projects Fund	300,000
Total Appropriations		300,000

**Supplemental Budget
Police Seizure Fund 240**

Revenues		
240-2112-338-30-00	Federal Grant	50,000
240-2112-361-10-00	Interest	160
Total Revenue		50,160
Appropriations		
240-2112-409-01-21	Overtime	50,160
Total Appropriations		50,160

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 as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

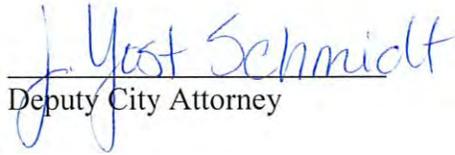
ADOPTED this 15th day of November, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney


CITY OF LOVELAND

BUDGET OFFICE

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AGENDA ITEM: 3
MEETING DATE: 11/15/2011
TO: City Council
FROM: Bonnie Steele, Finance Department
PRESENTER: John Hartman, Budget Officer

TITLE:

Consideration of an ordinance on second reading enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2011 budget.

RECOMMENDED CITY COUNCIL ACTION:

Approve 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

DESCRIPTION:

This is administrative action. The Ordinance appropriates funds from prepaid assessments to pay down debt.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

The revenue for the appropriation is from a prepaid assessment in full. The revenue is being used to call District bonds early reducing the debt service for the District.

SUMMARY:

The Special Improvement District #1 (SID) was established to allow for the collection of assessments from property owners in the district to back bonded debt used to construct infrastructure improvements located within the district. The District is in east Loveland north of Eisenhower Boulevard along Rocky Mountain Avenue, extending north above Houts Reservoir.

A large property within the district prepaid the assessment. The funds are used to call District bonds early reducing the debt service in the District.

The City does not have any legal obligation towards this debt.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. An Ordinance enacting a supplemental budget and appropriation to Loveland Special Improvement District #1 2011 budget

FIRST READING November 1, 2011

SECOND READING November 15, 2011

ORDINANCE #5652

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 2011 BUDGET

WHEREAS, the Loveland Special Improvement District #1 has received funds not anticipated or appropriated at the time of the adoption of the District’s budget for 2011; and

WHEREAS, the City Council acting as the Board of Directors for the Loveland Special Improvement District #1 desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the District’s budget for 2011, 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 are available for appropriation from prepaid assessments and are appropriated to call District bonds early, reducing the debt services amount. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**Supplemental Budget
Loveland Special Improvement District #1 Fund 038**

Revenues		
038-0000-318-35-00	Special Assessment -Prepaid	196,450
Total Revenue		196,450
Appropriations		
038-5502-409-06-10	Principal	196,450
Total Appropriations		196,450

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 as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

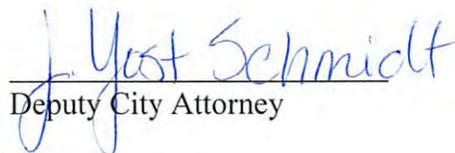
ADOPTED this 15th day of November, 2011.

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: 4
MEETING DATE: 11/15/2011
TO: City Council
FROM: Ken Cooper, Public Works - Facilities Management
PRESENTER: Ken Cooper

TITLE:

Second reading of an ordinance authorizing the sale of the “Bishop House” and the sale of real property owned by the City of Loveland pursuant to Section 4-7 of the City of Loveland Municipal Charter

RECOMMENDED CITY COUNCIL ACTION:

Adopt the ordinance on second reading

OPTIONS:

1. Adopt the ordinance on second reading
2. Deny the ordinance
3. Adopt a modified ordinance
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

DESCRIPTION:

This is an administrative action to approve the sale of the “Bishop House,” located at 871 E. 1st Street, and approximately 0.4 acres of City-owned real property located at 1317, 1321, & 1375 W. 8th Street (these parcels were acquired for the Taft Avenue widening project).

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

If approved on second reading by City Council, the monies collected from the sale will be used to reimburse Public Works Capital Expansion Fees originally used to purchase the 8th Street Properties for the Taft Avenue widening project.

SUMMARY:

On November 1, 2011, City Council approved on first reading the sale of these City-owned properties to a group led by Bryant Bajema.

In 1999, the City purchased approximately three acres of real property southeast of the Chilson Center to help provide growth space for future Civic Center needs. This three-acre parcel, which has a mailing address of 871 E. 1st Street, is commonly referred to as the “Bishop Property.” In 2009, City Council directed staff to move forward with expansion projects at both the Chilson Center and the Library, and the Bishop Property was targeted for redevelopment to meet additional access and parking needs for Civic Center visitors and employees. However, it was always the City’s desire to save the old farm house located on the Bishop Property (“Bishop House”).

In 2009, City staff sent out a Request for Proposals soliciting someone to purchase and move the Bishop House. Although there was interest, nobody bid on the Bishop House. Eventually, local business owner Steve Schroeder offered to buy the Bishop House for \$100 and pay for all costs to move it. Mr. Schroeder first planned to move it to 1179 E. 7th Street, but the site had too many constraints. Mr. Schroeder then set his sights on 1725 Garfield Avenue, land he owned near Lake Loveland, but opposition from neighbors was problematic.

Mr. Schroeder then hoped to buy the City-owned properties at the northeast corner of 8th Street and Taft Avenue known as 1317, 1321, and 1375 W. 8th Street (“8th Street Properties”) and buy the Bishop House and move the House to that location. The 8th Street Properties total approximately 0.4 acre and were purchased for the Taft Avenue widening project, which was completed in late 2005. Although the 8th Street Properties have been for sale by the City since early 2008, no other offers have been made, and there has been almost no interest. Mr. Schroeder had planned to offer the City \$25,000 for the purchase of the Bishop House and the properties at N. Taft and 8th Street, but was unable to formalize the offer because of the financial realities of the project. He stopped pursuing the project late in 2010.

In early 2011, another development group led by Bryant Bajema became involved. Mr. Bajema has now offered to buy the Bishop House and the 8th Street Properties for a total purchase price of \$18,000. He has done extensive due diligence on the project, including an asbestos survey on the Bishop House. If Council approves his offer on Second Reading, Mr. Bajema will move the Bishop House to the new location and use or sell it for use as a private residence. Mr. Bajema will pay all associated moving and site development costs, including applicable City fees. The 8th Street Properties come with water credits that are worth about \$24,500 due to the homes previously located there.

In a completely different real estate market in early 2007, the 8th Street Properties were appraised at \$145,000. The widening of Taft Avenue left the 8th Street Properties with only 0.4 acre, which is restrictive to development. In addition, access to the 8th Street Properties is limited to 8th Street. However, this site does provide visual access to Taft Avenue, and City staff believes it would be a fine location for the Bishop House. The Bishop House would remain in Loveland in a visible location where the community could enjoy it for many years to come.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Ordinance

Agreement for purchase & relocation of Bishop House (Exhibit A to ordinance)

Maps of site locations

FIRST READING November 1, 2011

SECOND READING November 15, 2011

ORDINANCE #5653

**AN ORDINANCE AUTHORIZING THE SALE OF THE BISHOP HOUSE
AND THE SALE OF REAL PROPERTY OWNED BY THE CITY OF
LOVELAND PURSUANT SECTION 4-7 OF THE CITY OF LOVELAND
MUNICIPAL CHARTER**

WHEREAS, the City of Loveland is the owner of certain personal property known as the Bishop House, currently located at 871 E. First Street, Loveland, Colorado 80537 (the “Bishop House”); and

WHEREAS, the City is the owner of certain real property legally described Lots 11, 12, and 13 of Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-911, also known by the mailing addresses of 1317, 1321, and 1375 W. 8th Street, Loveland, CO 80537 respectively (the “Lots”); and

WHEREAS, the City acquired the Lots as part of the Taft Avenue Widening Project, which was completed in late 2005; and

WHEREAS, the Lots are not used for parks purposes and are not needed for any governmental purpose, and have been on the real estate market since 2008; and

WHEREAS, the City has been seeking a buyer for the Bishop House in order to relocate the Bishop House elsewhere in Loveland to preserve this local landmark and make way for Civic Center development; and

WHEREAS, Microproperties Indiana, LLC has offered purchase the Bishop House and the Lots from the City for a total of Eighteen Thousand Dollars (\$18,000); and

WHEREAS, Microproperties Indiana, LLC intends to relocate the Bishop House to the Lots, thereby preserving this local landmark and making use of real property that the City desires to put back into private ownership; and

WHEREAS, the City desires to sell the Bishop House and the Lots to Microproperties Indiana, LLC for Eighteen Thousand Dollars (\$18,000) on the terms and conditions set forth in the Agreement for Purchase and Relocation of Bishop House, attached hereto as Exhibit A and incorporated herein by reference (“Agreement”); and

WHEREAS, pursuant to Section 4-7 of the City of Loveland Municipal Charter, the City Council must act by ordinance to approve the transfer of fee ownership in real property owned by the City.

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

Section 1. That the City Council hereby finds and determines that the Lots are not needed for any governmental purpose, and that the sale of the Lots is in the best interest of the City of Loveland.

Section 2. That the City Manager is authorized to enter into the Agreement for Purchase and Relocation of Bishop House, attached hereto as Exhibit A and incorporated herein by reference (“Agreement”) and execute all documents, the form of which shall be approved by the City Attorney, necessary to consummate the sale of the Bishop House and the Lots for the purchase price of Eighteen Thousand Dollars (\$18,000) and to transfer the City’s interest in the Bishop House and the Lots to Microproperties Indiana, LLC.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to approve changes to the form or substance of the Agreement as deemed necessary to effectuate the purposes of this Ordinance or to protect the interests of the City.

Section 4. 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 15th day of November, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

EXHIBIT A

AGREEMENT
For Purchase and Relocation of Bishop House

This Agreement (“Agreement”) is made and entered into this ____ day of November, 2011, by and between the **City of Loveland, Colorado**, a home rule municipality, whose address is 500 E. 3rd Street, Loveland, Colorado 80537 (“Seller”) and **Microproperties Five, LLC**, a Texas limited liability company, whose address is 14901 Quorum Drive, Suite 900, Dallas, Texas 75254 (“Buyer”).

Whereas, the Seller desires to sell, and the Buyer desires to buy, the house currently located at 871 E. 1st Street, Loveland, Colorado 80537, and three lots located on W. 8th Street in Loveland, Colorado, as more specifically described below, subject to the condition precedent that the Buyer remove the house from its present location and install it on the three lots for future residential use.

Now, therefore, in consideration of the mutual covenants and conditions described more fully herein, the parties agree as follows:

1. Description of Bishop House. The personal property that is the subject of this Agreement is that certain house, including all fixtures of a permanent nature now part of the house, and all improvements, including the garage, located at 871 E. 1st Street, Loveland, Colorado 80537 (“Bishop House”). **THE BISHOP HOUSE DOES NOT INCLUDE THE UNDERLYING REAL ESTATE, WHICH SHALL REMAIN THE PROPERTY OF THE SELLER (“CITY’S PROPERTY”). NOTHING HEREIN SHALL OPERATE AS OR BE CONSTRUED TO BE A CONVEYANCE OF THE CITY’S PROPERTY.**

2. Description of Lots. The real property that is the subject of this Agreement is legally described as follows (collectively referred to herein as the “Lots”):

a. Lot 11, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-911, also known by the mailing address of 1317 W. 8th Street, Loveland, CO 80537;

b. Lot 12, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-912, also known by the mailing address of 1321 W. 8th Street, Loveland, CO 80537; and

c. Lot 13, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-913, also known by the mailing address of 1375 W. 8th Street, Loveland, CO 80537.

3. Method of Conveyance. The Seller agrees to sell, and the Buyer agrees to buy, the Bishop House and the Lots, subject to the terms and conditions of this Agreement. The Bishop House shall be conveyed to the Buyer by bill of sale in the form attached hereto as **Exhibit A** and incorporated herein by reference (“Bill of Sale”). The Lots shall be conveyed to

the Buyer by quitclaim deed in the form attached hereto as **Exhibit B** and incorporated herein by reference (“Quitclaim Deed”).

4. Purchase Price. The total purchase price for the Bishop House and the Lots shall be Eighteen Thousand Dollars (\$18,000.00) (“Purchase Price”), to be paid as follows:

a. Upon the Seller’s execution of this Agreement, the Buyer shall deposit One Thousand Dollars (\$1,000) as an earnest money deposit (“Earnest Money”), which shall be held in escrow with Chicago Title Company, 201 W. Virginia Street, McKinney, Texas 75069 (“Title Company”).

b. The Buyer shall pay to the Seller Seventeen Thousand Dollars (\$17,000) by certified check at the time of Escrow Closing, defined below.

5. Escrow Closing.

a. The Escrow Closing shall be held within seven (7) business days from the date that the Seller approves the application to merge the Lots into one legal lot, as more particularly described in Paragraph 7, at the Title Company’s Loveland office, located at 3013 N. Taft Avenue, Suite 3, Loveland, Colorado 80538 (“Title Company’s Office”), or at such time as the parties may mutually agree, but in no event later than February 28, 2012.

b. The following shall occur at Escrow Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:

(i) The Seller shall execute, have notarized, and deliver to the Title Company the Bill of Sale conveying title to the Bishop House in place, F.O.B. City’s Property, in accordance with the provisions of this Agreement;

(ii) The Seller shall execute, have notarized, and deliver to the Buyer the Quitclaim Deed conveying title to the Lots, in accordance with the provisions of this Agreement;

(iii) The Buyer shall deliver to the Title Company the certified check required by Subparagraph 4.b. above;

(iv) The Buyer shall deliver to the Title Company a copy of the signed plat merging the Lots into one legal lot as required in Paragraph 7;

(v) The Seller shall execute and deliver to the Buyer an affidavit stating that the Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

(vi) The Seller shall execute Certificates as to Taxpayer Identification Number as required by law;

(vii) The Seller and the Buyer shall each execute and deliver Settlement Statements, showing adjustments in the payment of the costs of the closing;

(viii) The Buyer shall execute a Real Property Transfer Declaration as required by Colorado law; and

(ix) Each party shall deliver to the Title Company such other documents, certificates, and the like as may be required herein or as may be necessary or helpful to carry out each party's obligations under this Agreement, with copies of all such documents to the other party.

6. Escrow Release.

a. The Title Company shall release and deliver to the Seller or to the Buyer, as the case may be, all original documents and funds in its possession pursuant to Escrow Closing ("Escrow Release") only after all of the following have occurred:

(i) The Buyer's Relocation of the Bishop House onto the Lots as required in Paragraph 11;

(ii) The Buyer's completion of the City's property finish as required in Paragraph 13; and

(iii) Title Company's receipt of written instructions signed by both the Buyer and the Seller authorizing Escrow Release.

b. Following Escrow Release, the Title Company shall have no other duties or responsibilities to the parties.

7. **Lot Merger Required.** Following execution of this Agreement, the Seller and the Buyer shall cooperate to file an application with the City's Current Planning Division to merge the Lots into one legal lot. The Buyer shall pay all City fees associated with the application. The Seller agrees to cooperate with the Buyer and to expedite its review and approval, as appropriate, of the application in order to facilitate the transaction contemplated in this Agreement. The Buyer must obtain a signed plat recognizing the new legal lot prior to Escrow Release. In the event the Seller denies said application to merge the Lots into one legal lot, or fails to approve it by January 31, 2012, then this Agreement shall terminate, the Earnest Money shall be returned to the Buyer, and the parties hereto shall be released from all further obligations hereunder.

8. **Insurance.** The Buyer shall obtain insurance against all losses and damages to the Seller resulting from the Buyer's activities on the Lots prior to Escrow Release, the Buyer's relocation of the Bishop House from the City's Property to the Lots, and the Buyer's activities on

the City's Property. Said policy shall be for the mutual and joint benefit and protection of the Buyer and the Seller and shall provide that the Seller, although named as an additional insured, shall nevertheless be entitled to recover under said policies for any loss occasioned to it, its officers, employees, and agents by reason of the negligence of the Buyer, its officers, employees, agents, subcontractors, or business invitees. Such policy shall be written as a primary policy not contributing to and not in excess of coverage the Seller may carry. Prior to accessing the Lots and the City's Property for any reason other than for the limited purposes stated in Paragraph 18, the Buyer shall deliver a certificate of insurance to the Seller evidencing the insurance coverage required herein. Except as permitted for the limited purposes stated in Paragraph 18, the Buyer's right to access the Lots and the City's Property granted in this Agreement is expressly contingent on the Buyer's delivery of said certificate of insurance to the Seller.

9. Access to Lots Prior to Escrow Release; Improvements. The Seller recognizes the Buyer's need to access and improve the Lots prior to Escrow Release in order to prepare the Relocation Site for installation of the Bishop House. Therefore, following Escrow Closing and subject to the requirements of paragraph 8, the Seller authorizes the Buyer to access the Lots, and after obtaining all permits required by the Loveland Municipal Code, to install a foundation upon the Lots and to install and make all necessary utility connections to the Relocation Site in order to provide residential utility services to the Bishop House following its relocation. Such access shall be during regular business hours, and at such other times as may be permitted by the Seller.

10. Possession of Bishop House. Subject to the requirements of paragraph 8, the Buyer shall be entitled to take possession of the Bishop House immediately following Escrow Closing. The Buyer may not occupy the Bishop House while it remains on the City's Property and may not authorize any other party to do so.

11. Relocation of Bishop House.

a. After Escrow Closing, but before Escrow Release, the Buyer shall remove the Bishop House from the City's Property and relocate it to the Lots. Said relocation shall be at the Buyer's sole cost and expense. Said relocation must occur on or before one hundred eighty (180) days after Escrow Closing ("Relocation Deadline"). If the Buyer fails to relocate the Bishop House as required herein on or before the Relocation Deadline without the Seller's express written consent, which shall not be unreasonably withheld, then the Buyer shall be in default, and the provisions of Paragraph 19 shall apply.

b. The Buyer shall be responsible, at its sole cost and expense, for hiring a licensed contractor to remove and transport the Bishop House from the City's Property to the Lots. The Seller shall have no responsibility for any action, inaction, success, or lack of success of the contractor. The Buyer and the contractor shall be solely responsible for selection of the means and methods regarding the work to be performed under the contract between them; provided, however, that the Buyer shall require the contractor to have in place insurance, including general liability and automobile insurance, adequate to cover the work. The Buyer shall require the contractor to list the Seller as an additional

insured under said policies. The Buyer shall deliver to the Seller a certificate of insurance evidencing said coverage prior to relocating the Bishop House.

c. The Buyer shall be responsible for obtaining any and all permits and approvals necessary to move the Bishop House from the City's Property to the Lots, including, without limitation, any and all permits and approvals required by the City and of utility providers whose overhead lines may need to be moved.

12. Transportation and Risk of Loss. The Buyer shall be solely responsible for all costs of transporting the Bishop House from the City's Property to the Lots. The Buyer further agrees to assume all risk of loss or damage to the Bishop House during removal and transport from the City's Property to the Lots. The Buyer shall secure insurance against such loss or damages during removal and transport and thereafter as the Buyer deems necessary or desirable.

13. City's Property Finish. The Buyer shall do all of the following prior to Escrow Release:

a. **Basement.** The Buyer acknowledges that there is a partial basement under the Bishop House. Following removal of the Bishop House from the City's Property, the Buyer shall fill in the basement with clean fill dirt and return the City's Property to grade.

b. **Septic System.** The Buyer acknowledges that there is a septic system located on the City's Property that served the Bishop House. The Buyer shall do all work to properly abandon the septic system as required by Larimer County in accordance with all applicable laws. Upon completion of the abandonment, the Buyer shall deliver to the Seller a septic system pumping report and a letter from the Buyer to the Seller stating the methods used to abandon the septic system.

c. **Performance of Work.** The Buyer shall perform all work on the City's Property in a safe, careful, and workmanlike manner and shall not modify, damage, or destroy the Seller's landscaping, irrigation system, adjacent sidewalks, and right-of-way improvements and, except for the work required in this Paragraph 13, shall return the surface of the City's Property to its prior condition after completion of said work. The Buyer shall not leave any materials, equipment, or debris of any kind on the City's Property.

14. Indemnification. The Buyer hereby covenants and agrees to indemnify, save, and hold harmless the Seller, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorney's fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any violation of any applicable law, regulation, or permit requirement, or any negligent act or omission or other tortious conduct of the Buyer, its officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement.

15. Bishop House and Lots Sold As-Is; No Warranties. THE BISHOP HOUSE AND LOTS ARE SOLD BY THE SELLER AS-IS. THE SELLER DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO QUALITY AND SUITABILITY OF THE BISHOP HOUSE AND LOTS IS WITH THE BUYER, AND SHOULD THE BISHOP HOUSE OR LOTS PROVE TO BE DEFECTIVE IN ANY WAY FOLLOWING THE PURCHASE, THE BUYER SHALL ASSUME THE ENTIRE COST OF ALL MAINTENANCE AND REPAIR. THE SELLER SHALL NOT BE LIABLE TO THE BUYER, AND THE BUYER HEREBY WAIVES ALL CLAIMS AGAINST THE SELLER, REGARDLESS OF THE NATURE OR THEORY UNDER WHICH SAID CLAIMS MAY ARISE, FOR ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, OR LOSS OF INCOME, OR ANY OTHER DAMAGES, INCIDENTAL OR OTHERWISE, ARISING OUT OF THE SALE OR USE OF THE BISHOP HOUSE OR THE LOTS.

16. Maintenance of Bishop House and Lots. The Seller shall keep, or cause to be kept, the Bishop House and the Lots in their condition as of the date of this Agreement to the date of Escrow Closing, subject to the terms of this Agreement, and agrees not to commit or permit waste thereon.

17. Casualty. In the event that the Bishop House is substantially damaged by fire, flood, or casualty between the date of this Agreement and the date of Escrow Closing, this Agreement may, at the option of the Buyer, be declared null and void and of no effect, in which case the Earnest Money shall be returned to the Buyer, and the parties shall be released from all further obligations hereunder.

18. Right to Inspect.

a. The Buyer shall be allowed to fully inspect the Bishop House and the Lots at any time up to and including November 30, 2011 (the "Inspection Period"). The Seller agrees that the Buyer and its agents may have reasonable access to the Bishop House and the Lots to conduct tests and/or inspections, at the Buyer's expense, concerning the environmental or geological conditions that could expose the Buyer to future liability for damages or clean-up expenses.

b. Notwithstanding anything contained herein to the contrary, the Buyer shall have the term of the Inspection Period within which to inspect the Bishop House and the Lots and any and all matters related to the purchase or relocation of the Bishop House, including without limitation, governmental requirements, environmental conditions, and other matters that might affect the feasibility of the Bishop House for the Buyer's anticipated use thereof or its relocation, or that might affect the feasibility of the Lots for the Buyer's anticipated use thereof, to determine whether or not the Buyer desires to proceed with the purchase of the Bishop House and the Lots from the Seller. In the event that the Buyer, within the Inspection Period, gives written notice to the Seller of the

Buyer's decision not to purchase the Bishop House and the Lots for any of the reasons set forth in this paragraph, then this Agreement shall be null and void and of no effect, the Earnest Money shall be returned to the Buyer, and the parties shall be released from all further obligations hereunder.

c. Notwithstanding anything contained herein to the contrary, the Buyer shall not be obligated to obtain the insurance coverage or provide to the Seller the certificate of insurance required by Paragraph 8 in order to have access to the City's Property and the Lots to inspect the Bishop House and the Lots as permitted in this Paragraph 18.

19. Remedies on Default. If any payment due hereunder is not paid, honored, or tendered when due, or if any other obligation hereunder is not performed as herein provided, there shall be the following remedies:

a. If the Buyer is in default, the Seller's sole remedy shall be to elect to treat this Agreement as terminated, in which case the Earnest Money and all payments and things of value received hereunder from the Buyer, including any improvements made to the Lots pursuant to Paragraph 9, shall be forfeited by the Buyer and retained by the Seller, and the Seller may recover such damages as may be proper, but not to exceed Thirty-six Thousand Dollars (\$36,000.00).

b. If the Seller is in default, the Buyer's sole remedy shall be to elect to terminate this Agreement and retain the Earnest Money, or seek specific performance of this Agreement.

20. Lead-Based Paint. A completed Lead-Based Paint Disclosure form signed by the Seller is attached hereto as **Exhibit C** and incorporated herein by reference. The Buyer acknowledges timely receipt of the completed Lead-Based Paint Disclosure form signed by the Seller.

21. Methamphetamine Disclosure.

a. If the Seller knows that methamphetamine was ever manufactured, processed, cooked, disposed of, used, or stored at the Bishop House, the Seller is required to disclose such fact. No disclosure is required if the Bishop House was remediated in accordance with state standards and other requirements are fulfilled pursuant to C.R.S. § 25-18.5-102. The Buyer further acknowledges that the Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Bishop House has ever been used as a methamphetamine laboratory. If the Buyer's test results indicate that the Bishop House has been contaminated with methamphetamine, but has not been remediated to meet the standards established by rules of the State Board of Health promulgated pursuant to C.R.S. § 25-18.5-102, the Buyer shall promptly give written notice to the Seller of the results of the test, and the Buyer may terminate this Agreement upon the Seller's receipt of the Buyer's written notice to terminate, notwithstanding any other provision of this Agreement.

b. THE SELLER HAS NO KNOWLEDGE OF ANY METHAMPHETAMINE MANUFACTURE, PROCESSING, COOKING, DISPOSAL, USE, OR STORAGE AT THE BISHOP HOUSE.

c. Any testing to be performed and notice given under this paragraph shall be done within the Inspection Period and in accordance with the procedures set forth in Paragraph 18. The Buyer’s failure to test or notify the Seller before expiration of the Inspection Period shall be deemed a waiver of any objection on the grounds stated in this paragraph.

22. Notices. Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three days after being sent by certified mail, return receipt requested:

	<u>To the Seller:</u>	<u>To the Buyer:</u>
Work Coordination:	Ken Cooper Public Works, Facilities 510 E. 5 th Street Loveland, CO 80537 coopek@ci.loveland.co.us	Bryant Bajema 15851 NCR 7 Wellington, CO 80549 blbajema@hotmail.com
Legal Notices:	City Attorney City Attorney’s Office 500 E. 3 rd Street Loveland, CO 80537 citins@ci.loveland.co.us	James Lang, Chief Financial Officer Microproperties Five, LLC 14901 Quorum Drive, Suite 900 Dallas, TX 75254 jlang@usrproperties.com

23. Attorney’s Fees and Costs. In the event either party hereto shall default in any of its covenants or obligations herein provided, and the party not in default commences legal or equitable action against the defaulting party, the party adjudged to be the defaulting party expressly agrees to pay all of the non-defaulting party’s reasonable expenses of said litigation, including a reasonable sum for attorney’s fees.

24. Governing Law. This Agreement and the legal relations between the parties hereto shall be governed by and be construed in accordance with the laws of the State of Colorado, without reference to its conflict of laws principles. Venue for any judicial proceeding arising under this Agreement shall be only in the District Court for Larimer County, Colorado. In addition, the parties acknowledge that there are legal constraints imposed upon the Seller by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the Seller by its Charter and Code and that, subject to such legal constraints, the parties shall carry out the terms and conditions of this Agreement.

25. Time is of the Essence. It is agreed that time shall be of the essence to this Agreement and each and every provision hereof.

26. **Terms Survive Closings.** Except those terms and conditions that, by their nature, are fully and completely performed upon Escrow Release, all terms and conditions of this Agreement shall survive Escrow Release and shall continue to be binding on and inure to the benefit of the parties and their respective successors, and assigns.

In Witness Whereof, the parties have executed this Agreement on the day and year first written above.

Seller:

City of Loveland, Colorado

By: _____
William D. Cahill, City Manager

Attest:

City Clerk

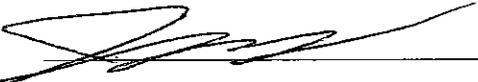
Approved as to Form:



Assistant City Attorney

Buyer:

Microproperties Five, LLC

By: 

Title: CFO

State of TEXAS)
) ss.
County of DALLAS)

The foregoing Agreement was acknowledged before me this 25th day of Oct,
2011, by James Lang as CFO of Microproperties
Five, LLC.

Witness my hand and official seal.

My commission expires 8/6/2012.

Janet L. Green
Notary Public



**Exhibit A
Bill of Sale – Form**

BILL OF SALE

The City of Loveland, Colorado (“Grantor”), in consideration of Nine Thousand Dollars (\$9,000) to it paid by Microproperties Five, LLC (“Grantee”), the receipt of which is acknowledged, hereby grants, sells, transfers, conveys, and delivers in “AS-IS” condition to the Grantee the following personal property, namely: that certain house, including all fixtures of a permanent nature now part of the house, and all improvements, including the garage, located at 871 E. 1st Street, Loveland, Colorado 80537 (“Bishop House”). THE BISHOP HOUSE DOES NOT INCLUDE THE UNDERLYING REAL ESTATE, WHICH SHALL REMAIN THE PROPERTY OF THE GRANTOR. NOTHING HEREIN SHALL OPERATE AS OR BE CONSTRUED TO BE A CONVEYANCE OF THE UNDERLYING REAL PROPERTY OWNED BY THE GRANTOR.

To have and to hold the Bishop House by the Grantee, its successors, and assigns forever.

In Witness Whereof, the Grantor has signed this Bill of Sale on _____, 2011.

Grantor:

City of Loveland, Colorado

By: _____
William D. Cahill, City Manager

Attest:

City Clerk

Approved as to Form:

Assistant City Attorney

**Exhibit B
Quitclaim Deed – Form**

QUITCLAIM DEED

THIS DEED is made this ____ day of _____, 2011, between **City of Loveland, Colorado**, a home rule municipality, whose address is 500 E. 3rd Street, Loveland, Colorado 80537 (“Grantor”), and **Microproperties Five, LLC**, a Texas limited liability company, whose address is 14901 Quorum Drive, Suite 900, Dallas, Texas 75254 (“Grantee”)

WITNESS, that the Grantor, for and in consideration of the sum of Nine Thousand Dollars (\$9,000), the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, and QUITCLAIMED, and by these presents does remise, release, sell, and QUITCLAIM unto the Grantee, its successors, and assigns forever all the right, title, interest, claim, and demand which the Grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Larimer, State of Colorado, described as follows:

Lot 11, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-911, also known by the mailing address of 1317 W. 8th Street, Loveland, CO 80537.

Lot 12, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-912, also known by the mailing address of 1321 W. 8th Street, Loveland, CO 80537.

Lot 13, Block 2, Bray Addition, City of Loveland, County of Larimer, State of Colorado, County Parcel No. 95142-36-913, also known by the mailing address of 1375 W. 8th Street, Loveland, CO 80537.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereto appertaining, and all the estate, right, title, interest, and claim whatsoever, either in law or in equity, of the Grantor, its successors, and assigns.

IN WITNESS WHEREOF, the Grantor has executed this deed on the date set forth above.

Grantor:

City of Loveland, Colorado

By: _____
William D. Cahill, City Manager

Attest:

City Clerk

Approved as to Form:

Assistant City Attorney

State of Colorado)
) ss.
County of Larimer)

The foregoing Quitclaim Deed was acknowledged before me this ____ day of _____, 2011, by William D. Cahill as City Manager of the City of Loveland, Colorado.

Witness my hand and official seal.

My commission expires _____.

Notary Public

The printed portions of this form except differentiated additions, have been approved by the Colorado Real Estate Commission.
(LP45-5-04)

Lead-Based Paint Disclosure (Sales)

Attachment to Contract to Buy and Sell Real Estate for the Property known as:

871 E. 1st Street, Loveland, Colorado 80537

Street Address

City

State

Zip

WARNING! LEAD FROM PAINT, DUST, AND SOIL CAN BE DANGEROUS IF NOT MANAGED PROPERLY

Penalties for failure to comply with Federal Lead-Based Paint Disclosure Laws include treble (3 times) damages, attorney fees, costs, and a penalty up to \$10,000 (plus adjustment for inflation) for each violation.

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure to Buyer and Real Estate Licensee(s) and Acknowledgment

(a) Seller acknowledges that Seller has been informed of Seller's obligations. Seller is aware that Seller must retain a copy of this disclosure for not less than three years from the completion date of the sale.

(b) Presence of lead-based paint and/or lead-based paint hazards (check one box below):

- Seller has no knowledge of any lead-based paint and/or lead-based paint hazards present in the housing.
 Seller has knowledge of lead-based paint and/or lead-based paint hazards present in the housing (explain):

(c) Records and reports available to Seller (check one box below):

- Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.
 Seller has provided Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below):

Buyer's Acknowledgment

(d) Buyer has read the Lead Warning Statement above and understands its contents.

(e) Buyer has received copies of all information, including any records and reports listed by Seller above.

(f) Buyer has received the pamphlet "Protect Your Family From Lead in Your Home".

(g) Buyer acknowledges federal law requires that before a buyer is obligated under any contract to buy and sell real estate, Seller shall permit Buyer a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(h) Buyer, after having reviewed the contents of this form, and any records and reports listed by Seller, has elected to (check one box below):

- Obtain a risk assessment or an inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards, within the time limit and under the terms of Section 10 of the Contract to Buy and Sell Real Estate; or
 Waive the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Real Estate Licensee's Acknowledgment

Each real estate licensee signing below acknowledges receipt of the above Seller's Disclosure, has informed Seller of Seller's obligations and is aware of licensee's responsibility to ensure compliance.

Certification of Accuracy

I certify that the statements I have made are accurate to the best of my knowledge.

Date: October 27, 2011 Date: _____

Seller Seller
Date: _____ Date: _____

Buyer Buyer
Date: October 27, 2011 Date: _____

Real Estate Licensee (Listing) Real Estate Licensee (Selling)



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: 5
MEETING DATE: 11/15/2011
TO: City Council
FROM: Economic Development Department
PRESENTER: Betsey Hale

TITLE:

A Resolution amending the scheduled meeting dates and location of the Creative Sector Development Advisory Commission

RECOMMENDED CITY COUNCIL ACTION:

Motion to approve the resolution

OPTIONS:

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

DESCRIPTION:

This is an administrative action to change the meeting date and location of those meetings of the Creative Sector Development Advisory Commission from the third Thursday of every month in the City Manager's Conference Room to the third Thursday of every other month in the City Council Chambers.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The Creative Sector Development Advisory Commission meetings have traditionally been held on the third Thursday of each month in the City Manager's Conference Room. In order to conduct the meetings in a more effective way and provide for public participation, it is desirable to shift the meetings to a bimonthly schedule and meet in the City Council Chambers. On October 20, 2011 the Commission approved a motion to recommend City Council change the

Commission meeting date and location to the third Thursday of every other month in the City Council Chambers.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

A Resolution Amending the Scheduled Meeting Dates and Location of the Creative Sector Development Advisory Commission

RESOLUTION #R-73-2011

**A RESOLUTION AMENDING THE SCHEDULED MEETING DATES AND
LOCATION OF THE
CREATIVE SECTOR DEVELOPMENT ADVISORY COMMISSION**

WHEREAS, on December 7, 2010, City Council adopted Resolution #R-67-2010 setting forth the 2011 meeting dates and location for the City's boards and commissions, including the City of Loveland Creative Sector Development Commission (the "CSDC"); and

WHEREAS, the CSDC regular meeting time is currently set on the third Thursday of each month at 6:00 p.m. in the City Manager's Conference Room, 500 East Third Street, Loveland, Colorado; and

WHEREAS, the CSDC desires to change the regular meeting time to the third Thursday of every other calendar month and the meeting location commencing with the November, 2011 meeting as set forth in this Resolution.

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

Section 1. That the meeting dates and location adopted in Resolution #R-67-2010 are hereby amended to change the CSDC's regular meeting dates and location from the third Thursday of each calendar month in the City Manager's Conference Room to the third Thursday of every other calendar month in the Council Chambers commencing with the November, 2011 meeting. The meeting time shall remain the same: 6:00 p.m. The Council Chambers is located at 500 East Third Street, Loveland, Colorado.

Section 2. That Resolution #R-67-2010, as amended herein and by prior resolutions, shall remain in full force and effect.

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

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

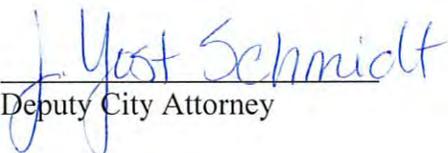
ADOPTED this 15th day of November, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



CITY OF LOVELAND
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 6
MEETING DATE: 11/15/2011
TO: City Council
FROM: Bonnie Steele, Acting Finance Director
PRESENTER: Bonnie Steele

TITLE:

Motion to award an increase to the contract for fuel from \$1,175,000 to \$1,350,000 to Gray Oil; authorize the City Manager to sign the contract on behalf of the City for the remainder of 2011 (November-December 2011).

RECOMMENDED CITY COUNCIL ACTION:

Adopt the motion as recommended

OPTIONS:

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

DESCRIPTION:

This is an administrative action to increase the contract with Gray Oil Company, Inc. from \$1,175,000 to \$1,350,000 to cover costs of fuel for the rest of the calendar year 2011 and authorizes the City Manager to execute the contract change.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Second reading of Ordinance for increase to fuel budget is included in this council agenda.

SUMMARY:

The City purchases unleaded and diesel fuel for use in city vehicles and equipment. Deliveries are made to several locations within the City. The City has used the Municipal Assembly of Procurement Officials (MAPO)/City of Denver bid since October 2006, and recommends

continuing to use the same as basis for the new contracting period. Such cooperative procurement by the City Manager is authorized by City Code Section 3.12.170. The current year contract is based on using the same terms in the City & County of Denver bid from 2006, which has been extended annually for the past four years with the final extension year being 2011.

BACKGROUND

Using a cooperative bid with the City & County of Denver, Gray Oil was awarded the contract for fuel purchases and deliveries for various City locations. After Council approval on December 7, 2010 a contract was executed with Gray Oil for an amount not to exceed \$1,000,000. A change order for \$175,000 was executed by staff on October 27, 2011. It has been determined by staff that the expenditures will exceed 20% of the original contract amount. As required by Municipal Code Section 3.12.B Council approval is required for change orders that equal or exceed 20%.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Gray Oil Contract Change Order

Contract Change Order Form

Date: 11/15/2011 Number: 2

Project Title: Fuel Purchases and Delivery Project Number: _____

Purchase Order Number: _____

Contractor: Gray Oil Company, Inc.

DESCRIPTION

Reason for Change:

Fuel prices have continued to remain higher than projections

Description of Change:

Increase not to exceed dollar amount from \$1,175,000.00 to \$1,350,000.00

Change in Contract Cost: \$175,000.00 Change in Contract Time: None

Original Contract Cost: \$1,000,000.00

Total Approved Change Orders: \$175,000.00

Total Pending Change Orders: \$0.00

Total This Change Order: \$175,000.00

Adjusted Contract Cost: \$350,000.00

(assuming all changed orders are approved) % increase to contract: 35%

Adjusted Date for Completion: _____

APPROVAL

Submitted By: _____ Date: _____

Reviewed By: _____ Date: _____

Approved By: _____ Date: _____

This change order is accepted and the contract is amended to conform thereto, this _____ day of _____

City of Loveland

By: _____

Title: _____

Contractor

By: 

Title: President

By: _____

Title: _____



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: 7
MEETING DATE: 11/15/2011
TO: Loveland Urban Renewal Authority Board of Commissioners
FROM: Greg George, Development Services Department
PRESENTER: Bethany Clark, Community & Strategic Planning

TITLE:

A public hearing and an ordinance enacting a supplemental budget and appropriation to Loveland Urban Renewal Authority 2011 Budget

RECOMMENDED CITY COUNCIL ACTION:

Convene as the Loveland Urban Renewal Authority Board of Commissioners and conduct a public hearing to adopt on first reading AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO 2011 LOVELAND URBAN RENEWAL AUTHORITY BUDGET

OPTIONS:

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

DESCRIPTION:

This is an administrative action to adopt an ordinance on first reading appropriating funding received through the Downtown Urban Renewal Authority (URA) property tax increment to continue the Downtown Façade Improvement Grant Program. This appropriation would commit the TIF fund balance of \$48,100 to fund the façade program. An Inter-Governmental Agreement (IGA) between the Loveland URA and the City (see Attachment 3) would contractually commit the TIF fund balance for funding the Façade Improvement Grant Program in 2011. The resolution approving the IGA would be presented to City Council when the appropriation ordinance comes back for second reading.

BUDGET IMPACT:

- Positive
 Negative

Neutral or negligible

In the past, LURA tax increment funds that were otherwise not committed were paid to the City to reimburse it for administrative costs under an IGA signed in 2007. Under the proposed appropriation, these funds would be appropriated in the budget for Community and Strategic Planning for the sole purpose of funding the Façade Grant Program.

SUMMARY:

On October 4th, the Loveland Downtown Team approved a motion recommending to City Council that the TIF fund balance of \$48,100 be appropriated to fund the Façade Improvement Grant Program. The recommendation included revisions to the Grant Application and Scoring Criteria. The intent of the façade program is to improve the appearance of downtown buildings by providing grants to property owners for undertaking façade improvements. The property tax increment generated as a result of increased property values and not otherwise committed by LURA would be used to fund the Façade Improvement Grant Program. If the requested appropriation is approved, then City staff would open up the 2011 grant round for the façade matching grant program. Staff will present the recommended grant awards for LURA's approval after the grant cycle is closed, likely in early 2012.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Ordinance enacting a supplemental budget and appropriation.
2. Staff Report
3. Draft IGA

FIRST READING November 15, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO LOVELAND URBAN RENEWAL AUTHORITY 2011 BUDGET

WHEREAS, the Loveland Urban Renewal Authority has reserved funds on hand not appropriated at the time of the adoption of the City budget for 2011; and

WHEREAS, the City Council acting as the Board of Directors for the Loveland Urban Renewal Authority desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the Authority’s budget for 2011, 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 \$48,100 in the Loveland Urban Renewal Authority Fund 037 are available for appropriation. Revenues in the total amount of \$48,100 are hereby appropriated for Facade Grant Program in the Downtown Project Areas and transferred to the funds as hereinafter set forth. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget		
Loveland Urban Renewal Authority - Downtown Project Area Facade Grants		
Revenues		
Fund Balance		48,100
Total Revenue		48,100
 Appropriations		
037-8001-409-04-02	Facade Grant Program	48,100
Total Appropriations		48,100

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 as provided in City Charter Section 11-5(d), this Ordinance shall be effective upon final adoption.

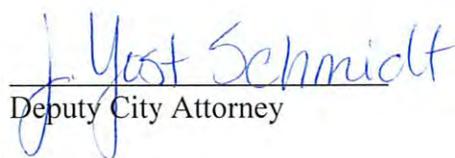
ADOPTED this ____ day of December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney



COMMUNITY & STRATEGIC PLANNING
 Civic Center • 500 East Third Street • Loveland, Colorado 80537
 (970) 962-2745 FAX (970) 962-2945 • TDD (970) 962-2620
 www.cityofloveland.org

Loveland Urban Renewal Authority Board of Commissioners
 Staff Report

From: Community and Strategic Planning
 Meeting Date: November 15, 2011
 Re: Façade Improvement Program

Façade Program Summary:

In 2007, the Loveland Urban Renewal Authority (LURA) Board of Directors authorized a program intended to promote direct improvements in the appearance of downtown buildings. The original program was set up in such a way that grants could be awarded for up to 10 percent of a redevelopment’s total cost, or up to 100% of the cost of eligible façade improvements. However, this structure limited the program to large redevelopment projects. In 2009, the City Council approved the addition of a small matching grant program for existing business and building owners.

2011 Matching Grant Round:

The approval of the program in 2007 included \$155,000 in general fund seed money, most of which has now been awarded as grants. The Façade Improvement Program has a small amount of funds leftover from the previous year’s grant round. Upon approval of this supplemental appropriation, Development Services plans to make \$50,000 (four \$12,500 matching grants) available to property owners. The remaining funds would be available for the 10 percent Façade Incentive Program.

Current Appropriated funds*:	\$23,815.85	
<u>Current Supplemental Appropriation Request**:</u>	<u>\$48,100.00</u>	
Total:	\$71,915.85	Façade Matching Grant: \$50,000.00 Façade Incentive Program: \$21,915.85

*from general fund seed money – appropriated in 2011 budget
 **from Downtown Plan Area current tax increment fund balance

Matching Grant Application Process:

The matching grant program is a competitive process, with applications being reviewed and ranked by a subcommittee of Loveland Downtown Team members and/or the Loveland Historic Preservation Commission. Projects will be prioritized based on the visibility, historic character, potential to leverage additional funds, as well as ability to meet the minimum requirements outlined in the application and prioritization criteria.

On October 4th 2011, the Loveland Downtown Team recommended continuing the façade program with modifications to the application and scoring criteria in order to strengthen the program’s selection and scoring process. Staff recommended additional measures to be incorporated into the scoring criteria to address the quality and appropriateness of design, and the impact the improvement will have to the downtown. Additionally, the application includes clarifications about ineligible improvements and submittal requirements. Attachments B and C include the language added by City Staff in red. These improvements will help staff and the review committee be more selective about the types of projects which are awarded grants. The prioritization will serve as the basis for Staff’s recommendation of grant awards to the LURA Board of Directors. The LURA Board of Directors reserves the final decision on all grant requests.

Program Success:

Five property owners to date have been awarded façade money to improve the appearance of their building, and all have successfully completed, or are in the process of completing the improvements. A sixth grant was awarded in 2010, but the property owners failed to sign the contract and forfeited the award. Two of the five awards were in the form of the 10 percent Incentive Program, and three of the awards were matching grants. The images below outline the success of the program in improving the appearance of prominent buildings in the downtown area.

417-421 E 4th Street, Moca LLC

Total Cost: \$1,100,000

Award: \$59,000

Before



After



301 E 4th Street, Heartland Café

Total Cost: \$29,295

Award: \$12,500

Before



After



247 E 4th Street, Stroh Building

Total Cost: \$26,303

Award: \$12,500

Before



After



200 E 4th /330 N Cleveland, State Merc. Building

Total Cost: \$590,000

Award: \$48,639

Before (West façade)



After (West façade)



Before (South façade)



After (South façade)



315-319 E 4th Street, Odd Fellows Bldg

Before



Total Cost: \$131,844

Award: \$12,500

Drawing of Proposed Work



Attachments:

Attachment A: Program Information and Guidelines

Attachment B: Façade Program Application

Attachment C: Façade Program Prioritization Criteria

FAÇADE INCENTIVE PROGRAM and FAÇADE MATCHING GRANT PROGRAM Program Information and Guidelines

WHAT IS THE FAÇADE INCENTIVE AND MATCHING GRANT PROGRAM?

The Loveland Urban Renewal Authority (LURA) Board of Directors authorized a program to encourage property and business owners within the core of downtown Loveland to renovate commercial building facades and improve the appearance of downtown. There are two options available, based on the needs of the applicant:

<i>Façade Incentive Program</i>	<i>Façade Matching Grant Program</i>
Incentive equal to 10 percent of the total cost of development, up to a maximum of 100 percent of the cost of the eligible façade improvement.	A dollar for dollar matching grant not to exceed \$12,500. The grant is to be used for eligible costs of improvement to the façade by a property or business owner.

Land and structure(s) must be located in the core of the Downtown Loveland Urban Renewal Area, as identified by the City of Loveland Urban Renewal Plan. This area is bounded by Fifth Street, Third Street, Railroad Ave, and Washington Ave. The applicant for the Façade Incentive Program must be the property owner. The applicant for the Façade Matching Grant Program may be the property owner or the business owner, provided that the business owner must have the approval of the building owner to improvement the building façade.

HOW TO APPLY

Applicants must assemble a packet of information to be submitted to the City of Loveland staff for review and recommendation prior to final consideration by the LURA Board of Directors. The application is the same for both the Incentive Program and the Matching grant program. The packet must include the following:

1. A narrative describing the project as per the grant application. The project description must demonstrate that the proposed improvements are eligible as outlined on page two of the application and must describe the scope of improvements.
2. Proof of taxes paid including any sales tax by a merchant seeking grant funding.
3. A detailed cost breakdown of the proposed façade improvement from a contractor. The design architect and/or contractor should be able to develop these numbers. If the design professional develops the numbers, the LURA encourages applicants to have a general contractor review the costs prior to inclusion in the packet of information.

Attachment A

4. A digital photo of the façade and a professional design sketch or rendering of the proposed improvements.
 - a. Renderings of the proposed façade improvements are encouraged and should be developed by professional architects.
 - b. It should indicate type of materials and architectural details reflected in the list of eligible façade improvements.
5. Written approval of the property owner, if renting.

PERIOD OF ELIGIBILITY

For the \$12,500 Façade Matching Grant program, there will be an application deadline and review period established by LURA Board based on availability of funds.

For the 10 percent Façade Incentive Program, due to the nature of the incentive, staff will accept applications throughout the year and review them as necessary.

PRIORITIZATION AND REVIEW*Matching Grant Program*

The Matching Grant Program is subject to a competitive process. Projects will be prioritized based on the visibility, historic character, potential to leverage additional funds as well as ability to meet the minimum requirements outlined in the application and the attached Application Prioritization Criteria.

Façade Incentive Program

For the Façade Incentive Program, applicants will be reviewed based on the fiscal impact to the Urban Renewal Area as well as the ability to meet the minimum requirements outlined in the application.

APPROVAL PROCESS*Matching Grant Program*

Staff will review applications for completeness and present the applications to a subcommittee of the Loveland Downtown Team and/or the Loveland Historic Preservation Commission for prioritization and ranking. The prioritization will serve as the basis for the recommendation to the LURA Board of Directors. The LURA Board of Directors reserves the final decision on all grant requests. The prioritization matrix is attached.

Façade Incentive Program

Staff will review applications for completeness and based on the level of investment and assess the fiscal impact to the URA. The staff will then make a recommendation to LURA Board of Directors.

ADDITIONAL INFORMATION

If the LURA Board approves an incentive or a grant, the approval is valid for one calendar year from the date of the approval. A one-year extension will be automatic if the project is actually under construction at the first anniversary date.

At the time of approval, the LURA may provide to the applicant a “Conditional Project Commitment Guarantee” which will be followed by a formal agreement between the LURA and the property owner.

LURA funds will not be released until construction is complete.

Questions can be addressed to:

Bethany Clark, City Planning Technician
Development Services
City of Loveland
500 East Third Street
Loveland, CO 80537
Tel: 970-962-2745
E-mail: clarkbe@ci.loveland.co.us



ATTACHMENT B

Downtown Loveland Façade Improvement Program

INFORMATION AND APPLICATION

PROGRAM INTENT

The Downtown Loveland Urban Renewal Authority (URA) Façade Improvement Program is an initiative intended to promote direct improvements in the appearance downtown buildings. The program provides grants for façade improvements that support direct investment in downtown buildings and also supports existing merchants who seek to improve the appearance of their storefront.

The Program is intended to:

- Promote improvements to structures in the Loveland Urban Renewal Area and eliminate and prevent conditions that cause blight;
- Preserve the unique character of downtown's historic buildings by providing greater leverage to private investment and historic preservation monies;
- Encourage façade improvements that are consistent with downtown standards for non-historic structures by providing matching grants to merchants and building owners.

ELIGIBLE PROPERTIES

Land and structure(s) must be located in the core of the Downtown Loveland Urban Renewal Area, as identified by the City of Loveland Urban Renewal Plan. This area is bounded by Fifth Street, Third Street, Railroad Ave, and Washington Ave.

The applicant for the Façade Incentive Program must be the property owner. The applicant for the Façade Matching Grant Program may be the property owner or the business owner, provided that the business owner must have the approval of the building owner to improvement the building façade.

PROGRAM INCENTIVES

The program provides two options for applicants to be used for the rehabilitation and renovation of existing building facades that are visible from either the public right-of-way or publicly owned property. The program has two options available based on the needs of the building owner and/or merchant.

1. Façade Incentive Program: The Loveland URA will provide an incentive equal to 10% of the total project redevelopment cost, up to 100% of the cost of eligible façade improvements.
2. Façade Matching Grant Program: The Loveland URA will provide a 1/1 matching grant for the cost of eligible façade improvements. The matching grant shall not exceed \$12,500.

CONTACT INFORMATION

The Downtown Façade Improvement Program is funded by the Loveland Urban Renewal Authority, and administered by the Community and Strategic Planning Department. To learn more about the program please contact Bethany Clark, Planner, City of Loveland at 970-962-2745 or email at clarkbe@ci.loveland.co.us

ATTACHMENT B**ELIGIBLE FAÇADE IMPROVEMENTS**

The following are considered eligible for **both** the Façade Incentive and the Façade Matching Grant Programs:

- Restoration of brickwork, wood, masonry, and stucco with “timeless” materials.
- Replacement, repair, or addition of architectural details (e.g. cornices, bulkheads, transoms, etc.)
- Gutters and downspouts;
- Visible roof repairs;
- Windows and doors;
- Signage, in accordance with Loveland Municipal Code standards;
- Entranceway modifications including provisions to improve accessibility in accordance with the Americans with Disabilities Act (ADA);
- Repair, replacement, or reconstruction of stairs, stoops, porches
- Awnings;
- Accent Lighting;
- Removal of non-historic features;
- Siding repair/replacement;
- Window/display areas;
- Security improvements for window/display areas;
- Sidewalks, curbs, driveways, and water and sewer utilities exposed/impacted during renovation activities;
- Structural support elements of the façade, including the repair or replacement of interior structural support elements related to the façade;

INELIGIBLE IMPROVEMENTS

The following improvements are not eligible for the façade improvement program:

- Any improvements not seen from the public right-of-way or publicly owned space;
- Non-permanent fixtures (e.g. portable outdoor dining tables, chairs, flower planters)
- Any interior improvements not related to the repair or maintenance of structural support elements of the façade;
- Business operations-related costs including elimination or reducing debt, business inventory, display fixtures, sweat equity;
- **Minor maintenance and repairs;**
- Signage, unless it is integrated with comprehensive façade improvements;
- Non-visible roofing;
- Parking lot surfaces;
- Billboards;
- New Construction;
- Property Acquisition;
- Working Capital;
- Refinance of existing debt;
- Loans for speculative purposes;
- Expansion of building area.

If you have questions about the eligibility of your proposed improvements, please contact program staff at 970-962-2745 or clarkbe@ci.loveland.co.us

ADDITIONAL INFORMATION

- All applicants are required to meet existing ordinances and zoning restrictions
- Applicants are not exempt from obtaining the necessary permits to complete the project
- All applications are subject to review and approval by the Loveland Urban Renewal Authority Board and subject to available appropriators.
- Applicants are encouraged to contact program staff prior to submitting an application to review the proposal for eligibility under the above guidelines
- Funds for both the Façade Incentive and Facade Matching Grant Programs will be paid upon completion of the façade improvement as a reimbursement with appropriate receipts for construction costs as outlined in the application
- The applicant, if approved by LURA, has six months to begin construction on the façade improvement and one year to complete the project and submit receipts for reimbursement
- LURA will not cover any cost overruns

EXAMPLE - OPTION 1

10 percent of project development cost

\$500,000	Interior Improvements and Finish
\$75,000	Cost of Façade Improvement
\$575,000	Total Project Cost
(X .10)	
\$57,500	Total eligible grant amount

EXAMPLE OPTION 2

1/1 matching grant

\$25,000	Cost of Façade Improvement
(X.50)	
\$12,500	Total Eligible Grant amount

ATTACHMENT B

FAÇADE IMPROVEMENT PROGRAM GRANT APPLICATION

Applicant: _____

Business: _____

Property Owner: _____

Address: _____

Phone: _____

NARRATIVE: Describe the scope of improvements including materials used and color: (For a more complete response, applicants are encouraged to complete the narrative on a separate page)

Please include the following with the application:

- Proof of taxes paid for property or existing business
- Two professional contractor estimates for the cost of the proposed improvements
- Digital photos of the existing building facade and a **professional** design sketch or rendering
- Written approval of the building owner if renting

Total Construction Cost: _____ (if applicable)
 Façade Improvement Cost: _____
 Total Project Cost: _____

X .10 or X.5

Grant Request:

City of Loveland Façade Improvement- Application Prioritization Criteria

Date _____

Reviewer _____

Applicant/Building Address _____

	Criteria for evaluating submitted written proposals	Ranking: 1=low; 3=medium; 5=highest	Notes
1	Before prioritization of the applicant, staff reviewed the application to ensure it has met the minimum requirements as outlined in the applications. Yes/No	Yes/No	
	Required Criteria		
2	Visibility- this is important when considering pedestrian and vehicular traffic through downtown; buildings on prominent, most highly visible downtown corners will receive extra points		
	<i>A. Is the property located on a prominent corner in Downtown Loveland? Example: 4th and Cleveland or 4th and Lincoln? (yes= 5 points; partially visible=2-4 points no= 0 points)</i>		
	<i>B. How visible is the façade improvement? Is the façade improvement multi-story, does the width exceed 25 feet? (If yes to both 5 points; partial=2-4 points, neither=0 points)</i>		
3	In order for this program to be of greatest benefit to the property owner and to downtown, any project should be leveraged with funds from the State Historic Fund. This means that the structure in consideration must be designated as a historic landmark. This in mind, what is the likelihood of historic designation and thus the likelihood that this project will be leveraged by State Historic Fund?		
	<i>A. Integrity (does the improvement include or embody its original elements, features, characteristics?)(If yes=5 points; partial=2-4 points, no=0 points)</i>		
	<i>B. Does the structure embody the distinctive characteristics of a type, period, or method of construction/architecture, or represents the work of a master, or that possesses high artistic values? (If yes=5 points; partial=2-4 points, no=0 points)</i>		
	<i>C. Is the property a designated historic landmark? (yes=5 points, no=0 points)</i>		
	<i>D. Has the owner submitted an application to the State Historic Fund for matching dollars? (yes=5 points, no=0 points)</i>		

4	Is the property currently vacant, what is the likelihood of someone investing in this structure?		
	A. <i>Is the space occupied, or at the completion of the façade renovation will the space be occupied?(If yes=5 points; partial=2-4 points, no=0 points)</i>		
	B. <i>Is there a potential for the property to be demolished within the next 5 years. If yes, then the building should be scored 0 on the application.(yes=0 points, no=5 points)</i>		
5	Commitment from the building owner		
	A. <i>Does the total grant request exceed \$1 for \$1 match? Example - If the owner is investing \$50,000 total and asking for \$12,500 = \$3 to \$1 match.(If yes=5 points; partial=2-4 points, no=0 points)</i>		
	B. <i>Has the owner demonstrated a commitment to maintain the existing façade. (If yes=5 points; partial=2-4 points, no=0 points)</i>		
6	Project Design		
	A. <i>The project includes major façade work. (If yes=5 points; partial=2-4 points, no=0 points)</i>		
	B. <i>The building includes a creative design that is an appropriate fit for the proposed location and is consistent with the BE Zone standards. (If yes=5 points; partial=2-4 points, no=0 points)</i>		
	C. <i>The project significantly improves the streetscape appearance of the building. (If yes=5 points; partial=2-4 points, no=0 points)</i>		
Total (maximum 65 points)			

Comments:

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOVELAND,
COLORADO AND THE LOVELAND URBAN RENEWAL AUTHORITY FOR 2011
FAÇADE PROGRAM FUNDING**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made this 6th day of December, 2011 by and between THE CITY OF LOVELAND, COLORADO, a home rule city of the State of Colorado (“City”) and THE LOVELAND URBAN RENEWAL AUTHORITY, a body corporate and duly organized and existing as an urban renewal authority under the laws of the State of Colorado (“LURA”).

RECITALS

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, LURA is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, C.R.S. (the “Act”);

WHEREAS, as governmental entities in Colorado, the City and LURA 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; and

WHEREAS, in 2002, Downtown Loveland was the first project area (the “Downtown Plan Area”) approved under the City of Loveland Urban Renewal Plan, as authorized by the Act; and

WHEREAS, on November 20, 2007, LURA, approved a Façade Improvement Program (the “Façade Program”) pursuant to Resolution R#118-2007 making grant funds available to applicants who own property or businesses located within the boundaries of the Downtown Plan Area to further redevelopment, elimination of blight, and funding for façade improvements in a manner consistent with the Urban Renewal Plan; and

WHEREAS, on November 20, 2007, the Loveland City Council approved the transfer \$155,000 in City funds to the LURA to fund the Façade Program; and

WHEREAS, on September 15, 2009, the Façade Program was modified to include the Façade Matching Grant Program pursuant to Resolution R#89-2009; and

WHEREAS, the criteria for grants under the Façade Program is being reviewed and revised and therefore no grants have been made or committed for 2011 and LURA has \$48,100.00 in tax increment fund balance available for appropriation and expenditure; and

WHEREAS, the Loveland City Council desires that LURA contractually commit to provide funding for the Façade Program, as the same may hereafter be amended, from the tax increment fund balance available for 2011 to be expended by LURA during its 2012 grant cycle in order to serve the public purpose of furthering redevelopment and renovation of the Downtown Loveland area; and

WHEREAS, LURA is willing to make such a commitment in consideration of the City’s waiver of the City’s right to payment for the City’s 2011 personnel and other administrative costs utilized in support of the Downtown Plan Area, which right to payment arises under the Intergovernmental Agreement between the City and LURA dated December 18, 2007 (the “2007 IGA”).

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. LURA hereby agrees to expend \$48,100.00 in tax increment revenues available to it in the form of fund balance for 2011 (the “2011 Revenues”) to fund grants under the Façade Program, to be distributed by LURA during its 2012 grant cycle(s). Any portion of the 2011 Revenues not expended or contractually committed by LURA during fiscal 2012 for grants under the Façade Program shall be returned to the City in payment for the City’s 2011 personnel and administrative costs under the 2007 IGA.
2. The City hereby waives its right to payment by LURA for the City’s 2011 personnel and administrative costs utilized in support of the Downtown Plan Area in the amount of the 2011 Revenues, which payment is otherwise required under the 2007 IGA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed to be effective as of the date set forth above.

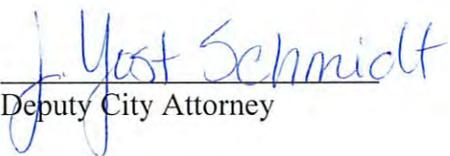
CITY OF LOVELAND

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


Deputy City Attorney

LOVELAND URBAN RENEWAL AUTHORITY

Chairman

ATTEST:

Secretary



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: 8
MEETING DATE: 11/15/2011
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Kerri Burchett, Current Planning

TITLE:

A public hearing and an ordinance amending Section 18.04.040 of the Loveland Municipal Code, the same relating to zoning regulations for certain property located in the Waterfall Subdivision, City of Loveland, Larimer County, Colorado

RECOMMENDED CITY COUNCIL ACTION:

City staff recommends the following motion for City Council action:

Hold a public hearing and adopt on first reading AN ORDINANCE OF THE CITY COUNCIL AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE WATERFALL SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

OPTIONS:

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

DESCRIPTION:

Consideration of a quasi-judicial action for adoption of an ordinance on first reading rezoning Lot 1, Block 1 of the Waterfall Subdivision from I-Developing Industrial to MAC - Mixed-Use Activity Center District. The 12.3 acre property is located at the northwest corner of the intersection of East 15th Street and North Boyd Lake Avenue and was formerly occupied by the Loveland Waterpark. The owner of the property is MBL 34, LLC, a McWhinney-controlled entity.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The application proposes to rezone the property to MAC - Mixed-Use Activity Center District and develop the property in phases under a single, unified conceptual master plan. The MAC District is a mixed-use district that permits a wide variety of commercial, residential and office uses with an emphasis on serving the surrounding neighborhoods. The conceptual master plan ensures the coordinated development of the entire parcel and provides a general location of land uses, unifying architectural guidelines and site planning standards. The Planning Commission unanimously recommended approval of the rezoning application as an item on the consent agenda at the October 10, 2011 Planning Commission meeting.

REVIEWED BY CITY MANAGER:**LIST OF ATTACHMENTS:**

- A. Ordinance
- B. Staff Memorandum

FIRST READING: November 15, 2011

SECOND READING: _____

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR CERTAIN PROPERTY LOCATED IN THE WATERFALL SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO

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 territory located within the Waterfall Subdivision, City of Loveland, Larimer County, Colorado, and more particularly described as:

Lot 1, Block 1 Waterfall Subdivision

Which territory is now included within the boundaries designated I - Developing Industrial shall be included within the boundaries of the district designated as follows:

"MAC – MIXED-USE ACTIVITY CENTER DISTRICT"

The above described property contains 12.289 acres (535,308.84 sq. ft.), more or less, and is further subject to all Rights-of-Way, Easements, Restrictions and Agreements, written or unwritten, now existing, or of record.

Section 2. That the **MAC – MIXED-USE ACTIVITY CENTER DISTRICT** 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. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

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

Signed this ____ day of _____, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Mayor

APPROVED AS TO FORM:



Deputy City Attorney



DEVELOPMENT SERVICES
Current Planning

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www.cityofloveland.org

MEMORANDUM

TO: City Council
FROM: Kerri Burchett, Principal Planner
DATE: November 15, 2011
RE: Lot 1, Block 1, Waterfall Subdivision Rezoning

I. EXHIBITS

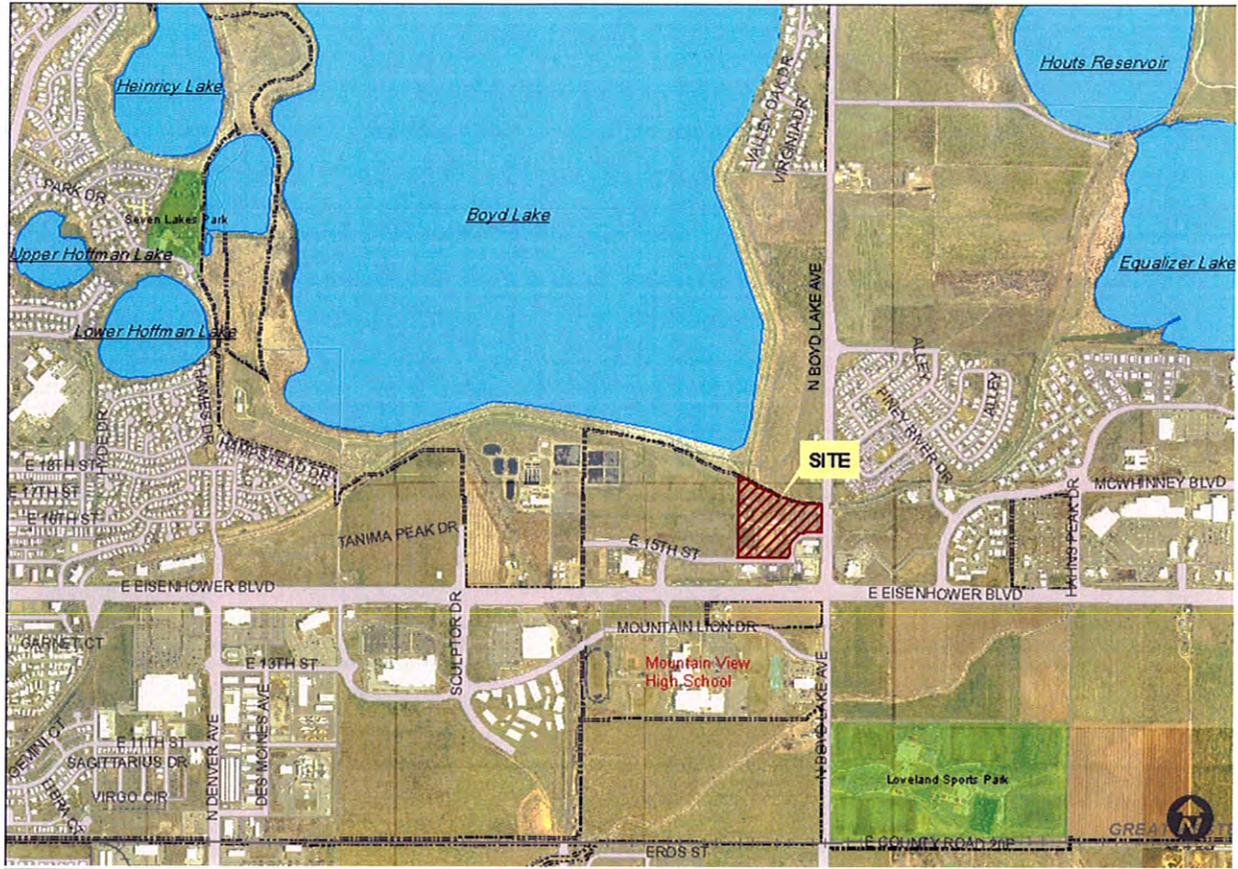
- A. Planning Commission staff report, including:
1. Waterfall Rezoning Narrative
 2. Waterfall Conceptual Master Plan
 3. Traffic Excerpt
 4. MAC Zone District

II. PROJECT SUMMARY

A. Description

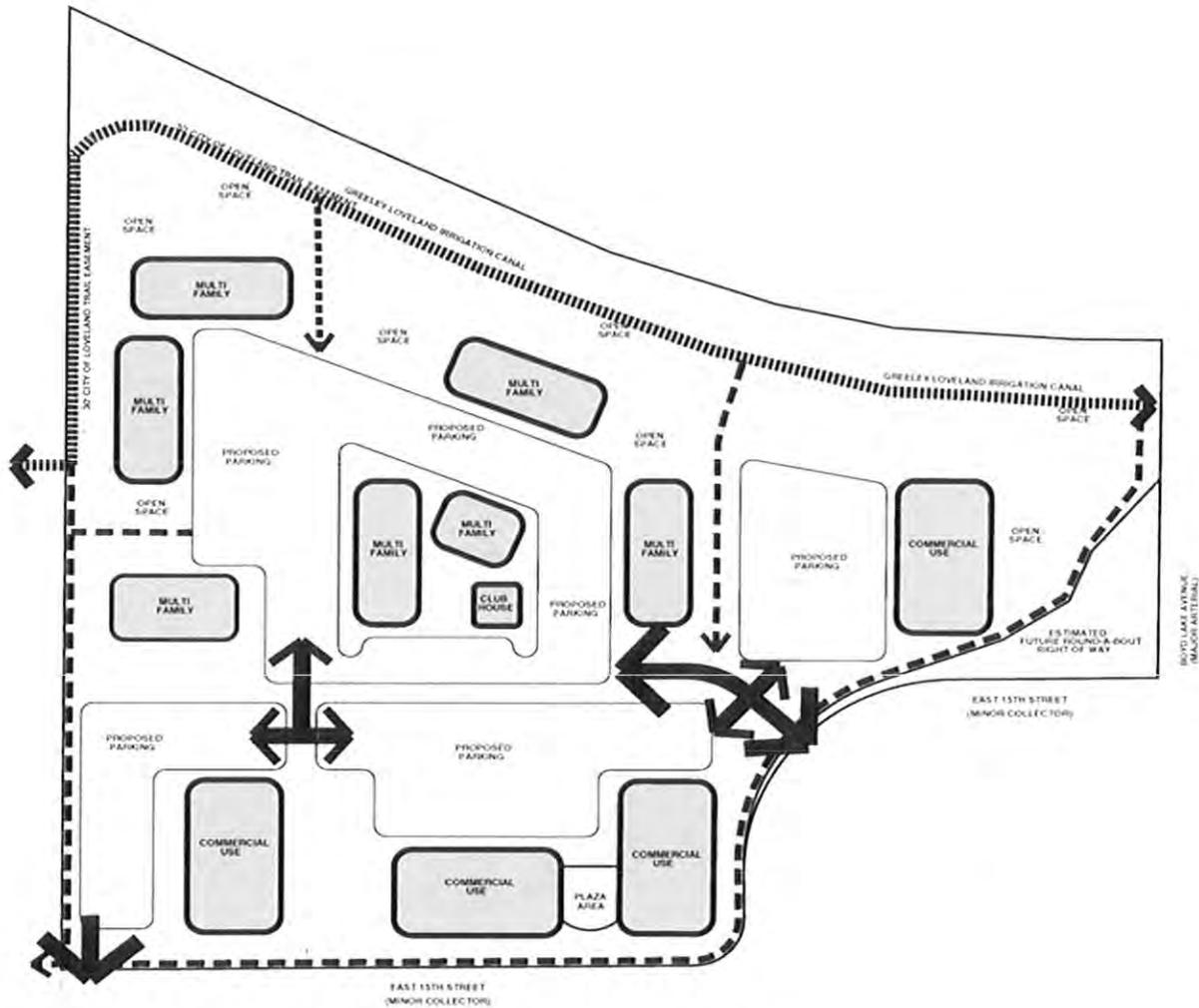
The application is for a rezoning of 12.3 acres located at the northwest corner of the intersection of Boyd Lake Avenue and East 15th Street. The property, which was formerly occupied by the Loveland Waterpark, is currently zoned I - Developing Industrial and is vacant. The application proposes to rezone the property to MAC - Mixed-Use Activity Center and develop the project in phases in conjunction with a conceptual master plan (see **Attachment 2** in **Exhibit A**). The MAC District is a mixed-use district intended to provide large, neighborhood-serving commercial centers. The District permits a wide variety of retail and commercial uses serving the surrounding area as well as larger retail uses serving a community-wide or regional market. The District also permits residential and office uses adjacent to the center's core.

B. Property Location



C. Conceptual Master Plan

The MAC District requires the creation of a conceptual master plan to ensure the coordinated development of entire parcel when developed in phases. The master plan would be approved in conjunction with the rezoning of the property. The master plan for the Waterfall Subdivision establishes commercial land uses fronting on Boyd Lake Avenue and East 15th Street with multifamily residential uses located in the northwest corner of the site. Approximately 6.2 acres or 50% of the site would be devoted to commercial uses, 4.4 acres or 36% of the site would be allocated for residential uses and the remaining 1.6 acres or 13% would consist of open space primarily along the Greeley Loveland Irrigation Canal. The maximum density in the MAC district is 16 dwelling units per acre, which would result in a maximum of 70 units permitted within the residential area of the master plan. The Housing Authority of the City of Loveland has expressed interest in developing the multifamily component of the master plan.



The master plan also sets forth architectural standards to ensure a coordinated and unified development. Thematic architectural elements include color palette, materials, architectural detailing and roof forms. These elements are described in further detail in Section III of the Planning Commission staff report (**Exhibit A**). In addition to the unifying architectural standards, the conceptual master plan incorporates site planning elements such as building orientation and pedestrian circulation to promote a cohesive development.

D. Key Issues

Staff has not identified any key issues associated with the request.

E. Planning Commission

The Planning Commission held a public hearing regarding the rezoning proposal on October 10, 2011. The Planning Commission considered the item as part of the consent agenda and unanimously recommended approval of the request. As the item remained on the consent agenda, minutes from the October 10, 2011 hearing have not been included in the staff memorandum.



**Development Services
Current Planning**

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**Planning Commission Staff Report
September 26, 2011**

Agenda #: Regular Agenda - 1
Title: Lot 1, Block 1, Waterfall Subdivision
Applicant: MBL 34, LLC
Request: Rezoning
Location: North of East 15th Street, west of Boyd Lake Avenue, at the former waterpark site
Existing Zoning: I - Developing Industrial
Proposed Zoning: MAC District - Mixed-Use Activity Center District
Staff Planner: Kerri Burchett

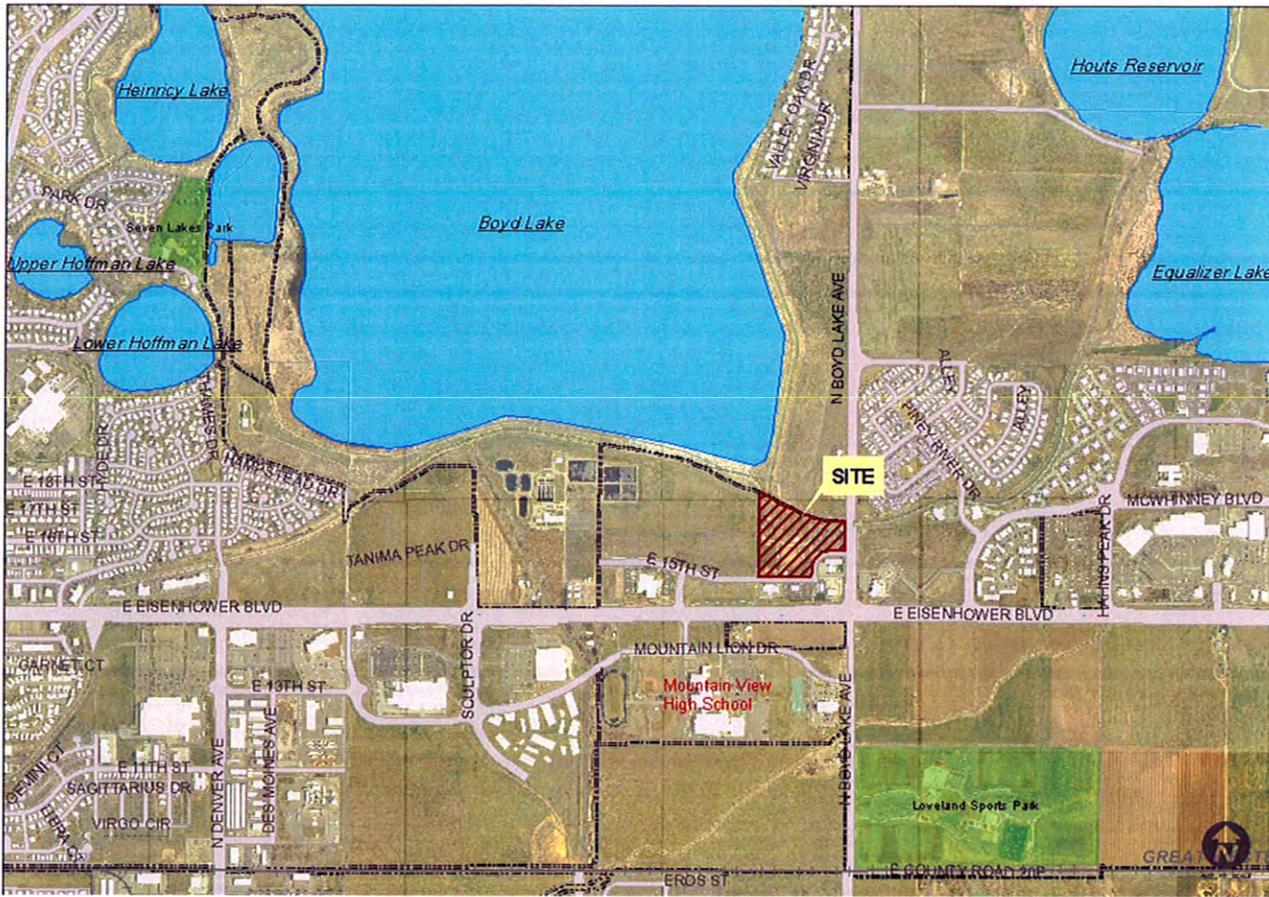
Staff Recommendation
 Subject to additional evidence presented at the public hearing, City staff recommends the following motion:
Recommended Motions:
 1. Move to make the findings listed in Section VIII of this report dated September 26, 2011 and, based on those findings, recommend approval of the rezoning of Lot 1, Block 1, Waterfall Subdivision, subject to the conditions listed in said report, as amended on the record.

Summary of Analysis
 This is a public hearing item to consider a rezoning of Lot 1, Block 1, Waterfall Subdivision from I-Developing Industrial to MAC -Mixed-Use Activity Center. The site is located at the northwest corner of the intersection of Boyd Lake Avenue and East 15th Street and was formerly occupied by the Loveland Waterpark. The MAC District is a mixed-use zoning district intended for large neighborhood-serving commercial centers. The district permits a wide variety of commercial, residential and office uses with an emphasis on providing convenient access to and from adjacent neighborhoods for pedestrians and bicyclists.
 As the project will be developed in phases, a Conceptual Master Plan is provided to ensure the coordinated development of the entire parcel. The master plan provides a general location of land uses, unifying architectural guidelines and site planning standards that address pedestrian and vehicular circulation.
 Staff believes that all key issues have been resolved based on City Code, standards contained in the Conceptual Master Plan and the conditions of approval recommended in Section IX of this staff report.

I. ATTACHMENTS

1. Waterfall Rezoning Narrative
2. Waterfall Conceptual Master Plan
3. Traffic Excerpt
4. MAC Zone District

II. VICINITY MAP



III. PROJECT DESCRIPTION

Summary

The application is for a rezoning of 12.3 acres located at the northwest corner of the intersection of Boyd Lake Avenue and East 15th Street. The property, which was formerly occupied by the Loveland Waterpark, is currently zoned I - Developing Industrial and is vacant. The application proposes to rezone the property to MAC - Mixed-Use Activity Center and develop the project in phases in conjunction with a Conceptual Master Plan (see **Attachment 2**). The MAC District is a mixed-use district intended to provide large, neighborhood-serving commercial centers. The District permits a wide variety of retail and commercial uses serving the surrounding area as well as larger retail uses serving a community-wide or regional market. The District also permits residential and office uses adjacent to the center's core. The District emphasizes the integration of pedestrian circulation within the center and to and from adjacent neighborhoods.

Conceptual Master Plan: Land Use Location

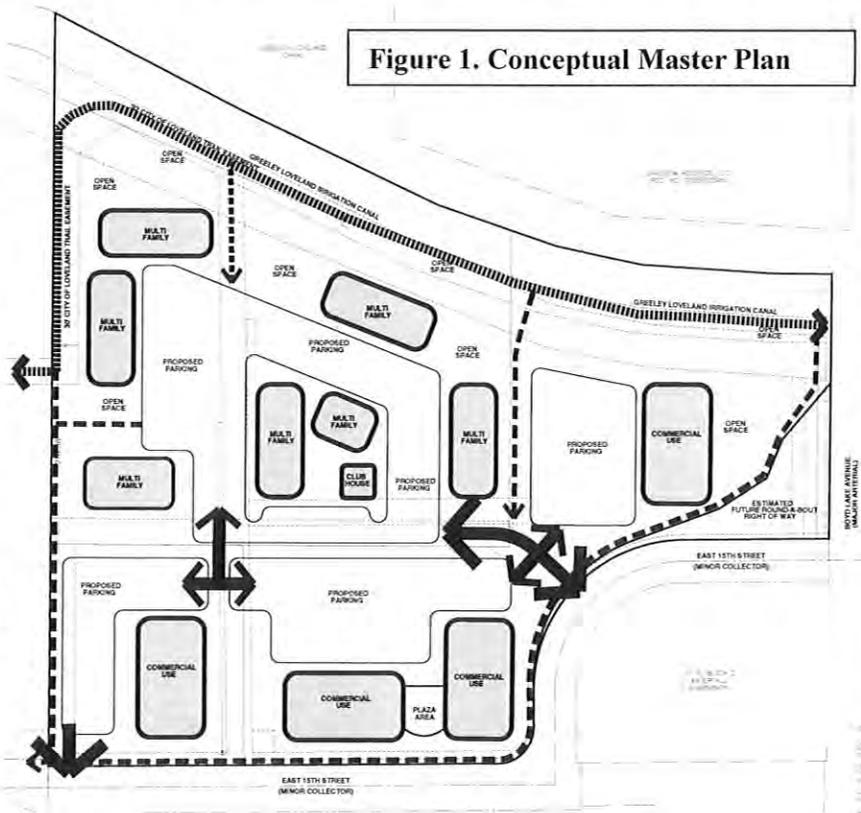
The MAC District requires the creation of a Conceptual Master Plan to ensure the coordinated development of entire parcel when developed in phases. The Master Plan would be approved in conjunction with the rezoning of the property.

The Master Plan for the Waterfall Subdivision establishes commercial land uses fronting on Boyd Lake Avenue and East 15th Street with multifamily residential uses located in the northwest corner of the site. Approximately 6.2 acres or 50% of the site would be devoted to commercial uses, 4.4 acres or 36% of the site would be allocated for residential uses and the remaining 1.6 acres or 13% would consist of open space primarily along the Greeley Loveland Irrigation Canal. The maximum density in the MAC district is 16 dwelling units per acre, which would result in a maximum of 70 units permitted within the residential area of the Master Plan.

Conceptual Master Plan: Architectural Standards

The Conceptual Master Plan sets forth architectural standards to ensure a coordinated and unified development. Thematic architectural elements included in the plat are as follows:

1. Color Palette: Rich earth tone palette of colors that includes the warm hues of brown, russet, clay, tans, buffs and creams;
2. Materials: Nonresidential structures will contain a combination of stone, brick and stucco on all building facades; residential structures will contain the same brick or stucco. Colors for each material are specified in the Master Plan;
3. Architectural Detailing: Decorative roof trusses or brackets will be incorporated into each building design; and
4. Roof Forms: Nonresidential buildings will incorporate a combination of flat and shallow (6:12 or less) sloped roofs with the dominant form being the sloped roof. Residential buildings shall utilize shallow (6:12 or less) sloping roofs and/or flat roofs.

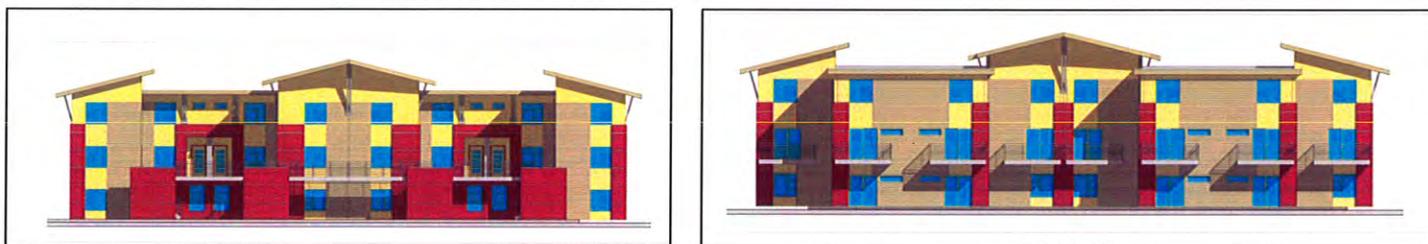


Illustrations of the proposed development standards contained in the Master Plan include the following:

Figure 2. Nonresidential Architectural Illustrations



Figure 3. Residential Architectural Illustrations



Conceptual Master Plan: Site Planning

In addition to the unifying architectural standards, the Conceptual Master Plan incorporates site planning elements such as building orientation and pedestrian circulation to promote a cohesive development. Buildings will be oriented in clusters and centered around open space areas and plazas. Primary pedestrian routes have been identified in the Master Plan and will comply with the standards of the MAC District, which requires adjoining landscaping and a change in paving material when the pedestrian route crosses a vehicular drive aisle. Signage within the development will also be unified and a planned sign program will be established for the nonresidential uses prior to the issuance of a sign permit. The planned sign program will provide consistent visual design elements for all nonresidential signs within the development.

IV. KEY ISSUES

City staff believes that all key issues have been addressed in the development proposal and through the recommended conditions of approval.

V. SITE DATA

ACREAGE OF SITE-GROSS.....	12.28 ACRES
ACREAGE OF SITE-NET.....	12.28 AC
ACREAGE OF RIGHT-OF-WAY.....	0 AC
MASTER PLAN DESIGNATION.....	REGIONAL ACTIVITY CENTER
EXISTING ZONING & USE	I-DEV INDUSTRIAL / VACANT
PROPOSED ZONING.....	MAC-MIXED-USE ACTIVITY CENTER
PROPOSED USE.....	MIXED USE COMMERCIAL AND MULTIFAMILY RESIDENTIAL
ACREAGE OF OPEN SPACE PROPOSED.....	1.6 AC
EXIST ADJ ZONING & USE - NORTH.....	COUNTY FA FARMING / GREELEY LOVELAND IRRIGATION CANAL AND VACANT
EXIST ADJ ZONING & USE - SOUTH	B- DEV BUSINESS / PROFESSIONAL OFFICES, BANK, VETERINARIAN CLINIC
EXIST ADJ ZONING & USE - WEST.....	E - EMPLOYMENT –VACANT (BOYD LAKE VILLAGE DEVELOPMENT)
EXIST ADJ ZONING & USE - EAST.....	PUD - VACANT COMMERCIAL PROPERTY, BANK AND RESIDENTIAL TO THE NORTHEAST
UTILITY SERVICE – WATER & SEWER	CITY OF LOVELAND
UTILITY SERVICE - ELECTRIC	CITY OF LOVELAND
WATER RIGHTS PAID	DUE PRIOR TO BUILDING PERMIT

VI. BACKGROUND

The following represents a timeline for the background of the development:

- January, 1993** The property was annexed to the City of Loveland and zoned I-Development Industrial. In conjunction with the annexation and zoning, an annexation and development agreement was implemented regarding the development of a water theme park.

- July, 1993** The Waterfall Subdivision was approved, which created 3 lots, including the subject property, Lot 1, Block 1.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

A. Notification

An affidavit was received from McWhinney Enterprises which certifies that the surrounding property owners within 300 feet of the property were notified on August 17, 2011 of a neighborhood meeting held on September 1, 2011. An affidavit was also received from McWhinney Enterprises which certifies that the surrounding property owners within 300 feet of the property were notified on September 9, 2011, and a notice was posted in a prominent location on the perimeter of the project site on September 9, 2011. In addition, a notice was published in the

Reporter Herald on September 10, 2011. All notices stated that the Planning Commission will hold a public hearing on September 26, 2011 to consider the matter.

B. Neighborhood Response

A neighborhood meeting was held on September 1, 2011. There were 4 neighbors, along with the applicant and city staff, in attendance. Questions raised at the meeting included the following:

1. **Traffic.** Questions were asked regarding the timing of the future roundabout at East 15th Street and Boyd Lake Avenue in regards to the multifamily component of the project. The applicant indicated that a traffic impact study was completed and the roundabout was not required with the development of the multifamily residences.
2. **Multifamily Housing.** Neighbors requested more information concerning the multifamily housing and voiced concerns that the housing component would be expanded on the entire parcel. Neighbors also questioned if the development would be affordable or "Section 8" housing. City staff responded that the location of the multifamily housing was limited through the Conceptual Master Plan to the 4.5 acres shown on the plan. In the future, if more land is requested for residential uses, a major amendment to the Conceptual Master Plan would be required, which would involve additional public hearings. The applicant indicated that they were currently working with the Loveland Housing Authority regarding the multifamily property however they were unaware of specifics regarding rental rates or affordability.
3. **MAC Zoning.** General questions regarding the uses permitted in the Mixed-Use Activity Center District and the Comprehensive Master Plan designation were addressed by City staff.
4. **Design Standards.** Neighbors raised questions regarding the design standards contained in the Conceptual Master Plan and the compatibility of the structures with the existing offices to the south. The applicant discussed the proposed design standards and indicated that the standards were created using the character of the surrounding office to ensure compatibility.

No additional correspondence was received by City staff after the neighborhood meeting.

VIII. FINDINGS AND ANALYSIS

In reviewing the application, the Planning Commission must determine if the findings specified in the Municipal Code can be met. These findings are listed in italicized font below, along with a summary analysis provided by City staff. If, based on the submitted application, the Planning Commission determines that the findings can be met, the Planning Commission shall recommend approval of the rezoning application. If the Planning Commission determines that the findings cannot be met, the Planning Commission must recommend disapproval of the rezoning application.

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

Current Planning: The purpose of Title 18 could be met with the development of permitted uses on this site consistent with Chapter 18.29 Mixed-Use Activity Center District, the Site Development Performance Standards and Guidelines and the additional development standards contained in the Conceptual Master Plan (see **Attachment 2**). Purposes indicated in Section 18.04.010 of the Municipal Code include the following:

- Lessen congestions in the street;
- Secure safety from fire, panic and other dangers;
- Promote health and general welfare;
- Provide adequate light and air, prevent overcrowding of land and avoid undue concentration of population; and
- Facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements.

Finding 3, below, contains an analysis from City review agencies determining compliance with the adequate provisions of various infrastructure components. The rezoning application and Conceptual Master Plan represents a generalized plan for future development of the property. Specific development proposals will be reviewed at the time of an individual Site Development Plan, Special Review or building permit to determine compliance with the purposes set forth in Section 18.04.010 of the Municipal Code, as listed above, as well as compliance with the Conceptual Master Plan. Further, the location and size of the property, the established surrounding uses, and the lack of site constraints ensure that future uses could be developed on this site in a manner that achieves the purposes of the Municipal Code.

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 affected by development of it.*

Current Planning: Development of the site under the provisions of the Mixed-Use Activity District should be compatible with surrounding land uses. The MAC District permits a variety of commercial and residential land uses by right and by special review. The Conceptual Master Plan locates commercial land uses along the East 15th Street and Boyd Lake Avenue frontages, clustering the multifamily residential component in the

northwest portion of the site. Properties located directly to the south of the site are zoned B-Developing Business and are developed predominately as professional offices and clinics. The development standards established in the Conceptual Master Plan and the location of the proposed commercial land uses will provide a compatible transition to the multifamily land uses.

Property located to the west of the site is zoned Employment in the Boyd Lake Village Master Plan. While the adjacent site is currently vacant, the permitted land uses within the MAC district are compatible with uses identified permitted in the surrounding land use plans. The proposed zoning to the MAC District is consistent with the City's Comprehensive Master Plan and the development pattern established along Eisenhower Boulevard and East 15th Street.

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: Infrastructure and utility service requirements for development on this site can be met with existing or planned service levels for this area. All required improvements would be completed by the developer in accordance with City policy. The specific details regarding transportation, stormwater, water/wastewater, fire prevention and power will be reviewed in detail at the time of the subdivision plat, site development plan, special review and building permit. The following review agencies have reviewed the rezoning application and have indicated that they have no conflicts with the proposal: Stormwater, Building, Fire Prevention, Water and Sanitary Sewer, Parks and Recreation, and Transportation Engineering. Additionally, the review agencies have provided the following analysis.

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

- An existing 3-phase, 200 Amp. underground power is located in a vault on the north side of E. 15th Street and power can be extended from this existing vault onto the proposed development at the Developer's expense per current City of Loveland Policy.

Water/Wastewater: Staff believes that this finding can be met, due to the following:

- This development is situated within the City's current service area for both water and wastewater and the proposed development will not negatively impact City water and wastewater facilities.

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

- Development of the subject property pursuant to any of the uses permitted by right under the MAC Zone District will not impact any existing City of Loveland infrastructure and services related to stormwater.

Fire Prevention: Staff believes that this finding can be met due to the following:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 6) located at 4325 McWhinney Boulevard.
- Future development will comply with adopted fire codes which include access and water supply standards.

Transportation: Staff believes that this finding can be met due to the following:

- Rezoning 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 2030 Street Plan, the Larimer County Urban Area Street Standards and any updates to either in effect at the time of development application. Moreover, as identified in the City Municipal Code Title 16, a Traffic Impact Study shall be required with all future development or other land use applications.

Parks and Recreation: Staff believes that this finding can be met due to the following:

- The Parks and Recreation Department trail Master Plan identifies this trail corridor as critical in connecting the existing City Trail to the public trail system (privately maintained) within the Centerra Development on the east side of Boyd Lake Ave. The City has been working to acquire the easements with the intent of constructing the trail in the next few years or when the new underpass at Boyd Lake Ave. is completed.
- In conjunction with the final plat for the property, easements for the trail will be dedicated and secured.

In addition to the City review agencies, the rezoning application has been reviewed by the Thompson R2-J School District, who has provided the following comments:

Thompson R2-J School District: The School District does not have any concerns or comments regarding the rezoning of the property. The development would be served by Monroe, Conrad Ball and Mountain View schools which have adequate capacity to serve the development.

4. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in development that is consistent with relevant philosophies contained in the Loveland Comprehensive Master Plan, particularly those philosophies included in Section 4.0 Land Use.*

Current Planning: The Comprehensive Master Plan designates this area as a Regional Activity Center (RAC). The RAC category provides areas for regional commercial, service and employment uses intended to serve a regional market area of up to 300 acres or larger. The Comprehensive Master Plan identifies typical uses of a RAC area to include mid and

high-rise office; hotels; major cultural and entertainment; retail and service; technology/light manufacturing and higher education. Additionally up to 50% of the total land area in the RAC may comprise of medium to high density residential uses with up to 16 dwelling units per acre.

The Mixed-Use Activity Center zone district proposed in this application aligns with the RAC category in the City's Land Use Plan and the permitted uses would be consistent with the intent and philosophies of the Comprehensive Master Plan. The RAC development guidelines encourage high-quality architecture. Development standards established in the Conceptual Master Plan include the following to ensure a unified, high quality development:

- A. Unifying architectural design standards including a consistent color palette, building materials, architectural detailing and roof forms;
 - B. Site planning provisions that require buildings to be clustered and oriented around open space elements and outdoor plazas;
 - C. Unified lighting and signs, and
 - D. Continuous pedestrian pathways, connecting to the City's trail system, building entrances and focal points within the development.
5. *Development of the subject property pursuant to any of the uses permitted by right under the zoning district would result in development that would not be detrimental to the health, safety, or welfare of the neighborhood or general public.*

Current Planning: Development of any of the uses permitted by right in the Mixed-Use Activity Center District must comply with the City of Loveland Building Code, Fire Code, and Title 18 of the Municipal Code. These measures have been adopted with the intent of protecting the health, safety, and welfare of the public. Consequently, such development in accordance with the adopted Codes and provisions would not be detrimental to the health, safety, or welfare of the general public.

IX. RECOMMENDED CONDITIONS

Engineering

1. All future development within this addition shall comply with the Larimer County Urban Area Street Standards (LCUASS).
2. Notwithstanding any conceptual information presented in the conceptual master plan; street layout, street alignments, access locations, intersection configurations and intersection operations (traffic controls) shall be determined at the time of application for site specific development.

ARCHITECTURE

Unifying Architectural Elements

1. Color Palette:

- All buildings shall utilize a rich earth tone palette of colors that includes the warm hues of brown, russet, clay, tans, buffs and creams. Materials used as the dominant/primary cladding of the sides of buildings and roofs shall not include primary colors or cool hues of blue, gray and green.
- Specific color ranges for the following materials are required:
 - Brick color shall be an earth tone reddish/brown color consistent on all buildings within the master plan.
 - Stone shall be a buff sandstone color consistent on all buildings within the master plan.
 - Stucco shall be warm earth tone colors ranging from buff to tan to brown.
 - Roof shingles shall be brown or similar to weathered wood.
 - Standing seam metal roofs shall be bronze or warm gray.
- The photos below in Illustrations 1 - 3 depict buildings utilizing the required color palette, allowed materials, entry elements and wainscot for reference.

Illustration 1



Illustration 2



Illustration 3



2. Materials:

- All nonresidential structures shall contain a combination of stone, brick and stucco on all building facades. Nonresidential structures shall also contain a minimum of a brick or stone wainscot on each façade and shall have brick or stone vertical architectural enhancements or columns at the main entry.
- Residential structures shall contain either brick or stone along with stucco and/or siding. It is intended for the buildings to have “four sided” architecture where each façade shall include the same materials but the percentage of the use of each material may vary. Individual garage buildings located internal to the site are not required to have any brick or stone.
- Metal used for exposed plates, connectors, railings, stairs, etc. shall be a consistent design and color throughout the residential buildings and throughout the nonresidential buildings in the master plan.
- Standing seam metal roofs may be used to accent entries, outdoor porches, porte cocheres and similar but shall not be the main dominant roof material.

3. Architectural Detailing: Decorative roof trusses or brackets shall be incorporated into each building design. Refer to Illustration 1 for an example.

4. Roof Forms:

- Nonresidential buildings shall incorporate a combination of flat and shallow (6:12 or less) sloped roofs with the dominant form being the sloped roof. Hip roof configurations must be the dominate sloped roof form.
- Residential buildings shall utilize shallow (6:12 or less) sloping roofs and/or flat roofs.

SITE PLANNING

Building Orientation

Buildings shall be clustered and centered on open space areas and outdoor plazas. Buildings located along East 15th Street and Boyd Lake Avenue shall orient and face onto these roadways. For development fronting on Boyd Lake Avenue, buildings must be oriented towards Boyd Lake Avenue in a reverse mode design and comprise more than 50% of the linear lot frontage along this roadway. All parking spaces fronting onto Boyd Lake Avenue shall be 100% screened with landscaping to a minimum 3'-0' height.

Access and Circulation

1. A continuous primary pedestrian route shall connect buildings and focal points within the development, such as plazas, building entrances and the pedestrian trail. When a primary pedestrian pathway crosses a parking lot or drive aisle, the crossing shall be delineated by a change in paving material and pattern, consistent throughout the development. The primary pedestrian route shall feature an adjoining landscaped area on a least one side with trees, shrubs, benches, ground covers or other such materials for no less than 50% of the length of the pedestrian route. At the time of a Site Development Plan approval to the City for any portion of the master plan, the primary pedestrian route will be determined for that portion of the master plan.
2. Provide pedestrian and vehicular connectivity between uses.
3. The extension of the existing sidewalk along 15th Street shall be a 6' wide detached sidewalk except when adjacent to the existing large cottonwood trees where the narrow space between the curb and the trees makes an attached sidewalk a better alignment. For detached sidewalks, a tree lawn of drought tolerant turf and shade trees planted at a maximum of 40' on center shall be planted between the sidewalk and the curb.

Site Lighting

1. Nonresidential: All buildings and sites shall use the same design and color fixtures including poles and bases.
2. Residential: All buildings and sites shall use the same design and color fixtures including poles and bases.

SIGNAGE

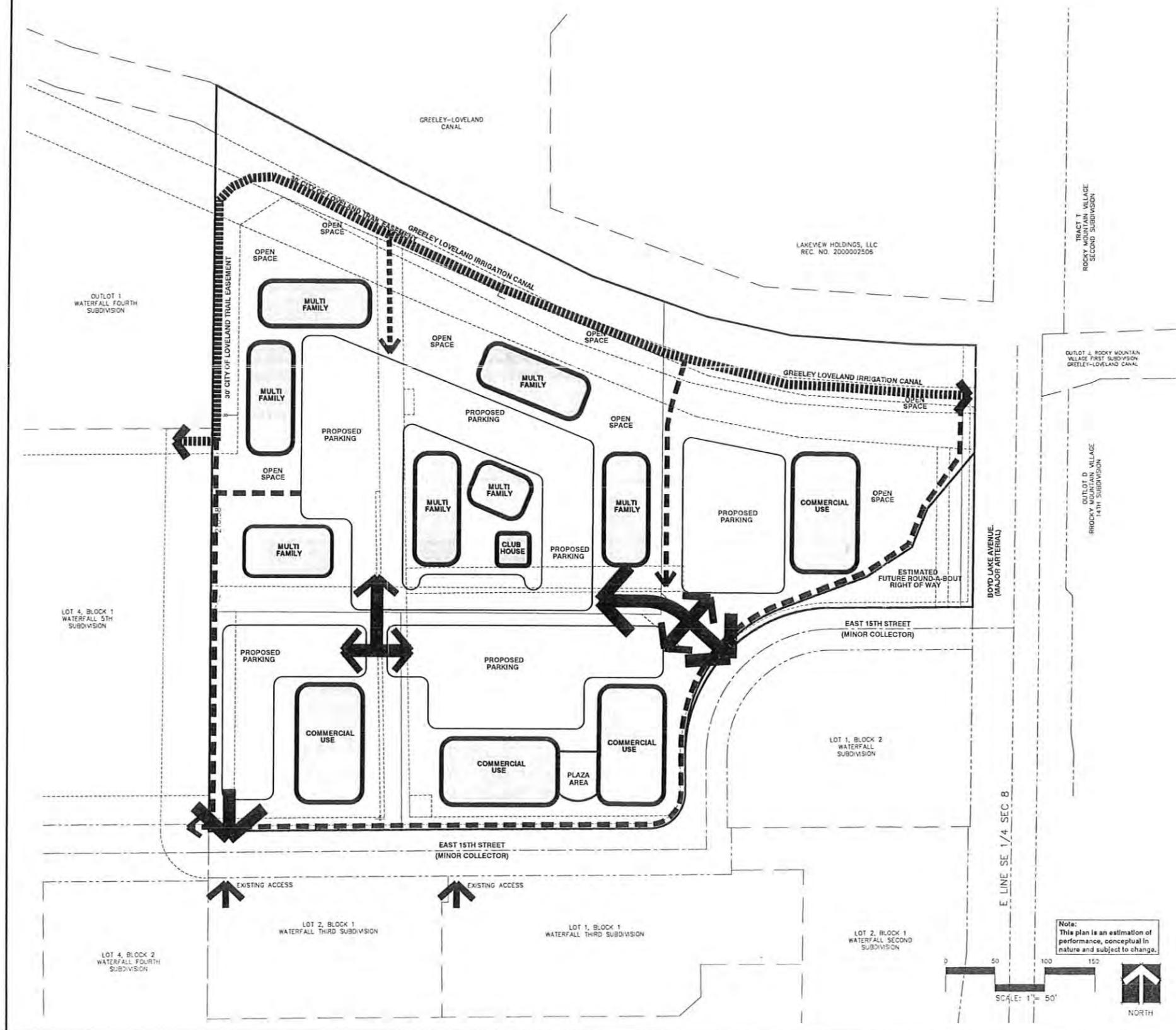
1. Nonresidential: A planned sign program will be developed prior to any sign construction within the nonresidential development to insure consistent sign design and location for wall

mounted and freestanding signs within the development. The master plan shall be considered a premise for the purpose of calculating the maximum number of freestanding signs.

2. Residential: If the residential development desires a monument sign outside the boundaries of the lot, within the premise of the master plan, then a planned sign program will be developed prior to any sign construction within the residential development. The master plan shall be considered a premise for the purpose of calculating the maximum number of freestanding signs.

WATERFALL SIXTH SUBDIVISION – MAC MASTER PLAN

BEING A SUBDIVISION OF LOT 1, BLOCK 1, WATERFALL SUBDIVISION
 LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 5 NORTH, RANGE 68 WEST
 OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO



VICINITY MAP
N.T.S.

LEGEND:

- PEDESTRIAN CONNECTION SIDEWALK/TRAIL
- PEDESTRIAN CONNECTION SIDEWALK/TRAIL
- OPEN SPACE
- EXISTING ACCESS
- PROPOSED ACCESS

SIGNATURES:

- Approval blanks to be show as follows:
- A. Approved this ___ day of _____, 20___, by the Current Planning Manger of the City of Loveland, Colorado.

 Current Planning Manger
 - B. Approved this ___ day of _____, 20___, by the City Engineer of the City of Loveland, Colorado.

 City Engineer
 - C. Approved this ___ day of _____, 20___, by the City Attorney of the City of Loveland, Colorado.

 City Attorney
 - D. Approved this ___ day of _____, 20___, by the City Planning Commission of the City of Loveland, Colorado.

 Chairperson
 - E. Approved this ___ day of _____, 20___, by the City Council of the City of Loveland, Colorado.

 Mayor Attest

OWNERS CERTIFICATION:

KNOW ALL MEN BY THESE PRESENTS THAT:
 Being all the lawful recorded owners of the property shown on this Rezone, except any existing public streets, roads, or highways, do hereby certify that I consent to the recordation of any information pertaining thereto.

OWNER:
 MBL 34, LLC, A COLORADO LIMITED LIABILITY COMPANY

NAME: _____ TITLE: _____

STATE OF COLORADO)
) ss.
 COUNTY OF LARIMER)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 2011, BY _____ AS _____ OF MBL 34, LLC A COLORADO LIMITED LIABILITY COMPANY.

WITNESS MY HAND AND OFFICIAL SEAL.
 MY COMMISSION EXPIRES _____
 NOTARY PUBLIC _____

REVISIONS	DATE	DESCRIPTION
BY	SS	COMMENTS TO FIRST ROUND REVISIONS
CE	8/29/11	COMMENTS TO SECOND ROUND REVISIONS
CE	8/29/11	COMMENTS TO THIRD ROUND REVISIONS
DRAWN		
CHECKED		
DESIGNED		
FILENAME		
WATERFALL SIXTH SUBDIVISION		
MASTER PLAN		
MIXED USE ACTIVITY CENTER DISTRICT		
DATE	02/25/2011	
REVISION	09-05-2011	
JOB NO.		
SCALE		

WATERFALL SIXTH SUBDIVISION – MAC MASTER PLAN DESIGN STANDARDS

ARCHITECTURE

Unifying Architectural Elements

1. Color Palette:

- All buildings shall utilize a rich earth tone palette of colors that includes the warm hues of brown, russet, clay, tans, buffs and creams. Materials used as the dominant/primary cladding of the sides of buildings and roofs shall not include primary colors or cool hues of blue, gray and green.
- Specific color ranges for the following materials are required:
 - Brick color shall be an earth tone reddish/brown color consistent on all buildings within the master plan.
 - Stone shall be a buff sandstone color consistent on all buildings within the master plan.
 - Stucco shall be warm earth tone colors ranging from buff to tan to brown.
 - Roof shingles shall be brown or similar to weathered wood.
 - Standing seam metal roofs shall be bronze or warm gray.

- The photos below in illustrations 1 - 3 depict buildings utilizing the required color palette, allowed materials, entry elements and wainscot for reference.



2. Materials:

- All nonresidential structures shall contain a combination of stone, brick and stucco on all building facades. Nonresidential structures shall also contain a minimum of a brick or stone wainscot on each facade and shall have brick or stone vertical architectural enhancements or columns at the main entry.
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Site Lighting

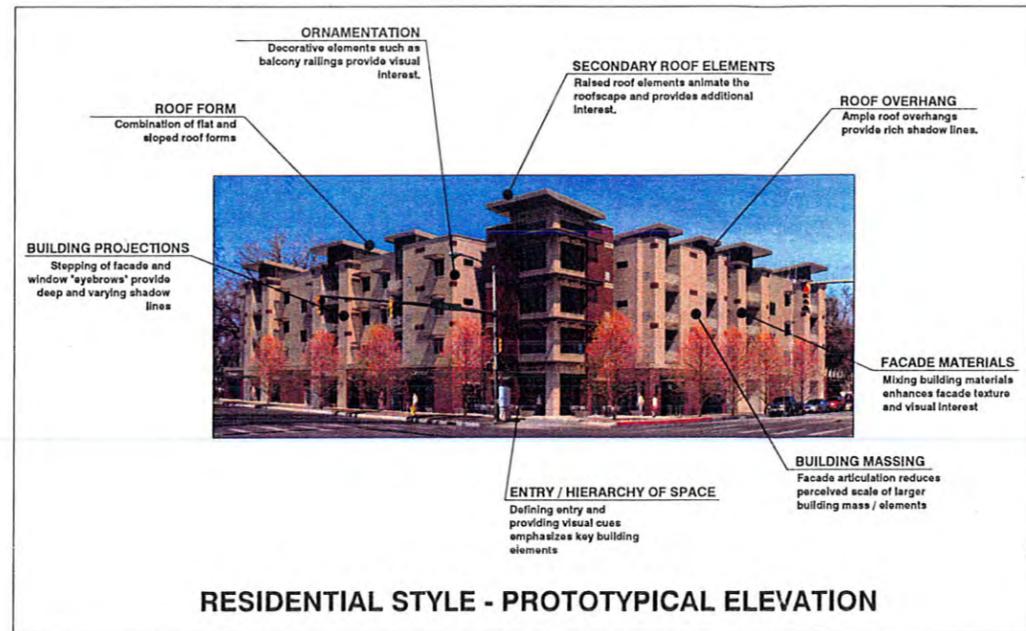
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2. Residential: All buildings and sites shall use the same design and color fixtures including poles and bases.

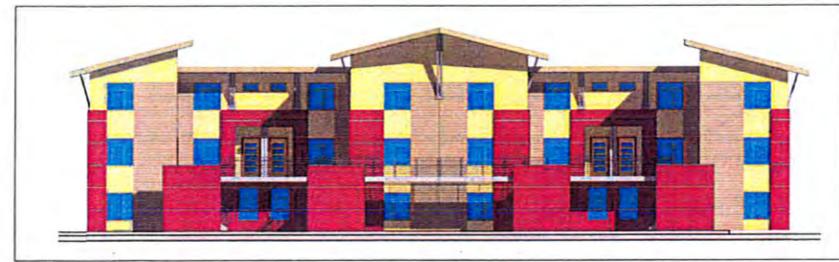
SIGNAGE

1. Nonresidential: A planned sign program will be developed prior to any sign construction within the nonresidential development to insure consistent sign design and location for wall mounted and freestanding signs within the development. The master plan shall be considered a premise for the purpose of calculating the maximum number of freestanding signs.

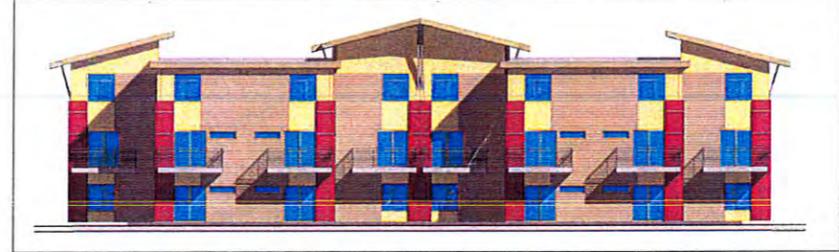
2. Residential: If the residential development desires a monument sign outside the boundaries of the lot, within the premise of the master plan, then a planned sign program will be developed prior to any sign construction within the residential development. The master plan shall be considered a premise for the purpose of calculating the maximum number of freestanding signs.



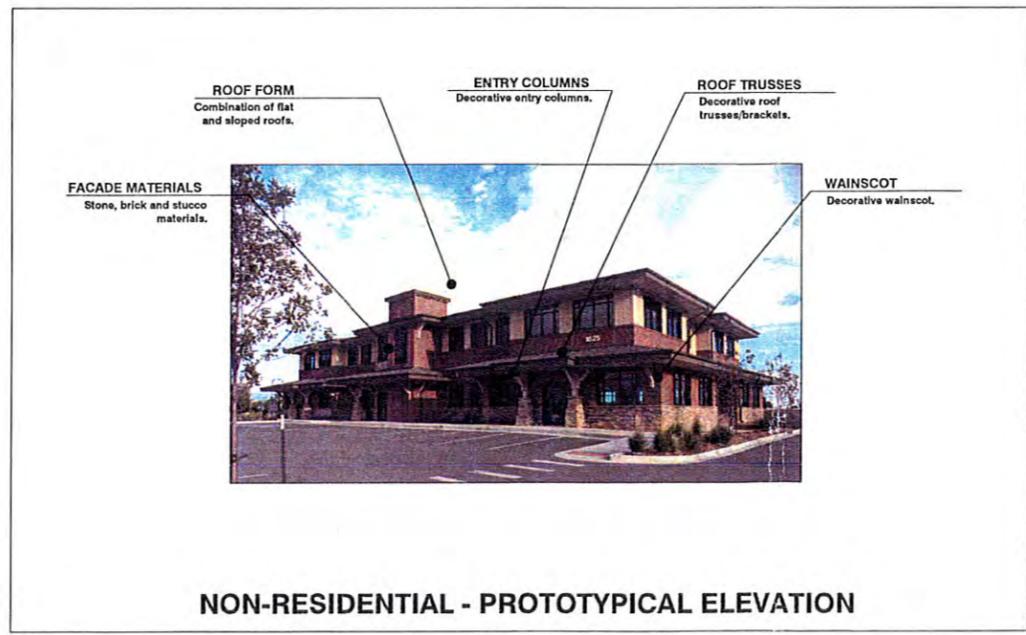
RESIDENTIAL STYLE - PROTOTYPICAL ELEVATION



Typical Elevation
Note: Elevation shows the intended massing of the building and not the materials used for the facade.



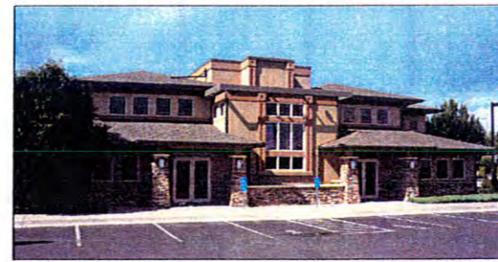
Typical Elevation
Note: Elevation shows the intended massing of the building and not the materials used for the facade.



NON-RESIDENTIAL - PROTOTYPICAL ELEVATION



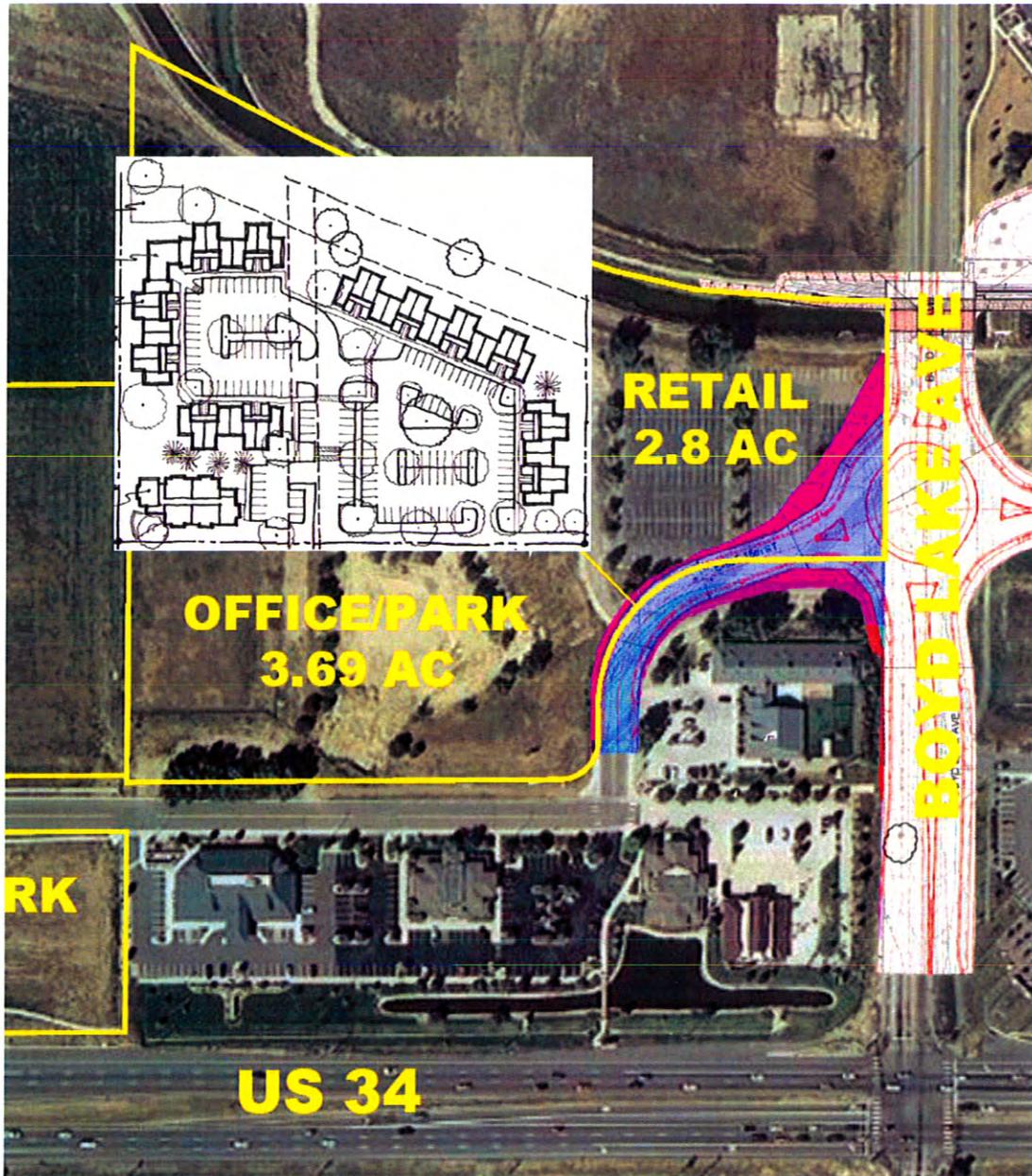
Stone columns and vertical brick elements at entry



REVISIONS	DESCRIPTION
DATE	COMMENTS TO FIRST ROUND REVISIONS
BY	COMMENTS TO SECOND ROUND REVISIONS
DATE	COMMENTS TO THIRD ROUND REVISIONS
BY	
DATE	
BY	



SCALE: 1"=200'

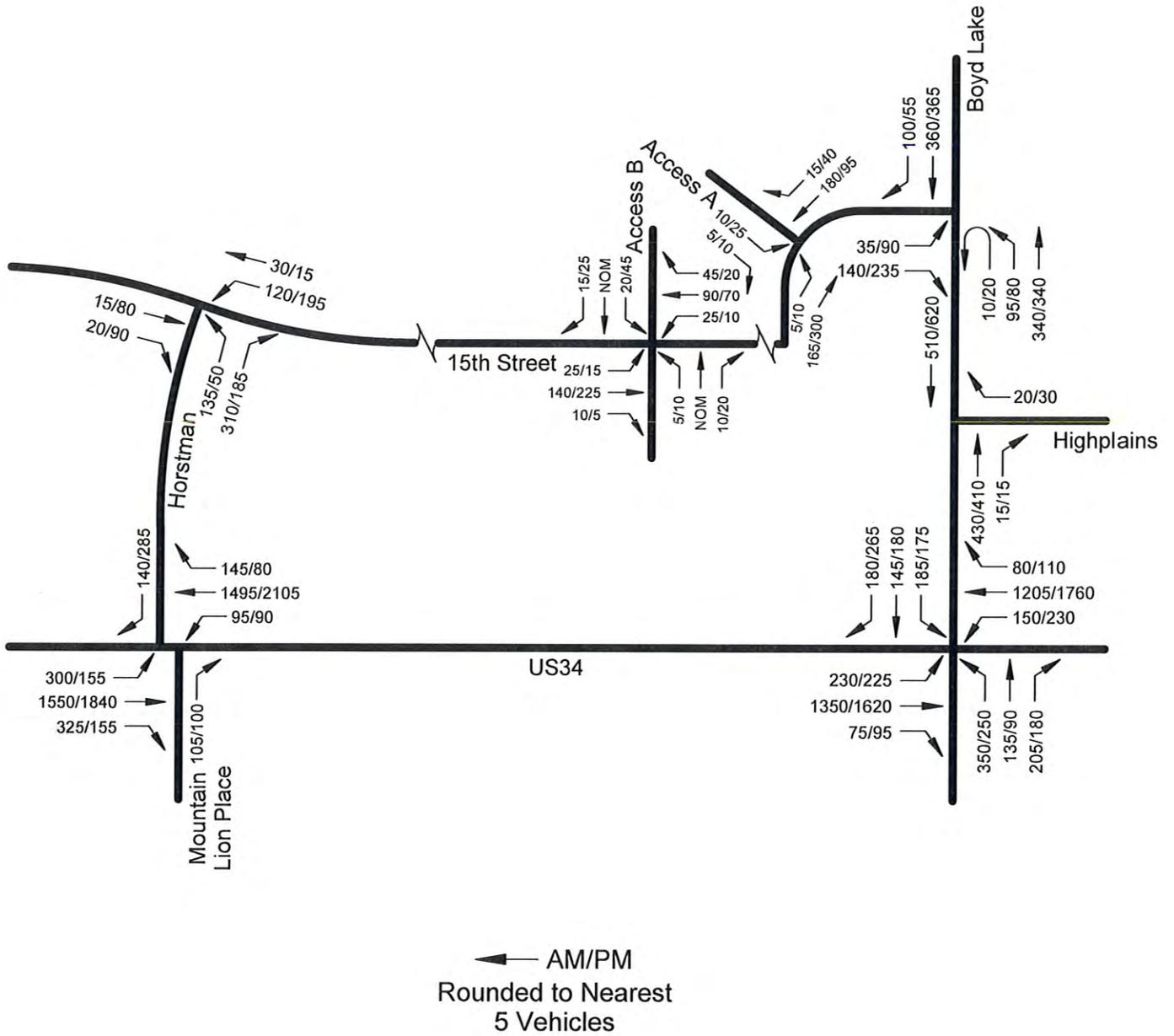


SITE PLAN

Figure 4



Waterfall 4th Subdivision TIS February 2014



SHORT RANGE (2015) TOTAL PEAK HOUR TRAFFIC

Figure 9

**TABLE 3
Street Traffic Volume Summary for the Existing and Short range (2015) Conditions**

Street Segment	Direction	Existing Traffic Volume (AM/PM)	Date Existing Volume Taken	Regional Growth and Traffic from Build-out of Other Proposed Development* (AM/PM)	Site Generated Traffic (2015) (AM/PM)	Total Traffic (AM/PM)	ACF Traffic Threshold	ACF Compliance (AM/PM)
1 US34 west of Horstman Drive	EB	1739/1659	1/11	2140/2115	36/32	2175/2150	3300	Y/Y
	WB	1222/1884	1/11	1615/2345	21/46	1635/2390	3300	Y/Y
2 US34 east of Boyd Lake Avenue	EB	1535/1622	1/11	1725/1935	13/31	1740/1965	3300	Y/Y
	WB	1142/1835	1/11	1410/2080	24/21	1435/2100	3300	Y/Y
3 Boyd Lake Avenue south of US34	NB	408/250	1/11	680/515	8/7	690/520	910	Y/Y
	SB	240/264	1/11	365/495	5/11	370/505	910	Y/Y
4 Boyd Lake Avenue north of US34	NB	306/242	1/11	395/375	45/51	440/425	820	Y/Y
	SB	262/291	1/11	480/545	25/70	505/615	820	Y/Y
5 Boyd Lake Avenue north of 15 th Street.	NB	270/242	1/11	370/415	6/15	375/430	820	Y/Y
	SB	266/244	1/11	445/410	13/10	460/420	820	Y/Y
6 15 th Street west of Boyd Lake Avenue	EB	21/59	1/11	145/240	31/85	175/325	425	Y/Y
	WB	57/28	1/11	135/75	58/61	195/135	425	Y/Y
° Approved developments, not yet built: remaining Boyd Lake Village, Lakeview, Phased LEI, remaining Boise Village North, remaining Falcon Brook, remaining Stone Creek, Lowe's pad sites, Metrolux Redevelopment, Kohl's pad sites, and 34 Marketplace pad site								
° Proposed developments, not yet approved:								
Notes/Comments Total traffic is rounded to the nearest five vehicles								

IV. CONCLUSIONS/RECOMMENDATIONS

This study assessed the transportation impacts associated with the phased development of the Waterfall 4th Subdivision in Loveland, Colorado. This study analyzed the transportation impacts in the short range (2015) and long range (2030) futures. As a result of these analyses, the following is concluded:

- Full development of the Waterfall 4th Subdivision is feasible from a traffic engineering standpoint. The trip generation for the Waterfall 4th Subdivision resulted in 2060 daily trip ends, 132 morning peak hour trip ends, and 205 afternoon peak hour trip ends. Passby traffic rates were applied.
- Current operation at the key intersections is acceptable, based upon City of Loveland evaluation criteria.
- It is unlikely that peak hour signal warrants will be met at any of the stop sign controlled intersections.
- Using the background traffic in the short range (2015) future, all of the key intersections operate acceptably.
- Using the background traffic in the long range (2030) future, all of the key intersections operate acceptably, except for the US34/Boyd Lake intersection during the afternoon peak hour.
- With short range (2015) development of the Waterfall 4th Subdivision and background traffic, all of the key intersections will operate acceptably during the peak hours. All street links meet the ACF criteria.
- The Boyd Lake/15th Street intersection can remain with stop sign control with full development of the Waterfall 4th Subdivision.
- With long range (2030) development of the Waterfall 4th Subdivision and background traffic, all of the key intersections will operate acceptably during the peak hours, except for the US34/Boyd Lake intersection during the afternoon peak hour. Details regarding the design of the US34/Boyd Lake intersection and the segment of US34, east of Boyd Lake Avenue, will be provided by the project civil engineer as this development goes through the review process.
- Bicycle lanes exist along most streets. The sidewalk system in this area is sporadic. As streets are improved, sidewalks will be incorporated to the standard cross sections.
- Table 8 shows a summary of the recommended improvements and the responsibility for that improvement. The incremental geometric improvements are shown schematically in Figures 11 and 12.
- No environmental or special studies are required with this development.

TABLE 8 Recommended Improvements Summary			
Improvement Description and Location	Responsible Party		
	Applicant	Background	Master Planned
SHORT RANGE (2015)			
On-site infrastructure	X		
Southbound right-turn lane on Boyd Lake Avenue approaching US34	X	X	
6-lane cross section on US34	X	X	X
LONG RANGE (2030)			
Boyd Lake/15 th Street roundabout		X	

Chapter 18.29**MAC DISTRICT – MIXED-USE ACTIVITY CENTER DISTRICT****Sections:**

- 18.29.010 Purpose.**
- 18.29.020 Uses permitted by right.**
- 18.29.030 Uses permitted by special review.**
- 18.29.040 Development standards.**
- 18.29.050 Development approval.**
- 18.29.060 Schedule of flexible standards.**

18.29.010 Purpose.

The MAC district is intended to be applied to areas designated as mixed-use activity centers by the Land Use Plan. This district may also be used in other appropriate locations, such as along existing commercial corridors, or in residential areas to provide larger neighborhood-serving commercial centers. Mixed-use Activity Centers may include a wide variety of retail and commercial uses serving the surrounding area as well as larger retail uses serving a community-wide or regional market. Such areas may also include residential and office uses adjacent to the center's core or above ground floor retail. Such centers are typically located at major road and highway intersections, or along major corridors and are predominantly auto-oriented. However, the center should be designed to provide convenient access to and from adjacent neighborhood(s) for pedestrians and bicyclists. (Ord. 5116 § 1, 2006)

18.29.020 Uses permitted by right.

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

- A. Art gallery, studio and workshop including live/work studio and workshop. Such facilities may include the display, sale, fabrication or production of paintings, sculptures, ceramics and other art media. Limited outdoor fabrication of art work may be permitted subject to special review as provided in Chapter 18.40.
- B. Bar or tavern;
- C. Car wash;
- D. Commercial child day care center licensed according to the statutes of the state;
- E. Clubs and lodges;
- F. Convention and conference center;
- G. Entertainment Facilities and Theaters, indoor;
- H. Financial Services;
- I. Food Catering;
- J. Funeral Home;
- K. Gas station with or without convenience goods or other services subject to Section 18.52.060 and 18.50.135 and located 300 feet or more from a residential use or zone district (measurement shall be made from the nearest site or lot line of the gas station to the nearest lot line of the residential use or zone district);
- L. Health Care Service Facility;
- M. Hospital;
- N. Indoor Recreation;
- O. Lodging Establishment (hotel and motel);
- P. Long Term Care Facilities;
- Q. Medical, dental or professional clinic or office;
- R. Nightclub;

ATTACHMENT5

- S. Office, general administrative;
- T. Parking Garage;
- U. Parking Lot;
- V. Personal and Business Service Shops;
- W. Place of Worship or Assembly;
- X. Print Shop;
- Y. Professional Office/Clinic;
- Z. Public and Private Schools;
- AA. Restaurant, Drive-In or Fast Food;
- BB. Restaurant, Standard indoor;
- CC. Restaurant, Standard outdoor;
- DD. Retail laundry (Laundromat);
- EE. Retail Store;
- FF. Veterinary Facilities, Small Animal;
- GG. Workshop and Custom Small Industry (entirely enclosed within a building and provided there is no excessive odor, glare, smoke, heat, vibration, etc.). Limited outdoor fabrication of products may be permitted subject to special review as provided in Chapter 18.40;
- HH. Dwelling, Attached Single-Family;
 - II. Dwelling, Detached Single-Family;
 - JJ. Dwelling, Multi-Family;
- KK. Dwelling, Two-Family;
- LL. Elderly housing;
- MM. Dwelling, Mixed Use;
- NN. Community Facility;
- OO. Park or recreation area;
- PP. Antennas as defined in Section 18.55.020(A), co-located on an existing tower or structure as provided in Section 18.55.030 and Section 18.55.030 and meeting all other requirements of Chapter 18.55; and
- QQ. Accessory buildings and uses. (Ord. 5116 § 1, 2006)
- RR. Shelter for Victims of Domestic Violence subject to Section 18.52.070. (Ord. 5413 § 6, 2009)

18.29.030 Uses permitted by special review.

The following uses are permitted by special review in a MAC district subject to the provisions of Chapter 18.40:

- A. Domestic Animal Day Care Facility;
- B. Gas station with or without convenience goods or other services subject to Section 18.52.060 and located less than 300 feet from a residential use or zone district (measurement shall be made from the nearest site or lot line of the gas station to the nearest lot line of the residential use or zone district);
- C. Open-Air Farmers Market;
- D. Outdoor Recreation Facility;
- E. Self-Service Storage Facility;
- F. Vehicle Minor Repair, Servicing, and Maintenance;
- G. Vehicle Rentals for Cars, Light Trucks and Light Equipment;
- H. Vehicle Sales and Leasing for Cars and Light Trucks;
- I. Research Laboratory;
- J. Essential Public Utility Uses, Facilities, Services, & Structures;
- K. Group Care Facility;
- L. Long Term Care Facility (nursing home);

- M. Personal wireless service facility as defined in Section 18.55.020(A), located on a new structure, meeting all requirements of Chapter 18.55; and
- N. Public Service Facility. (Ord. 5116 § 1, 2006)
- O. Crematorium subject to Section 18.52.080. (Ord. 5446 § 5, 2009)
- P. Off-Track Betting Facility (Ord. 5594 § 4, 2011)

18.29.040 Development standards.

The following standards shall be administered as Type 2 standards in accordance with Section 18.53.020 Compliance.

- A. **Architecture:** In addition to architectural standards in Chapter 18.53, commercial and mixed-use buildings in MAC districts shall include at least one significant defining architectural element or feature that conveys a sense of architectural depth and substance. Examples include substantial offsets that differentiate building masses; arcades with substantial columns; towers with roofs that extend fully around the building or feature; extensive use of decorative block; stone and/or brick finish material; deep gable roofs with substantial eaves or over hangs; or other equivalent feature (Figures 18.29.040-1-4).
- B. **Pedestrian Circulation:** A continuous primary pedestrian route shall connect focal points of pedestrian activity such as, but not limited to, transit stops, street crossings, and building entrances. Pedestrian/auto crossings shall be concentrated at key intersections, shall be incorporated into the primary pedestrian network, and shall be clearly delineated by a change in paving materials. The primary pedestrian route shall feature an adjoining landscaped area on at least one side with trees, shrubs, benches, ground covers or other such materials for no less than fifty percent (50%) of the length of the primary pedestrian route.
- C. **Screening Large Parking Fields:** Sites with large parking fields shall be encouraged to place and orient outlot or pad site buildings to screen large retail parking lots. Outparcels or pad sites shall minimize parking between the building and the frontage road to create a “building wall” along the frontage road. Where possible, landscape features (e.g. trees and shrubs, trellis, decorative wall, entry feature, etc.) shall be used to fill gaps between outlot buildings and where outlots are not planned. Where possible, “overflow” parking shall be placed to the side or rear of the building (See Figure 18.39.040-5)
- D. **Loading Areas:** The following location and screening requirements shall apply to loading areas, service and storage areas:
 - 1. Loading docks, solid waste facilities and other service areas shall be placed to the rear or side of buildings in visually unobtrusive locations.
 - 2. Screening and landscaping shall prevent direct views of the loading areas from adjacent properties or from the public right-of-way. Screening and landscaping shall also prevent spill-over glare, noise, or exhaust fumes.
 - 3. Screening shall be provided in the form of landscaping or as an integral part of the building architecture such as walls, architectural features, and shall be visually impervious. Recesses in the building or depressed access ramps may be used. Chain link fencing with slats shall not be an acceptable form of screening.
- E. **Utility Boxes:** Utility boxes, including, but not limited to, electric transformers, switch gear boxes, and telephone pedestals and boxes shall be screened from view on all sides not used for service access. The materials and colors of the materials used to provide the screening shall blend with the site and the surroundings.
- F. **Trash Enclosures:** Enclosures shall be placed around dumpsters and any other proposed trash receptacle. The enclosure shall prevent trash from being scattered by wind or animals. The dumpster shall be placed on a concrete pad, enclosed by an opaque wall at least six feet in height, with opaque gates. The enclosure shall be sturdy and built with quality wood and/or masonry materials similar or compatible with the primary materials of the primary structure. The trash enclosure shall be sited so the garbage truck has convenient access to the enclosure and has room to maneuver without backing onto a public right-of-way.
- G. **Other:** The requirements of Chapter 18.53 Commercial and Industrial Architectural Standards and Site Development Performance Standards and Guidelines shall apply to development within

the MAC district. (Ord. 5116 § 1, 2006)

Figure 18.29.040-1



Figure 18.29.040-2



Figure 18.29.040-3



Figure 18.29.040-4

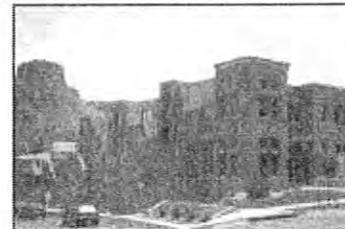
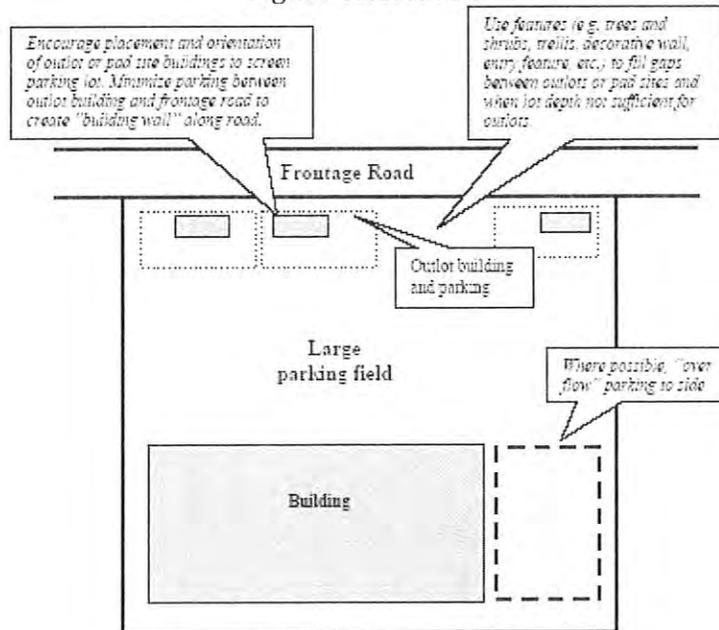


Figure 18.29.040-5



18.29.050 Development approval.

- A. Development Approval: Uses listed in Section 18.29.020 are permitted subject to the applicant obtaining a Type 1 Zoning Permit as required by Section 18.04.020, with approval of the site plan as required by Chapter 18.46 - Site Plan Review Requirements & Performance Standards, excluding single and two-family residential uses and accessory buildings as excepted by Section 18.04.020. Special review uses listed in Section 18.29.030 may be permitted subject to the applicant obtaining a Type 2 or 3 Zoning Permit as required by Chapter 18.40 - Uses Permitted By Special Review.
- B. Phased Approval: For larger development sites where site development details are not known for the entire site at the time of obtaining a Type 1, Type 2 or Type 3 Zoning Permit as prescribed

above, a conceptual master plan shall be provided for the entire parcel subject to phased approval of site plans to ensure the coordinated development of the entire parcel. The conceptual master plan must include the general type, intensity and location of land uses and public facilities and the overall classification and design of the primary road and pedestrian network, including all information that the planning division may require. The conceptual master plan shall also include a narrative statement, conceptual renderings, schematic designs, architectural guidelines or other information as needed demonstrating how the proposed development plan complies with Section 18.29.040 Development Standards. The conceptual master plan shall be provided with an MAC – Mixed-Use Activity Center rezoning application and the rezoning approval shall be subject to compliance with the conceptual master plan. Subsequent site plans submitted for Type 1, Type 2 or Type 3 Zoning Permit approval shall conform to the conceptual master plan.

- C. Plan Modifications: Modifications to the conceptual master plan as required to show compliance with Section 18.29.040 Development Standards, or that comply with Section 18.29.060 Schedule of Flexible Standards, may be approved administratively by the Director of Development Services. Changes to permitted uses or substantial changes to the location of land uses as depicted on the conceptual master plan shall be submitted for review and recommendation by the Planning Commission with final approval by the City Council. (Ord. 5157 § 1, 2006)

18.29.60 Schedule of flexible standards.

<i>Chapter 18.29 MAC and E Districts</i>								
Schedule of Flexible Standards								
Non-Residential				Residential				
District	Front Bldg. Setback (1)	Rear & Side Bldg. Setbacks (2)	Bldg. Height (3)	Residential Density	Front (2)	Rear (2)	Side (2)	Height
MAC-Community Activity Center	I-25: 80 ft Arterial: 35 ft Non-Arterial: 25 ft	See buffer requirements, Section 4.04 SDPSG	50 ft (4) 120 ft (5)	Up to 16du/ac (6) (7)	20 ft	15 ft	5 ft	40 ft
E-Employment Center	I-25: 80 ft Arterial: 35 ft Non-Arterial: 25 ft	See buffer requirements, Section 4.04 SDPSG	50 ft (4) 120 ft (5)	Residential up to 20% of total project area, up to 16du/ac (7)	20 ft	15 ft	5 ft	40 ft

Use	Maximum height of building or structure	Maximum height of accessory building or structure
MAC-Mixed-use Activity Center District	As provided in Chapter 18.29 MAC District Schedule of Flexible Standards	50

Notes to MAC and E Districts Schedule of Flexible Standards:

- (1) Building setbacks shall be measured from the edge of the future right-of-way. Development sites within the area cover by the U.S. 34 Corridor Plan shall conform to all road setback and design requirements of that plan. Exceptions from U.S. 34 Corridor Plan standards may be permitted for development plans following guidelines for optional flexible standards in note (2) below. (Ord. 5157 § 1, 2006)
- (2) Optional Flexible Standards: Setback required by this section and buffer standards required by Section 4.04 of the Site Development Performance Standards and Guidelines (SDPSG) may be reduced or waived for projects that orient buildings to streets to create an attractive pedestrian environment following “New Urbanism” or “Smart Code” principles (see “The Lexicon of the New

Urbanism” or “Smart Code”).

- a. Where front setbacks are reduced, a treelawn not less than four feet in width shall be provided between the outer edge of the curb and the sidewalk. Canopy trees planted not less than 30 feet on-center (Figure 18.29-1) shall be provided in the treelawn. Landscaped bulb-outs and trees planted in tree grates in the sidewalk (Figure 18.29-2), with on-street parking, may be provided instead of a treelawn. Where garages face and are accessed from the street, at least 20 feet shall be provided between the face of the garage and the back of the sidewalk so that adequate space is provided for vehicle parking in the driveway.
 - b. Residential buildings with reduced setbacks shall include features such as covered porches or front stoops and walkways between buildings and the public sidewalk. Also, garages should be placed to the rear of the lot behind the primary structure, with side driveway or alley access.
 - c. In evaluating proposals with reduced setbacks, consideration shall be given to existing setbacks in adjacent developed areas to avoid incompatible and/or inconsistent design conditions.
- (3) Subject to height restriction in Section 18.54.040, which restricts any nonresidential use or multi-family use located closer than fifty (50) feet from the property boundary of a residential use, excluding multi-family dwelling units, shall be limited to the maximum height allowed for a single family residential use.
 - (4) All uses other than office, research, lodging and mixed-use (see Note (5)).
 - (5) Office, research, lodging and mixed-use (mixed-use means residential located in the same building as non-residential uses).
 - (6) There shall be no limit on the amount of land area within a MAC district that may be devoted to residential use; however, for projects exceeding 50 percent residential land area, the applicant must demonstrate that sufficient land area is devoted to commercial use within the project, or within the vicinity of the project, to meet future commercial needs and demands. Such evidence may consist of a market analysis and/or an analysis of development trends and existing and proposed land uses within the vicinity of the project.
 - (7) Maximum number of dwelling units permitted per acre. The density calculation shall include the gross land area dedicated to residential use, including roads, drainage areas and open space within and serving the residential component of the project. Residential units that are part of a building that includes non-residential uses (mixed-use) shall not be included in the residential density calculation. (Ord. 5116 § 1, 2006)

Figure 18.29.060-1

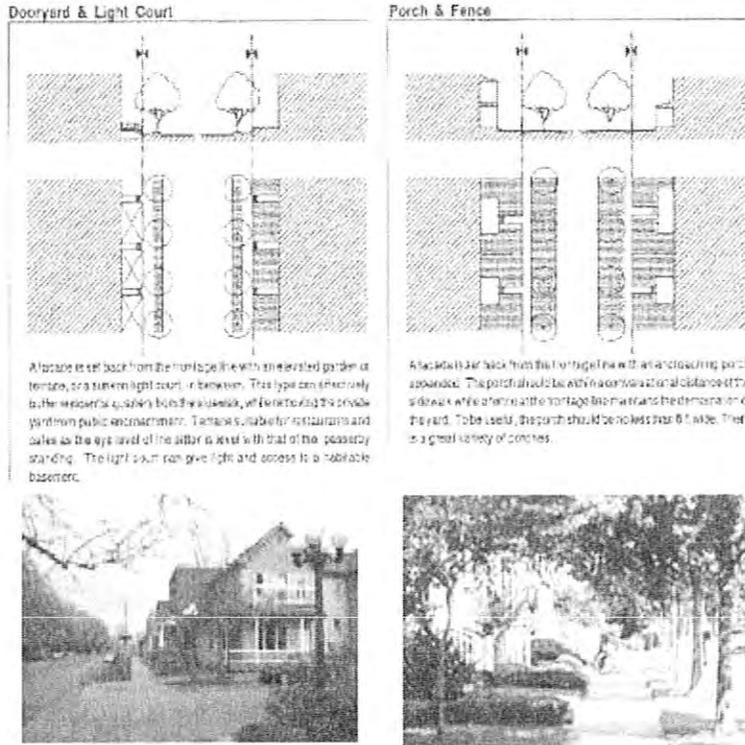
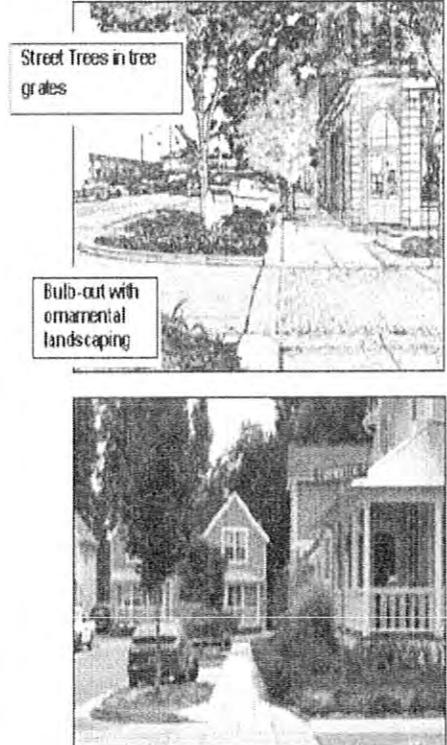


Figure 18.29.060-2





CITY OF LOVELAND
FIRE & RESCUE DEPARTMENT
 Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
 (970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM: 9
MEETING DATE: 11/15/2011
TO: City Council
FROM: Randy Mirowski, Fire Chief, Loveland Fire Rescue **rm**
PRESENTER: Randy Mirowski

TITLE:

A public hearing and an ordinance amending Section 2.60.110 of the Loveland Municipal Code to modify the purpose of the Fire and Rescue Advisory Commission to reflect the creation of a Fire Authority and to increase the Loveland Rural Fire Protection District's representation on the Commission to include voting members

RECOMMENDED CITY COUNCIL ACTION:

Conduct a public hearing and adopt the ordinance as recommended

OPTIONS:

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

DESCRIPTION: This is a legislative action. This ordinance makes provisions for citizen representation and involvement from the Loveland Rural Fire Protection District on the Fire Rescue Advisory Commission (FRAC). This action also changes the focus and concerns of future fire commissions to include areas within the new fire authority's boundaries; this will include the City of Loveland and the area of the Loveland Rural Fire Protection District. This action is necessary to reflect the changes brought about by the adoption of the new fire authority, which will commence on January 1, 2012.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

There is virtually no budget impact to this decision for the City of Loveland or the Loveland Rural Fire Protection District. Thus, adopting this ordinance is essentially a revenue neutral action.

SUMMARY: The Fire Rescue Advisory Commission (FRAC) is one of several Boards and Commissions that has operated by directive of the City of Loveland Municipal Code, to provide opportunities for citizen involvement with their government. FRAC advises the Fire Chief regarding department functions from the citizen's point of view, assists with the development and review of the department's strategic plan and acts as the review board for any appeals related to fire prevention ordinances or actions. The voting membership of FRAC has been made up of citizens living in the City of Loveland since its inception. With the establishment of the fire authority in January of 2012, the make-up of the commission itself will need to be changed to reflect citizen involvement from the Rural District. The proposal in this ordinance calls for two (2) of the nine (9) member commission to be citizens living in the Loveland Rural Fire Protection District. In addition, this ordinance calls for a change in the advisement and concern of the commission to include the fire authority and the areas and interests of the fire authority, including the City of Loveland and the Loveland Rural Fire Protection District.

This ordinance will improve FRAC by including citizens living in the Rural District and focusing on issues and concerns of the entire area of the fire authority, not limiting the commission's concern or focus to the City of Loveland only. The ordinance brings with it no additional costs, only an improvement in governance, more reflective of the area and obligation assumed once the fire authority is established. It is believed this ordinance will allow for more complete and comprehensive input to the entire area protected under the provisions of the fire authority.

The staff recommendation is to adopt the ordinance as recommended.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Ordinance

FIRST READING: November 15, 2011

SECOND READING: _____

ORDINANCE No. _____

AN ORDINANCE AMENDING SECTION 2.60.110 OF THE LOVELAND MUNICIPAL CODE TO MODIFY THE PURPOSE OF THE FIRE AND RESCUE ADVISORY COMMISSION TO REFLECT THE CREATION OF A FIRE AUTHORITY AND TO INCREASE THE LOVELAND RURAL FIRE PROTECTION DISTRICT'S REPRESENTATION ON THE COMMISSION TO INCLUDE VOTING MEMBERS

WHEREAS, On August 19, 2011, pursuant to an intergovernmental agreement between the City of Loveland ("City") and the Loveland Rural Fire Protection District ("District"), the Loveland Fire Rescue Authority ("Fire Authority") was created as a separate governmental entity with a beginning operational date of January 1, 2012 at 12:01 a.m.; and

WHEREAS, the Fire Authority will be responsible for the effective provisions of fire and emergency services within the jurisdictional boundaries of the City and the District and will be advised by the City's Fire and Rescue Advisory Commission ("Commission") on the implementation of the City's fire protection master plan and future strategic planning for fire and emergency services; and

WHEREAS, the City and the District desire to modify the language regarding the purpose of the Commission to reflect that it now will advise both the Fire Authority and the City and further desire to increase the District's representation on the Commission to include voting members, and to reflect the District's increased role in the Fire Authority; and

WHEREAS, the Commission, currently comprised of nine voting members, of whom all are appointed by the City Council, and one non-voting member of whom is a District board member appointed by the District, would be modified to have seven voting City Council-appointed members, two voting District-appointed members and one non-voting liaison from the District's board.

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

Section 1. That section 2.60.110 of the Loveland Municipal Code regarding the fire and rescue advisory commission is hereby amended to read in full as follows:

2.60.110 Fire and rescue advisory commission.

A. There is established a fire and rescue advisory commission consisting of nine members, ~~eight~~seven of whom shall be appointed by the city council to serve a term of three years, and ~~two~~one of whom shall be appointed by the Loveland Rural Fire Protection District board of directors ~~from among the district's board members~~ to serve a term to be determined by the ~~the District~~. The District shall have authority to appoint one member of its board to serve as a non-voting liaison to the commission. Members appointed by the city council or the District shall not be employees or volunteers of the ~~city Loveland fire and rescue department~~.

B. The purpose of the fire and rescue advisory commission shall be to serve as an advisory body to the city council and to the Loveland Fire Rescue Authority in the implementation of the fire protection master plan and future strategic planning for the ~~fire and rescue department~~city and the fire Authority. In addition, the commission shall serve as an advisory body to the fire chief concerning fire protection, rescue, and emergency management issues.

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 (10) days after its final publication as provided in the City Charter Section 4-8(b).

ADOPTED _____ day of November, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney



CITY OF LOVELAND
CITY MANAGER'S OFFICE

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

AGENDA ITEM: 10
MEETING DATE: 11/15/2011
TO: City Council
FROM: Brian Hayes, Parks and Recreation
PRESENTER: Brian Hayes

TITLE:

A Resolution approving a Farm Lease between the City of Loveland and Schwarz Farms, LLC.

RECOMMENDED CITY COUNCIL ACTION:

Adopt the attached resolution as recommended.

OPTIONS:

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

DESCRIPTION:

A Resolution approving a lease for agricultural crop production on a portion of the Agilent property, located immediately west of S. Roosevelt Avenue just north of S.W. 14th Street.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

The City of Loveland purchased the Agilent campus in June of 2011. The City plans to retain approximately 130 acres for open space purposes and sell approximately 177 acres including buildings A,B,C, and D to a developer.

Part of the 177 acres to be sold to a developer includes approximately 34 acres of land along S. Roosevelt Avenue which has been farmed the last few years by Marvin Schwarz. Mr. Schwarz will start to prepare the land for next year's crop starting this fall. The land will be planted with feed corn which is usually harvested by the end of September each year. The farmer will provide water for irrigation purposes. The lease rate is \$50 per acre, per year for each acre

planted, payable by January 1, 2012. The lease will be assignable to the new proposed owner of the property.

The City of Loveland wishes to approve a 1-year lease, to allow for the farming operations to continue for at least 1 more year. The farm lease will be renewable upon written agreement by both parties.

This has been reviewed by the prospective buyer of the affected property, Cumberland & Western, and they have consented to the lease's continuation. That means that if Cumberland closes on the purchase, they buy the property subject to the lease.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Resolution
Farm Lease
Map

RESOLUTION # R-74-2011

A RESOLUTION APPROVING A FARM LEASE BETWEEN THE CITY OF LOVELAND AND SCHWARZ FARMS, LLC

WHEREAS, the City of Loveland (the "City") owns approximately 34 acres of land located in the city of Loveland (the "Property"); and

WHEREAS, the City has in previous years, entered into a Lease Agreement with Schwarz Farms, LLC, ("Tenant") for the purpose of farming and maintenance of the Property; and

WHEREAS, the City of Loveland desires to enter into a new lease agreement with Tenant for farming of the Property, which is attached hereto as Attachment 1 and incorporated herein by reference.

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

Section 1. That the Farm Lease attached hereto and incorporated herein as Attachment 1 is hereby approved.

Section 2. That the Mayor is hereby authorized and directed to enter into the Farm Lease, subject to such modifications in form or substance as the Mayor, 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 _____, 2011.

ATTEST:

CITY OF LOVELAND, COLORADO:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:


Assistant City Attorney

FARM LEASE

THIS LEASE is entered into this ___ day of _____, 2011, between City of Loveland, Colorado, a municipal corporation (“Owner”) and Schwarz Farms, LLC (“Tenant”) whose address is 2551 E. County Road 16E, Loveland, Colorado, 80537, together herein referred to as the (“Parties”).

WHEREAS, the Owner owns approximately thirty-four (34) acres of land located in Section 23, Township 5 N, Range 69 W, in the city of Loveland (the “Property”); and

WHEREAS, the Tenant has in previous years entered into a Lease Agreement for the purpose of farming and maintenance of the Property; and

WHEREAS, the Owner desires to enter into a new lease agreement with Tenant for farming of the Property.

NOW THEREFORE, the Parties agree as follows:

1. **Agricultural Crop Production.** Tenant agrees to use the thirty-four (34) acres of land, more particularly described on **Exhibit A** attached hereto and made a part hereof, and referenced above as the “Property”, for agricultural crop production only. Tenant agrees to use his best efforts to keep the land in a neat and clean condition, free of noxious weeds and otherwise in accordance with local crop production customs, and free of trespassers and uses not allowed hereunder.
2. **Rent.** On or before January 1, 2012, Tenant shall pay the Owner rent in the amount of Fifty Dollars (\$50.00) per acre, per year, for the acreage to be planted into corn harvest during the spring of each year.
3. **Term.** The Term of this Agreement shall be for one year from the date first written above, and may be renewed annually by written agreement between the Parties.
4. **Income and Expenses.** Tenant shall receive 100% of the crop and the Production Flexibility payments from the Farm Service Agency. Tenant shall be solely responsible for any and all costs associated with crop production, including water, labor, insect control, herbicides, pesticides, and perennial weed control.
5. **Obligations of Tenant.** Tenant agrees to the following obligations:
 - a. Tenant shall be responsible for any irrigation ditches, and all expenses associated with irrigation of the Property, including water and maintenance costs. Irrigation ditches shall be maintained and improved in a proper manner by Tenant as deemed reasonable according to industry standards. All irrigation water shall be supplied by Tenant and shall be applied in a broad and efficient matter such that excess water shall be prevented from causing damage to the Property or to adjacent property. Tenant agrees to work and cooperate with neighbors to help assure the reasonable and efficient flow and application of said water.

- b. Tenant shall provide all labor, fuel, equipment and water necessary for crop production. Tenant agrees to engage in farming and soil conservation practices that will protect the fertility of the farm. Tenant shall cooperate with any weed control program or conservation practice beneficial to the Property, including those programs sponsored or participated in by Larimer County or by the U.S. Department of Agriculture.
- c. Tenant agrees to allow Owner to enter the Property at any time. If entry to the Property will impact the crop, Owner will give Tenant prior notice. If Owner is the cause of any surface or crop damage due to entry, Owner shall compensate Tenant for the same.

6. **Hunting.** The Tenant shall not have the right to hunt, shall not allow others to hunt and shall not receive income from hunting on said Property.

7. **Termination.**

- a. By Owners. It is understood and agreed that the Owner shall have the right to terminate this Lease, in whole or in part, by giving the Tenant thirty (30) days prior written notice of such termination. If at the time of such termination of this Lease, Tenant has performed farming operations in preparation of the next crop, Tenant shall be entitled to reimbursement from the Owner for the greater of (a) actual expenses, including any advance cash rental, incurred by the Tenant for such farm operations or (b) the fair market value of the growing and un-harvested crop on the date of the termination as determined by independent appraisal. Notwithstanding the foregoing, Tenant shall not be entitled to any compensation for any farm operations performed by Tenant more than (1) day after Tenant has received written notice that the lease will terminate on a day certain set forth in such notice.
- b. By Tenant. It is understood and agreed that Tenant shall have the right to terminate this lease, in whole or in part, by giving Owner thirty (30) days prior written notice of such termination. Upon such termination, Tenant shall have the right to harvest any growing crop when such crop is mature, even if harvesting occurs after the end of such thirty (30) notice day notice period. Owner may thereupon enter the Property and take possession of any remaining property being relinquished by Tenant after Tenant's harvest is completed.
- c. Receipt of notice of termination shall be the date of personal delivery to either party, or the date of the receipt as shown by certified mail receipt.

8. **Default.** If any party shall at any time fail, neglect, or refuse to carry out any substantial provision of this Lease, the other party shall have the benefits of any remedies and proceedings provided by law or equity.

9. **Assignment and Subletting.** Tenant shall not assign any portion of this Lease nor sublet any portion of the Property without the prior written approval of the Owner, which shall not be unreasonably withheld. Owner may assign this lease, or any portion thereof, to any future owner(s) or other successors and assigns. This Lease shall bind all successors and any permitted assigns of the

Parties.

10. **Insurance.** Tenant shall each be responsible to maintain and pay for its own crop damage insurance. Tenant shall pay and maintain liability insurance in accordance with the requirements set forth on the attached **Exhibit B** and list the Owner as an additional insured. Tenant shall also maintain workers compensation insurance if required by law, or shall provide Owner with a waiver of insurance requirement as provided in **Exhibit C** attached hereto and made a part hereof. Tenant understands that **Tenant is not a City employee and is not entitled to workers' compensation benefits from the City.** All insurance requirements must be met and copies of such coverage shall be provided to Owner in conjunction with execution of this Lease Agreement.

11. **Indemnity.** Tenant shall indemnify and hold the Owner harmless from any and all liability, loss, expense, litigation, judgments, damages, claims and demands of any kind whatsoever in connection with, arising out of or by any reason of any injury to any person or persons or to property of any kind whatsoever and to whomever belonging or from any cause or causes whatsoever arising out of any activity performed by Tenant pursuant to this Lease or on the Property.

12. **Release.** Tenant hereby releases the Owner from any claim for personal injury or property damage suffered by Tenant as a result of any activity occurring on the Property pursuant to this Lease.

13. **Notices.** Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to Owner:

City of Loveland: City Manager
City of Loveland
500 E. Third Street
Loveland, Colorado 80537

If to Tenant:

Marvin Schwarz
Schwarz Farms, LLC
2552 E. County Road 16E
Loveland, Colorado 80537

IN WITNESS WHEREOF, the parties have executed this Farm Lease as of the date first written above.

TENANT: Schwarz Farms, LLC

By: Marvin Schwarz
Marvin Schwarz

Its: member

OWNER:

CITY OF LOVELAND

ATTEST:

City Clerk

Cecil A. Gutierrez, Mayor

APPROVED AS TO FORM:


Assistant City Attorney

EXHIBIT A
Property Description

TRACT A, HEWLETT - PACKARD ROOSEVELT ADD
CITY OF LOVELAND
LARIMER COUNTY, COLORADO

LARIMER COUNTY ASSESSORS PARCEL #9523100918

EXHIBIT B

Insurance Requirements

Tenant, at its sole cost and expense, shall, during the term of this Lease, procure, pay for, and keep in full force and effect workers compensation insurance for each occurrence, for all of its employees to be engaged in work on the Leased Premises under this Lease.

Tenant, at its sole cost and expense, shall, during the term of this Lease, procure, pay for, and keep in full force and effect a commercial general liability insurance policy in an amount not less than Five Hundred Thousand Dollars (\$500,000) per occurrence with a One Million Dollar (\$1,000,000) aggregate covering the Leased Premises and insuring the Tenant covering bodily injury, including death to persons, personal injury, and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, the insured's liability for property damage, bodily injuries, and death of persons in connection with the operation, maintenance, or use of the Leased Premises (including acts or omissions of the Tenant or of its officers, employees, or agents), liability arising out of lawsuits related to employment contracts of the Tenant, and protection against liability for non-owned and hired automobiles. Such coverage shall also include comprehensive automobile liability insurance and coverage for such other risks as shall customarily be required by private institutional mortgage lenders with regard to property similar in construction, location, and use as the Property under this Lease Agreement.

All policies of insurance carried by the Tenant shall name the Tenant as an insured and shall name the Owner as an additional insured on the policy. The policy or policies shall contain a provision that the policy or policies cannot be canceled or materially altered either by the insured or the insurance company until fifteen (15) days prior written notice thereof is given to the Owner. Upon issuance or renewal of any such insurance policy, Tenant shall furnish a certified copy or duplicate original of such policy or renewal thereof with proof of premium payment to the Owner. Any such policy shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any act or omission of any assignees or sub lessees of the Tenant.

Any insurance policy purchased by the Tenant must be written by an insurance carrier which has a current rating by Best's Insurance Reports of "A" (Excellent) or better and a financial rating of "X" or better or such equivalent classification as may hereinafter be required customarily for properties similarly situated and it must be approved by the Tenant and the insurance carrier must be authorized by law to do business in the State of Colorado. Tenant shall not obtain any policy which, under the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members. All insurance policies carried by the Tenant may be reviewed at least annually by the Owner to ascertain that the coverage provided by such policy adequately covers those risks required by this Article VIII to be insured by the Tenant.

In case of the breach of any provision of this Article VIII, the Owner, at its option, may take out and maintain, at the expense of the Tenant, such insurance as the Owner may deem proper and may bill the costs for such insurance directly to the Tenant. When so billed, the Tenant shall reimburse the Owner for the costs of such insurance within thirty (30) days of being billed.

EXHIBIT C – CERTIFICATE OF EXEMPTION AND WAIVER

DIRECTIONS:

- ✓ If the Tenant is NOT required under Colorado law to carry workers' compensation insurance and DOES NOT carry it, this exhibit MUST be completed and attached to the Contract.
- ✓ If the Tenant IS required under Colorado law to carry workers' compensation insurance and DOES carry it, this exhibit IS NOT REQUIRED and may be discarded.

The Tenant certifies to the City that it is not required to carry workers' compensation insurance under the Colorado Workers' Compensation Act. The Tenant acknowledges that it will be engaging in activities that may expose it to risk of bodily injury. The Tenant affirms that it is physically capable of performing the activities and that all necessary precautions to prevent injury to the Tenant and others will be taken. The Tenant shall not hold the City liable for any injuries that may arise during or resulting from the work performed under the Contract, and the Tenant shall defend, indemnify, and hold harmless the City from all such claims.

Tenant

By: Maria Schwanz
 Title: member

STATE OF Colorado)
 COUNTY OF Larimer) ss.

The foregoing instrument was acknowledged before me this 28th day of October, 2011 by Martha Schwarz.
 (Insert name of individual signing on behalf of the Contractor)

Annette Marie Gilbert
 Notary's official signature
9-23-2012
 Commission expiration date



ACORD <small>TM.</small> CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 10/28/2011
PRODUCER Phone: (970) 353-2291 Fax: 970-353-1269 TRIBBETT AGENCY LLC 1750 25TH AVENUE #206 GREELEY CO 80634		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
		INSURERS AFFORDING COVERAGE
		NAIC #
INSURED SCHWARZ, MARVIN & ESTHER 2551 E. CO RD 16E LOVELAND CO 80537		INSURER A: Grange Insurance Company INSURER B: INSURER C: INSURER D: INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADDL INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
A		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> FARM LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ 500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED. EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 1,000,000 PRODUCTS-COMP/OP AGG. \$								
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$								
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below.				<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:50%;">WC STATU-TORY LIMITS</th> <th style="width:50%;">OTHER</th> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE-EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE-POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTHER	E.L. EACH ACCIDENT	\$	E.L. DISEASE-EA EMPLOYEE	\$	E.L. DISEASE-POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTHER													
E.L. EACH ACCIDENT	\$													
E.L. DISEASE-EA EMPLOYEE	\$													
E.L. DISEASE-POLICY LIMIT	\$													
		OTHER:												

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/ SPECIAL PROVISIONS

CERTIFICATE HOLDER City of Loveland 500 E. 3rd Street #200 Loveland, CO 80537	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, IT'S AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
Attention:	

Insured Copy

LIABILITY COVERAGE

Insured: **MARVIN SCHWARZ
SCHWARZ FARMS LLC**

Policy Number: FP01010579

LIABILITY DECLARATIONS

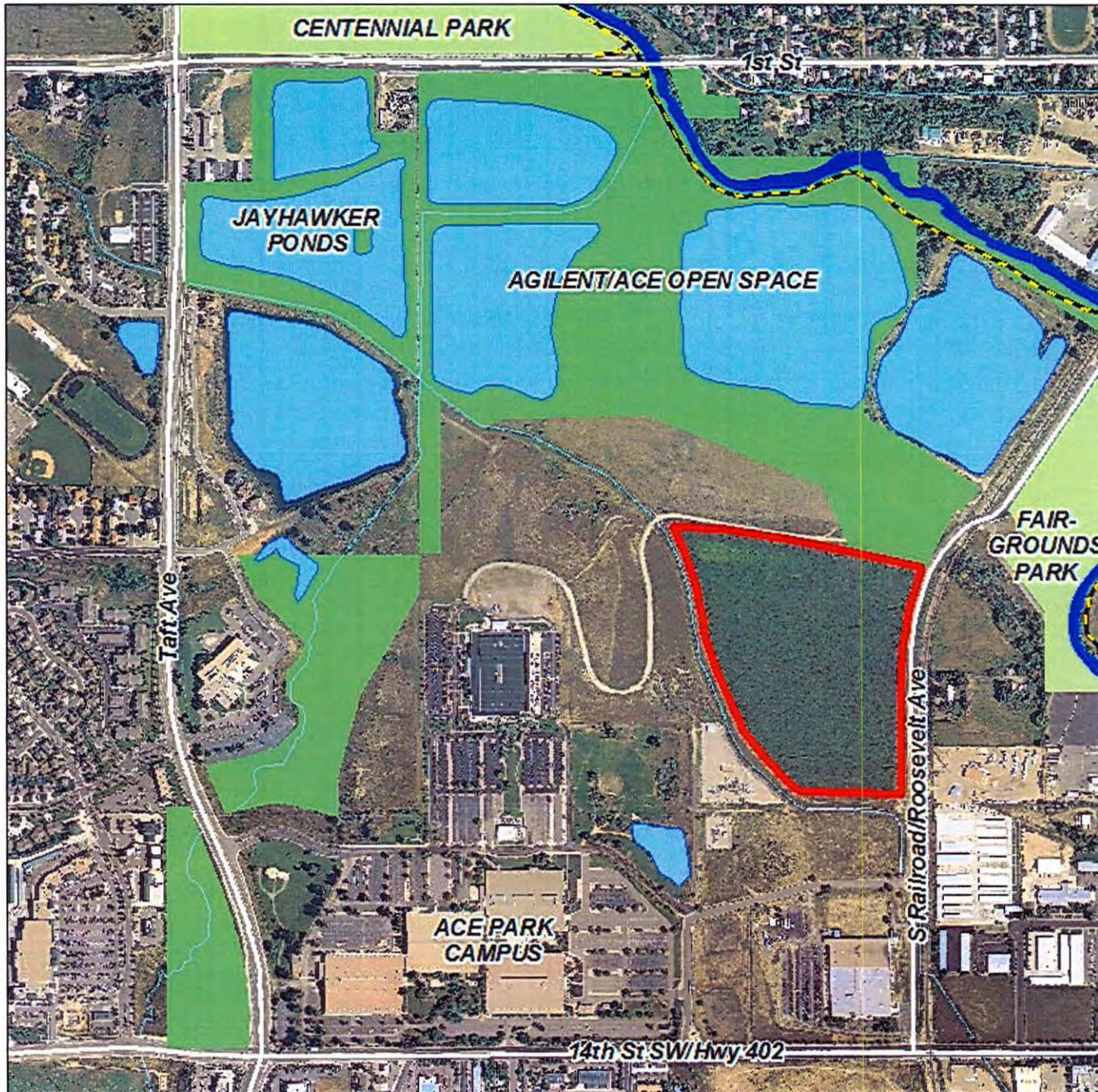
Premises covered by this policy:

LOC 001 - 35 A SW1/4 OF NE1/4 S30 T5N R68W OF 6TH	LARIMER COUNTY	CO 80537
LOC 004 - 97 A S1/2 OF NE 1/4 SEC 30, TWP 5N, R 68W	LARIMER COUNTY	CO 80537
LOC 005 - 36.5 ACRES S 31 T 5N R 68W OF 6TH PM	LARIMER COUNTY	CO 80537
LOC 006 - 85 A E1/2 OF W1/2/NE1/4 S25 T5N R69W	LARIMER COUNTY	CO 80537
LOC 007 - 34 A SE1/4 OF NE1/4 S30 T5N R68W OF 6TH	LARIMER COUNTY	CO 80537
LOC 009 - 59.7 A PORTION S 19 T 5A R 68W	LARIMER COUNTY	CO 80537
LOC 010 - 35 A PORTION SE1/4 S2 T4N R69W OF 6TH	LARIMER COUNTY	CO 80537
LOC 011 - 140 ACRES S 30 T 5N R 68W OF 6TH PM	LARIMER COUNTY	CO 80537
LOC 012 - 35 A NE1/4 OF SE1/4 S25 T5N R69W OF 6TH	LARIMER COUNTY	CO 80537
LOC 013 - 29 ACRES S 23 T 5N R 69W	LARIMER COUNTY	CO 80537
LOC 014 - 60 A W1/2 OF SE1/4 S1 T4N R69W	LARIMER COUNTY	CO 80537
LOC 015 - 115 A NW1/4 S 15 T 5N R68W OF 6TH PM	LARIMER COUNTY	CO 80537
LOC 016 - 150 A NW1/4 S31 SW1/4 S30 T5N R68W	LARIMER COUNTY	CO 80537
LOC 017 - 135 A NE1/4 S 16 T 5N R 68W OF 6TH PM	LARIMER COUNTY	CO 80537
LOC 018 - 40 A NW1/4 OF S30 NE1/4 S25 T5N R68W	LARIMER COUNTY	CO 80537
LOC 019 - 400 ACRES S 29,31,32 T5N R 68W	LARIMER COUNTY	CO 80537
LOC 020 - 11 ACRES SEC 30 TWP 5N RGE 68W	LARIMER COUNTY	CO 80537
LOC 021 3621 S COUNTY RD 11	LOVELAND	CO 80537

Coverages

Limit of Liability

H. Bodily Injury and Property Damage Liability		
I. Personal and Advertising Injury Liability		
J. Medical Payments	\$ 1,000,000	General Aggregate Limit
H. Bodily Injury and Property Damage Liability		
J. Medical Payments	\$ 500,000	Each Occurrence Limit
I. Personal and Advertising Injury Liability	\$ 500,000	
H. Fire Damage Liability	\$ 50,000	Any One Fire (Premises Rented To Insured)
J. Medical Payments	\$ 1,000	Any One Person Limit
Additional Coverage 2 - Damage to Property of Others	\$ 500	

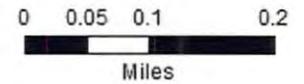


AGILENT/ACE PROPERTY

FARM LEASE

Legend

-  Farm Lease Area
-  Loveland Open Lands
-  Loveland Parks
-  Lakes & Ponds
-  Ditches/Canals
-  Recreation Trail



November 2011



CITY OF LOVELAND
FINANCE DEPARTMENT

Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2695 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: 11
MEETING DATE: 11/15/2011
TO: City Council
FROM: Jim Wedding, Finance/Revenue Division
PRESENTER: Bonnie Steele, Acting Finance Director

TITLE:

A Resolution approving the First Amended and Restated Collection Agreement for the City of Loveland to collect public improvement fee revenues and retail sales fee revenues in the Centerra retail development

RECOMMENDED CITY COUNCIL ACTION:

Adopt the attached Resolution as presented.

OPTIONS:

1. Adopt the action as recommended, with new agreement and procedures effective January 1, 2012
2. Deny the action and leave the current agreement in place
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
6. Council can terminate the Collection agreement with the Metro District resulting in an annual revenue loss of \$91,000

DESCRIPTION:

This is an administrative action to consider a resolution approving an Amended and Restated Collection Agreement for the City of Loveland to collect Public Improvement Fee (PIF) revenues and Retail Sales Fee (RSF) revenues in the Centerra retail development. The City staff has negotiated a revised Centerra Retail Development Collection Agreement for the collection and audit of the retail sales fee and the public improvement fee effective January 1, 2012. The revisions to the agreement reflect the more effective audit practices currently used for all City Sales Tax audits. The revised collection fee schedule reflects full cost recovery of the services provided by the City.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

Reduction in collection fee revenue; however, there is no net impact on the revenue budget because audit revenue on city only sales tax is increased based on historical collections over the past two years.

SUMMARY:

In 2004 the City entered into an agreement with the Public Improvement Collection Corporation, Centerra RSF Corporation and the McWhinney Lifestyle, LLC (which is now G & I VI Promenade, LLC) to be the appointed "Designated Receiving Entity". This designation included the responsibility of receiving the Revenues remitted by the vendors doing business in the Centerra Retail Development area on behalf of the three fee corporations, various reporting responsibilities, and enforcement actions including but not limited to: register checks, auditing and written violation notices. In consideration for the services provided by the City, the three fee corporations pay a fee and reimbursable expenses as set forth in "Exhibit J" of the Agreement.

It is important to note that this Agreement has nothing to do with the uses of the Public Improvement Fee (PIF) or the Retail Sales Fee (RSF) revenues, or with the existence or rate of the PIF or RSF itself. The Agreement only deals with the administrative collection and auditing of the PIF and RSF.

The current agreement has a provision that allows for a review of Exhibit J in June 2008 and every five years after that. The City and the fee corporations began the review in 2008, but tabled the process several times due to multiple ownership changes of the "Shops at the Promenade". The Amended agreement includes a provision that provides for Annual reviews of Exhibit J, to ensure that the City receives adequate compensation to cover actual costs.

There are minor housekeeping changes in the First Amended and Restated Collection Agreement to update ownership changes and District Bonds. The agreement also contains procedural changes in the services provided to improve efficiencies and the associated fees for those services.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Staff memo detailing the procedural changes and the associated fees.
2. Resolution
3. First Amended and Restated Collection Agreement.


CITY OF LOVELAND

REVENUE DIVISION

 Civic Center • 500 East Third • Loveland, Colorado 80537
 (970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

To: City Council
 Through: Bill Cahill, City Manager and Renee Wheeler, Assistant City Manager/Finance Director
 From: Jim Wedding, Revenue Manager
 Date: October 14, 2011
 Subject: First Amended and Restated Collection Agreement

I. Background

In 2004 The City entered into an agreement with the Public Improvement Corporation, Centerra RSF Corporation and the McWhinney Lifestyle, LLC (which is now G & I VI Promenade, LLC) to be the appointed “Designated Receiving Entity”. This designation included the responsibility of receiving the Revenues remitted by the vendors doing business in the Centerra retail development area on behalf of the three fee corporations, various reporting responsibilities, and enforcement actions including but not limited to, register checks, auditing and written violation notices. The Collection agreement included an “Exhibit J” which spelled out the scheduled payment for services from 2004 through 2029 and was based on the reimbursement of expenses with an automatic 4.5% annual increase, plus “Fees for Service” with an automatic 3.0% annual increase.

The agreement has a provision that allows for a review of Exhibit J in June 2008 and every five years after that. The City and the Boards began the review in 2008, but tabled the process several times due to multiple ownership changes of the “Shops at the Promenade”.

During the time that reviews took place there were three major changes that have been informally adopted in the collection agreement.

- 1) Audits were originally scheduled to be performed on the top 20% of the store (based on annual sales) every two years and the remainder of the stores every three years.
 - a. This causes a hardship for businesses who are accustomed to sales tax audits being performed no more frequently than three years and usually longer.
 - b. The top 20% is a moving target due to fluctuations in sales from year to year.
 - c. Everyone previously involved in this discussion has agreed that auditing each store every three years would be sufficient. Schedules have been designed to rotate stores so that one-third is audited each year. Stores that have closed are scheduled shortly after closing to protect access to records.

- 2) Many of the audits have resulted in immaterial assessments, but are time consuming and costly, therefore;
- a. It has been agreed that audits be performed in two steps.
 - i. The initial step (Discovery) involves engaging the taxpayer and obtaining source documents. In most audits it can be determined early on in the process if there are any compliance issues or not. If the taxpayer appears to be compliant then the audit is discontinued.
 - ii. The second step is a full audit if compliance issues are discovered in the discovery step. (E.g. exemptions not documented, taxable items not being taxed)
- 3) Register checks
- a. Initially all stores were checked quarterly.
 - b. Once several checks have been completed, most stores stay in compliance.
 - c. This process was changed to once a year, checking one-fourth of the stores each quarter.
 - d. Stores that are found to be non-compliant are then checked quarterly until they are compliant for one full year.

Based on negotiations between City Representatives, the Management Consultant for the Metro District, both City and Metro District legal councils and the various Centerra boards, the City staff has prepared the following modifications to the terms of the collection agreement as it relates to the collection, reporting and enforcement requirements as well as payment for services covered by Exhibit J.

II. Summary of Changes to the Collection agreement

Housekeeping changes

Amendments were made throughout the agreement to substitute "G&I VI Retail Prom, LLC" for "McWhinney Lifestyle Center LLC."

Amendments were made to incorporate a new definition of "Bank Representative" and other financing terms related to the recently completed Metro District refinancing.

“Bank Representative” means, initially, U.S. Bank National Association in its capacity as the Administrative Agent pursuant to that certain Loan Agreement dated June 8, 2011 among the Service District, the other Districts party thereto, Compass Bank, U.S. Bank National Association and the other lenders from time to time parties thereto, as the same may be amended or supplemented from time to time, and its successor or assigns pursuant to said Loan Agreement. The term “Bank Representative” shall also include any other party authorized in any

District Bond Document to receive information or take actions permitted or authorized to be received or taken by the Bank Representative hereunder.

Any references to Grand Station have been deleted. Amendments made to the document to permit such modification later with agreement of all parties. (See Section 2.08(b) below.)

Section 2.02 – Provision of Information to Centerra Retailers.

2.02(a) Added language to allow the City to provide information booklets by posting them on the City's website and deleted outdated references to individual store openings and inserted generic language that the City will provide all Centerra retailers with the information booklet prior to soft opening and any time changes are made.

Section 2.03 - Collection of Revenues

2.03(b) Added language to clarify when retailers must remit revenue to the City.

2.03(c) Deleted references to State sales tax returns.

2.03(d) and (e) Changed language to conform to the way the delinquency notices and reports are currently being written.

2.03 (f) Changed language to clarify that the City's enforcement of the Public Improvement Fee and Retail Sales Fee will now continue past the first and second notices in accordance with the City's normal collection efforts, up to the point that the City collects its delinquent sales taxes. At that point the City will stop collection efforts and present the documentation to the boards to continue collection efforts on their own.

Wording was added to allow retailers to remit Public Improvement Fee and Retail Sales Fee revenue by electronic means (i.e. Wire transfers) to sections 2.03(b), 2.04(a), (b) and (c).

Section 2.07 – Covenants of the Parties

Section 2.07(d) New language inserted that requires the Report Recipients to provide notice to the City of any changes in tenants/owners on a monthly basis.

Section 2.08 - Fees and Reimbursable Expenses

2.08(b) was deleted as outdated and replaced with new language inserted that allows the reallocation of responsibility for the payment of the Collection Agent's fees any time a new entity is added. It also provides that the Collection Agent's (City) fee can be adjusted at the same time.

2.08(d) Amended to provide for an annual review of Exhibit J "Schedule of City Fees and Reimbursable Expenses" on or about June 1st beginning in 2012. This date works well with the bylaws requirement of both the Public Improvement Corporation and Retail Sales Fee Boards that an annual meeting be held every June as well as the City's budget process.

Section 3.03 - Resignation, Removal, Assignment

New language inserted to recognize the obligations to the Majority Bank as the result of the Metro District debt financings to which the Public Improvement Fee revenues are pledged.

Section 3.05 – Notices

Updated names and addresses of parties to the agreement.

Section 3.06 - No Third Party Beneficiaries of this Collection Agreement

New language inserted to recognize the obligations to the Majority Bank as the result of the Metro District debt financings to which the Public Improvement Fee revenues are pledged.

Section 3.08 – Amendments

New language inserted to recognize the obligations to the Majority Bank as the result of the Metro District debt financings to which the Public Improvement Fee revenues are pledged.

Exhibit A – Definitions

Added "Bank", "Custodial Agreement", "Custodian" "Bank Representative", "Consent Party" and "Trustee" to recognize the obligations to the Bank Representative as the result of the Metro District debt financings to which the Public Improvement Fee revenues are pledged.

"First Delinquency Notice" and "Second Delinquency Notice" was amended to match the delinquency fees and interest rate charged by the City on delinquent sales tax payments.

"District Bonds" and "Indenture" have been modified to refer to the 2008 bonds, plus any additional bonds issued consistent with those bonds.

Exhibit B - PIF Property

Map has been updated to reflect current boundaries.

Exhibit C - Centerra RSF Property

Map has been updated to reflect current boundaries.

Exhibit E - Reporting Forms

The forms have been updated to reflect forms currently in use.

Exhibit F - Delinquency Notices

The notices have been updated to reflect interest and penalties currently charged by the City for sales tax issues. (The greater of \$15.00 or 10% penalty and interest at 1% per month)

Exhibit G - Official Notice of Violation

The notice has been revised to strike "Tenant does not have a signed Waiver of Confidentiality on file." from the list of potential violations. This is not a requirement under the Covenants. The Public Improvement Fee and Retail Sales Fee notices have been combined into one form with a check box to indicate which covenant they are in violation.

Exhibit H - Form of Monthly Reports

Reports have been updated to reflect the forms currently in use.

Exhibit J – Schedule of City’s Fees and Reimbursable Expenses

Schedule was revised to reflect the changes in procedures and recovery of actual cost to deliver the services being provided. (See attached “First Amended and Restated Collection Agreement”)

Procedural Changes**Changes in Section 2.06****Section 2.06(f)**

Previously - The City performed this function on every retailer, quarterly. This process was time consuming for City staff and inconvenient for the retailers and revealed little change from quarter to quarter.

As amended – The City will perform this function on one quarter of the retailers each quarter, effectively checking each retailer once per year. If a retailer is found to be in violation the retailer will be checked quarterly until they are compliant for one year.

The City shall visit the business establishments of all Centerra Retailers on a quarterly basis during the first year of operation to ensure compliance with

*guidelines and procedures relating to the PIF Revenues and RSF Revenues, including but not limited to customer notification of the PIF and RSF. If said establishment is in compliance for four consecutive quarters, the City will visit the establishment once in the subsequent year. In the event that an item of noncompliance is discovered, the City shall provide notice thereof in accordance with Section 2.03(g) hereof, and shall revisit such business establishment within 30 days to determine if such noncompliance has been corrected. The City will visit said establishment for four consecutive quarters to assure continued compliance. If the noncompliance has not been corrected by such return visit, the City shall continue to revisit such business establishments quarterly and, if necessary, send additional notices of noncompliance, until such noncompliance is corrected. Non-compliance may also result in remedies stipulated in the Centerra Public Improvement Fee Covenants, the Centerra Retail Sales Fee Covenants and any applicable lease and/or sales instruments. The City shall provide a written report to the Report Recipients in a form substantially similar to the forms set forth in **Exhibit G** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom, together with a copy of any such noncompliance notice sent to any Centerra Retailer, in the event that any noncompliance is discovered in any such visit. The PIC, Centerra RSF Corp. and Retail Prom shall, if requested by the City, assist in bringing Centerra Retailers into compliance with such guidelines and procedures.*

Section 2.06 (g)

Previously – The City was required to perform complete audits on each retailers based on the top 20% (based on annual sales) of the vendors every two years and the remainder of the retailers every three years. This process was inefficient because the top 20 stores are inconsistent due to sales fluctuations and caused a hardship for the retailers that are accustomed to being audited at thirty-six months or greater. All parties informally agreed that audits should be performed every thirty-six months and the “Discovery” process should be utilized. Discovery is a quick review of source documents to ascertain if material inconsistencies exist that warrant a complete audit.

As Amended – Each November the Public Improvement Corporation and Retail Sales Fee boards or their appointee will select twenty (20) vendors from the Centerra retail development area for discovery and forward the list to the City to be scheduled for the upcoming year. No vendor shall be scheduled prior to thirty-six (36) months from their last discovery/audit date. Once the discovery is complete the City will make recommendations to the boards, based on the discovery findings, to close the review or proceed to a full audit. The boards will have the option to proceed to full audit on up to a maximum of five (5) audits per year.

This process will allow City staff to utilize City resources more effectively.

The City shall investigate each Centerra Retailer to ensure accurate collection and remittance of the PIF Revenues and RSF Revenues according to the following two-phased process:

1. *Discovery. The City shall conduct discovery on twenty (20) Centerra Retailers annually. The Centerra Retailers to be subjected to the discovery process shall be selected by the PIC, the Centerra RSF Corp., and Retail Prom, collectively, and a list of such Centerra Retailers shall be provided to the City not later than November 30 of the year preceding the year in which the discovery is to be conducted. Discovery will consist of comparing reported sales to actual sales for the period that would be subject to audit, reviewing a reasonable sample of daily register transactions for inconsistencies in non-taxable and tax-exempt transactions. If the City does not find material discrepancies, the investigation will end at discovery. If, in doing so, the City determines that delinquent Revenues exist, City shall follow the procedures set forth in Section 2.03(e) hereof. The City shall provide a written report, no later than 30 days after the end of each calendar year to the Report Recipients indicating the identities of the Centerra Retailers subjected to discovery in the preceding calendar year and the results of any discovery indicating that a Centerra Retailer had underpaid PIF Revenues or RSF Revenues (provided that Dissemination Agents and Centerra Investors shall receive only aggregated information as described in subparagraph (c) above).*
2. *Audit. If the City determines, during the discovery process, that discrepancies exist with a particular Centerra Retailer's compliance with the collection of Revenues described herein, the City shall initiate phase 2 of the investigation, as described in this subparagraph 2.06(g)(2). The City will conduct up to five (5) audits per year of Centerra Retailers. The Centerra Retailers selected for audit shall be first recommended to the PIC, the Centerra RSF Corp., and Retail Prom by the City, based on the results of the City's discovery process. Following such recommendation, the City, the PIC, the Centerra RSF Corp., and Retail Prom shall collectively agree on which Centerra Retailers are to be audited each year while this Agreement shall remain in effect. As a part of such audit, the City shall compare the Reported Taxed Sales indicated on reports received by the City to PIF Sales and RSF Sales reported to the City and investigate any discrepancies in the reported amounts. Additional audits, over and above the five (5) annual audits contemplated in this subparagraph 2.06(g)(2), may be conducted upon the mutual agreement of the City, the PIC, the Centerra RSF Corp., and Retail Prom, subject to payment of the applicable hourly fees as set forth in **Exhibit J** hereto.*

Enhanced Enforcement Procedures

Additional enforcement activates include full participation in the City's delinquency collections process. When the City takes actions to collect delinquent sales tax revenue beyond the first and

second delinquency notices the City will continue to pursue the collection of delinquent Public Improvement Fees and Retail Sales Fees. Once the City collects the delinquent sales tax, if any fees remain uncollected the City will provide documentation to the boards stating the fees still due so that the boards may continue to pursue their own enforcement as outlined in Section 2.03(f) of the First Amended and Restated Collection Agreement.

RESOLUTION #R-75-2011

**A RESOLUTION
APPROVING THE FIRST AMENDED AND RESTATED COLLECTION
AGREEMENT FOR THE CITY OF LOVELAND TO COLLECT PUBLIC
IMPROVEMENT FEE REVENUES AND RETAIL SALES FEE REVENUES IN
THE CENTERRA RETAIL DEVELOPMENT**

WHEREAS, on January 20, 2004, the City Council approved the Centerra Master Financing and Intergovernmental Agreement (the “MFA”); and

WHEREAS, the MFA authorized a public improvement fee (“PIF”) to be charged on retail sales made in the Centerra Development; and

WHEREAS, subsequently, covenants imposing and implementing the PIF, as well as a Centerra retail sales fee (the “Centerra RSF”) and a Lifestyle Center retail sales fee (“Lifestyle RSF”) were finalized and recorded; and

WHEREAS, pursuant to the respective covenants, the Centerra Public Improvement Collection Corporation (with respect to the PIF), the Centerra RSF Corporation (with respect to the Centerra RSF) and G&I VI Retail Prom, LLC (as the owner of the Lifestyle Center and successor in interest with respect to the Lifestyle RSF) are entitled to receipt of these respective revenues; and

WHEREAS, on September 7, 2004, the Loveland City Council adopted Resolution #R-79-2004 to approve a Collection Agreement, dated September 1, 2004 (the “Collection Agreement”), pursuant to which the City collects the Lifestyle RSF, Centerra RSF, and PIF, remits the revenues to the respective recipients, and is compensated for this service; and

WHEREAS, the Collection Agreement has been amended by that certain First Amendment approved by the City Council’s adoption of Resolution #R-27-2008 on March 18, 2008 (the Collection Agreement and the First Amendment are referred to collectively as the “Collection Agreement”); and

WHEREAS, the parties desire to further amend and restate the Collection Agreement in its entirety as more fully set forth in that certain First Amended and Restated Collection Agreement dated as of November 1, 2011 attached hereto as **Exhibit A** attached hereto and incorporated herein by this reference (the “First Amended and Restated Collection Agreement”).

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

Section 1: That the First Amended and Restated Collection Agreement attached hereto as **Exhibit A** is hereby approved.

Section 2. That the City Manager is authorized, following consultation with the City Attorney, to modify the First Amended and Restated Collection 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 First Amended and Restated Collection 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.

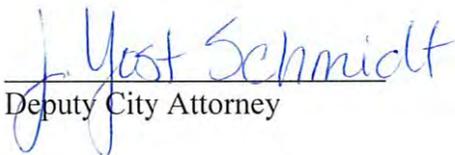
ADOPTED this 15th day of November, 2011

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

FIRST AMENDED AND RESTATED
COLLECTION AGREEMENT
DATED AND EFFECTIVE AS OF JANUARY 1, 2012
RELATING TO PIF REVENUES AND RSF REVENUES
IN THE CENTERRA RETAIL DEVELOPMENT

THIS FIRST AMENDED AND RESTATED COLLECTION AGREEMENT dated as of November 1, 2011, is entered into by and among **CENTERRA METROPOLITAN DISTRICT NO. 1** (the “**Service District**”), a special district formed pursuant to Colorado Revised Statutes §32-1-101 *et seq.*, the **CITY OF LOVELAND, COLORADO** (the “**City**”), a municipal corporation and political subdivision duly organized and existing as a home rule city under the provisions of Article XX of the Constitution and the laws of the State of Colorado and the home rule Charter of the City, Centerra Public Improvement Collection Corporation, a Colorado nonprofit corporation (the “**PIC**”), **G&I VI RETAIL PROM, LLC**, a Delaware limited liability company (“**Retail Prom**”), and the Centerra Retail Sales Fee Corporation, a Colorado nonprofit corporation (“**Centerra RSF Corp.**”).

All capitalized terms used herein, unless otherwise defined herein, will have the meanings ascribed to them in **Exhibit A** attached to this Collection Agreement, or if not otherwise defined herein, as set forth in the Indenture.

BACKGROUND

A. Centerra Properties West, LLC, a Colorado limited liability company; the City of Loveland, Colorado, a Colorado municipal corporation; the Loveland Urban Renewal Authority, a body corporate and politic; the Service District; the PIC; and The Centerra Public Improvement Development Corporation, a Colorado non-profit corporation are parties to that certain Centerra Master Financing and Intergovernmental Agreement dated as of January 20, 2004 (the “**MFA**”, and sometimes referred to as the “**MF&I Agreement**”) concerning the development of certain real property generally known as “Centerra” (the “**Development**” or “**Centerra**”) and located in Loveland, Colorado, and pertaining to, among other matters, the imposition and collection of a Public Improvement Fee. Pursuant to the MFA, the PIC is responsible for the collection and disbursement of the Public Improvement Fee.

B. Reference is made to the following documents recorded as indicated, in the real property records of Larimer County, Colorado: (i) Declaration of Covenants Imposing and Implementing the Centerra Public Improvement Fee (together with the amendments described herein and any subsequent amendments, the “**PIF Covenant**”) recorded in the Larimer County Clerk and Recorder’s Office on July 6, 2004 at Reception No. 2004-0067081; (ii) First Amendment to the PIF Covenant, recorded in the Larimer County Clerk and Recorder’s Office on February 12, 2009 at Reception No. 20090008199 (the “**First PIF Amendment**”); (iii) Minor Modification to the First PIF Amendment, recorded in the Larimer County Clerk and Recorder’s Office on February 12, 2009 at Reception No. 20090008201 (the “**Minor Modification**”) (the property encumbered by the PIF Covenant, the First PIF Amendment, and the Minor Modification is more particularly described on **Exhibit B** hereto, the “**PIF Property**”), which PIF Covenant concerns the collection of a Public Improvement Fee or PIF (defined herein); (iv) Declaration of Covenants Imposing and Implementing the Centerra Retail Sales Fee (together with the amendments described herein and any subsequent amendments, the “**Centerra RSF Covenant**”) recorded in the Larimer County Clerk and Recorder’s Office on July 6, 2004 at Reception No. 2004-0067082; (v) First Amendment to Centerra RSF Covenant, recorded in the Larimer County Clerk and Recorder’s Office on December 23, 2005 at Reception No. 2005-

0109627 (the “**First Centerra RSF Amendment**”); (vi) Second Amendment to Centerra RSF Covenant, recorded in the Larimer County Clerk and Recorder’s Office on March 6, 2008 at Reception No. 20080014232 (the “**Second Centerra RSF Amendment**”) (the property encumbered by the Centerra RSF Covenant, the First Centerra RSF Amendment, and the Second Centerra RSF Amendment is more particularly described on **Exhibit C** hereto, the “**Centerra RSF Property**”), which Centerra RSF Covenant concerns the collection of a Retail Sales Fee or Centerra RSF (defined herein); and (vii) Declaration of Covenants Imposing and Implementing the Lifestyle Retail Sales Fee (the “**Lifestyle RSF Covenant**”), recorded in the Larimer County Clerk and Recorder’s Office on August 27, 2004 at Reception No. 2004-0084619 (the property encumbered by the Lifestyle RSF Covenant is more particularly described on **Exhibit D** hereto, the “**Lifestyle RSF Property**”), which Lifestyle RSF Covenant concerns the collection of a Retail Sales Fee or Lifestyle RSF (defined herein). The above-described covenants, together with all amendments thereto, are referred to collectively herein as the “**Covenants**.”

C. Pursuant to the Covenants, the PIC (with respect to the Public Improvement Fee), Centerra RSF Corp. (with respect to the Centerra RSF) and Retail Prom (with respect to the Lifestyle RSF) are authorized to contract with a third-party, including but not limited to the City, to serve as “Designated Receiving Entity” thereunder and provide for the collection of the PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues, respectively.

D. The Service District is a Title 32 special district organized pursuant to the laws of the State of Colorado in order to construct, provide, operate and maintain certain public improvements and other services for itself and Centerra Metropolitan District Nos. 2, 3 and 4 (collectively, the “**Districts**”) in accordance with a Consolidated Service Plan, as amended, including, without limitation, streets and other roadway improvements, public parking facilities, water and drainage facilities, traffic controls, television relay, mosquito control, fire protection, park and recreation facilities, and other improvements necessary for Centerra (the “**Projects**”).

E. The Service District, as contemplated by the MFA, has previously issued District Bonds secured by certain revenues, including PIF Revenues, and plans to issue additional District Bonds in the future secured on a basis on parity with or subordinate to the District Bonds outstanding as of the effective date of this Agreement.

F. The Declarants under the Covenants have entered into Assignments of Revenues by Declarants (the “**Assignments**”), pursuant to which the Declarants have irrevocably assigned all their rights, if any, in and to the PIF Revenues, the Centerra RSF Revenues and the Lifestyle RSF Revenues to the PIC, the Centerra RSF Corp. and Retail Prom (as a successor in interest), respectively.

G. McWhinney Centerra Lifestyle Center LLC, a Delaware limited liability company, was an original party to the Collection Agreement, described in Recital L, below. McWhinney Centerra Lifestyle Center LLC subsequently designated Centerra Lifestyle LLC, a Delaware limited liability company (“Centerra Lifestyle LLC”) as the “Primary Recipient” under the Lifestyle Covenant and assigned all of its right, title and interest in and to the Lifestyle RSF pursuant to that certain Designation of Primary RSF Recipient and Assignment of RSF Revenues dated October 22, 2004. Such interest was subsequently acquired by CLC REO, LLC, a

Delaware limited liability company (“CLC REO”) pursuant to a Uniform Commercial Code public sale conducted on July 26, 2010, and transferred by CLC REO to G&I VI Promenade, LLC, a Delaware limited liability company pursuant to that certain Designation of Primary RSF Recipient and Assignment of RSF Revenues dated and effective December 17, 2010, and by G&I VI Promenade, LLC to Retail Prom pursuant to that certain Designation of Primary Recipient and Assignment of RSF Revenues dated and effective February 1, 2011.

H. Pursuant to the District Bond Documents, and as required by the MFA, the PIC has pledged and granted a lien and security interest in, and (subject to certain exceptions) all of its rights and interest in the PIF Revenues to holders of the District Bonds and certain swap providers.

I. It is clearly intended and understood by the parties hereto that (i) the nature of the PIF and the RSF is that of fees imposed for the benefit of the parties entitled thereto under private contract and not through the exercise of any City taxing authority, (ii) neither the PIF Revenues nor the RSF Revenues are tax revenues in any form, (iii) the PIF Revenues and the RSF Revenues are the property of the parties described in the related Covenant or assignees, designees, or successors thereof, (iv) the authority of the City, as “Designated Receiving Entity” under the PIF Covenant and RSF Covenants, to receive the PIF Revenues and the RSF Revenues is derived through this Collection Agreement, the Covenants, as applicable, and the Leases and (v) pursuant to the Covenants, each Centerra Retailer is required to execute a Waiver of Confidentiality with respect to (a) information contained in the reports submitted to the Designated Receiving Entity (initially, the City) by such Centerra Retailers and (b) their books and records related thereto.

J. Notwithstanding anything to the contrary herein or any other document related to the Projects and any other public improvements related to the Development, the parties hereto acknowledge and agree that, except as such entities may be entitled to such revenues in accordance with the Covenants or any contractual assignment of revenues related thereto, (i) the Declarants under the Covenants have no dominion or control over the PIF Revenues or the RSF Revenues, (ii) to the extent any PIF Revenue or RSF Revenue is collected by a Declarant, such Declarant is acting solely as an agent for and on behalf of the parties hereto entitled to such PIF Revenue or RSF Revenue, respectively, (iii) the PIF and the RSF are fees imposed on the Centerra Retailers to finance costs permitted by the PIF Covenant and RSF Covenants, respectively.

K. THE DISTRICT BONDS DO NOT CONSTITUTE OBLIGATIONS, DEBT OR INDEBTEDNESS OR MULTIPLE FISCAL YEAR OBLIGATIONS OF THE CITY AND DO NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE CITY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NEITHER THE CITY NOR THE DECLARANTS UNDER THE COVENANTS NOR ANY OF THEIR AFFILIATES HAS ANY OBLIGATION WHATSOEVER TO PAY THE PRINCIPAL OF AND/OR INTEREST ON THE DISTRICT BONDS.

L. This First Amended and Restated Collection Agreement is intended to supersede, in all respects, that certain Collection Agreement among the parties dated as of September 1, 2004 and the First Amendment to Collection Agreement dated March 19, 2008.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the City, the Service District, the PIC, Retail Prom and Centerra RSF Corp. agree as follows:

ARTICLE 1 NATURE, IMPOSITION, REDUCTION AND TERMINATION OF FEES

Section1.01 Nature and Imposition of the Fees Generally.

(a) The Lifestyle RSF, the Centerra RSF and the PIF are not taxes in any form and any rights therein are the result of contractual agreement only, including but not limited to the PIF Covenant and the RSF Covenants, as applicable, and not the exercise of the taxing power of any governmental entity, including the City.

(b) The Lifestyle RSF, the Centerra RSF and the PIF shall be imposed upon and collected from each Centerra Retailer and become due and payable as provided in the applicable Covenants, the Leases, and this Collection Agreement.

(c) PIF and RSF shall be calculated and imposed on all PIF Sales and RSF Sales, respectively, at the rates stated in the applicable Covenant, respectively, prior to the calculation and assessment of any Sales Tax, and before any other State, county, municipal or other sales taxes required to be imposed by law. All Sales Tax and sales taxes of other taxing entities shall be calculated and assessed on the sum of the sales price plus the amount of the PIF and the applicable RSF.

Section1.02 Calculation of, Adjustments to, and Termination of PIF

(a) Notification of Changes to Sales Tax Credit and Calculation of PIF. Pursuant to the terms of the PIF Covenant, the PIF shall be determined by multiplying the amount of each PIF Sale by 1.25%; provided however that such rate may be reduced upon written notice thereof by the PIC, subject to consent of the City and subject to the District Bond Documents. The PIC shall be responsible for providing notice of any reduction or termination of the PIF, in addition to the Sales Tax Credit, to Centerra Retailers in accordance with the provisions of the PIF Covenant and the District Bond Documents, and shall cause such notice to be recorded in the real property records of Larimer County, Colorado.

(b) Adjustments to PIF Sales.

(i) Pursuant to the terms of the PIF Covenant, PIF Sales shall exclude any sales transactions specified by the PIC, with the consent of the City, as exempt from the

Public Improvement Fee from time to time, subject to the provisions of the District Bond Documents.

(ii) Pursuant to the terms of the PIF Covenant, any proposed exclusion from PIF Sales must be approved by the PIC and the City, and, for so long as the District Bonds are outstanding, must comply with the District Bond Documents. Upon approval by the PIC and the City of an exclusion from PIF Sales, not later than 30 days prior to the effective date of the approved exclusion from PIF Sales (which date shall be determined by the PIC), the PIC shall provide notice thereof to all Centerra Retailers, Retail Prom, Centerra RSF Corp., and the City, and shall cause such notice to be recorded in the real property records of Larimer County, Colorado.

Section 1.03 Calculation, Reduction and Termination of RSF.

(a) Imposition, Reduction and Termination of RSF. Pursuant to the terms of the Lifestyle RSF Covenant and the Centerra RSF Covenant, the Lifestyle RSF and the Centerra RSF each shall be determined by multiplying the amount of each Lifestyle or Centerra RSF Sale, respectively, by 1.00%; provided however that such rate may be reduced, or the imposition of the RSF may be terminated, upon written notice thereof by Retail Prom or by Centerra RSF Corp., respectively. Retail Prom and Centerra RSF Corp. hereby agree to provide written notice of any planned reduction, subsequent increase (up to 1.00%) or termination of the Lifestyle RSF or Centerra RSF, respectively, to the City and each affected Centerra Retailer no later than 30 days prior to the effective date of such reduction, increase, or termination. Retail Prom and Centerra RSF Corp. hereby acknowledge that failure to do so will result in the inability of the City to implement such reduction, increase or termination in accordance with the terms hereof, and agree that the City will not be held responsible for any loss of revenues or other adverse effects of such failure. To the extent required by the Lifestyle RSF Covenant or the Centerra RSF Covenant, as applicable, Retail Prom and Centerra RSF Corp. shall cause notice of any such reduction, increase or termination to be recorded in the real property records of Larimer County, Colorado.

(b) Exclusions from RSF Sales. Pursuant to the terms of the Lifestyle RSF Covenant and the Centerra RSF Covenant, transactions may be excluded from Lifestyle RSF Sales or Centerra RSF Sales upon notice of the Retail Prom or Centerra RSF Corp., respectively. Notwithstanding the foregoing, in order to facilitate efficient and effective collection and enforcement procedures, as provided herein, the parties acknowledge their desire, where possible, to cause PIF Sales, Centerra RSF Sales and Lifestyle RSF Sales to be identical at all times, except with respect to the exclusion from Centerra and Lifestyle RSF Sales of automobile sales. Neither Retail Prom nor Centerra RSF Corp. shall cause or permit exclusions to be made from Lifestyle RSF Sales or Centerra RSF Sales other than in accordance with the provisions hereof and in accordance with the provisions of the Lifestyle RSF Covenant and Centerra RSF Covenant, respectively.

Section 1.04 Survival of Agreements Among Certain Parties. Unless expressly provided in writing and consented to by the Trustee (if required by the District Bond Documents so long as

any District Bonds remain outstanding), the PIC, the Retail Prom, and the Centerra RSF Corp., the provisions of this Article 1 shall survive the termination of the City's obligation to receive and remit all or any portion of the Revenues pursuant to this Collection Agreement and, in the event of such termination or appointment of a successor collection entity or otherwise, references in this Article 1 to the City shall be deemed to refer to any successor collection entity charged with receiving the Revenues.

ARTICLE 2 COLLECTION PROCEDURES

Section 2.01 Appointment of City as PIF and RSF Designated Receiving Entity.

(a) The City is hereby appointed as the initial Designated Receiving Entity under the Covenants by: (i) the PIC and the Service District, each as a beneficiary of a portion of the PIF Revenues; (ii) Retail Prom, as a beneficiary of the Lifestyle RSF Revenues; and (iii) Centerra RSF Corp. as a beneficiary of the Centerra RSF Revenues. The City is appointed as the initial Designated Receiving Entity under the Covenants for the purpose of receiving all Revenues from all Centerra Retailers. By the execution of this Collection Agreement, the City accepts the responsibility of receiving the Revenues remitted to the City by the Centerra Retailers and depositing the same in accordance with the provisions hereof. **THE CITY IS NOT THE AGENT OF ANY PARTY TO THIS COLLECTION AGREEMENT AND HAS ONLY THOSE RESPONSIBILITIES EXPRESSLY STATED HEREIN. THE OBLIGATIONS OF THE CITY UNDER THIS COLLECTION AGREEMENT SHALL NOT CONSTITUTE A MULTIPLE FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION WHATSOEVER OF THE CITY AND THE PAYMENTS OF ANY COSTS OF THE CITY INCURRED OR TO BE INCURRED IN PERFORMING ITS OBLIGATIONS HEREUNDER SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE CITY COUNCIL.**

(b) The City's obligations with respect to collection of the Revenues hereunder may be terminated, or the City may resign from such position, in accordance with the provisions of Section 3.03 hereof.

Section 2.02 Provision of Information to Centerra Retailers.

(a) The City shall prepare, in consultation with the PIC, Centerra RSF Corp., and Retail Prom, two Information Booklets: one for use by Centerra Retailers operating in the Centerra RSF Property (the "**Centerra Information Booklet**"), and one for use by Centerra Retailers operating in the Lifestyle RSF Property (the "**Lifestyle Information Booklet**"). These booklets shall be made available in electronic form on the City's website. The City shall provide each Centerra Retailer notice of the location at which an electronic copy of the applicable Information Booklet regarding the imposition of the PIF and the RSF and collection of the Revenues, consistent with the provisions of this Collection Agreement, is available prior to the "soft opening" of a Centerra Retailer's store of which the City has been notified and at such times as changes have been made to the applicable Information Booklet

(b) In addition, the City shall provide Centerra Retailers with appropriate supplies of the reporting forms attached as **Exhibit E** hereto, as applicable, as well as procedures and other instructions concerning the collection and remittance of Revenues, developed in consultation with the PIC, Centerra RSF Corp. and Retail Prom.

(c) The costs of preparation of the Information Booklet, reporting forms, procedures and other instructions shall be paid as set forth in Section 2.08.

(d) In the event that the City proposes to change such Information Booklet, reporting forms, procedures or other instructions, such changes shall be submitted to the PIC, Centerra RSF Corp., and Retail Prom and, following the prior written approval of the PIC, Centerra RSF Corp. and Retail Prom (which approval shall not be unreasonably withheld), shall be distributed to all Centerra Retailers no less than 45 days prior to the implementation thereof.

(e) Without limiting the generality of the foregoing, the City shall notify Centerra Retailers of any procedures that the Centerra Retailers should follow with respect to notifying customers concerning the PIF or RSF, as such procedures are developed by the City in consultation with the PIC, Centerra RSF Corp. and Retail Prom, consistent with the provisions of this Collection Agreement, and so as to comply with all applicable laws and reasonable business practices.

(f) For purposes of determining the Centerra Retailers to receive information and notices from the City in accordance with the provision hereof, the City shall rely on the information received by it in connection with Centerra Retailers' application for Sales Tax licenses, information acquired from business establishment visits and any other auditing function required to be performed by the City pursuant to Section 2.06 hereof, information received by the City in response to requests made pursuant to Section 2.07(d) hereof, and any information provided to the City by the parties hereto.

Section 2.03 Collection of Revenues.

(a) The City agrees that, in order to facilitate the collection, reporting and auditing procedures required herein, it shall cause the computer software used in the City's collection of its Sales Tax to geographically code Centerra Retailers as within the Centerra RSF Area or the Lifestyle RSF Area.

(b) Not later than the 20th day of the first month following the end of each Collection Month (as evidenced by postmark), Centerra Retailers shall remit collected Revenues for the preceding Collection Month to the City by means of a check or wire transfer payable to: (i) the PIC, in the case of PIF Revenues; (ii) Centerra RSF Corp., in the case of Centerra RSF Revenues; and (iii) Retail Prom, in the case of Lifestyle RSF Revenues, together with the appropriate reporting forms substantially similar to those set forth in **Exhibit E** hereto, as the same may be modified from time to time, in accordance with procedures to be provided by the City to the Centerra Retailers consistent with Section 2.03 hereof. Upon receipt thereof, such Revenues shall be remitted by the City in accordance with Section 2.04 hereof. Such reporting

forms shall be retained on file with the City pursuant to the City's then existing record retention policy and made available to the Report Recipients for the related Revenues in accordance with Section 2.03(c) hereof. Such Revenues shall be payable by Centerra Retailers and collected by the City monthly regardless of the frequency of any such Centerra Retailers' payment of City Sales Tax.

(c) The City also shall receive from the Centerra Retailers, on or before the 20th day of the month following the close of each Collection Month (as evidenced by postmark), such reports, returns and other documents as are delivered by Centerra Retailers pursuant to the terms of the PIF Covenant, the RSF Covenants and the Leases, which shall include the reports provided by such Centerra Retailer to the City in connection with the remittance of City sales taxes for such Collection Month, and any other documentation required pursuant to the terms of the PIF Covenant, the RSF Covenants and the Leases. Upon reasonable request of any Report Recipient (other than those described in subparagraphs (iii) and (iv) of the definition thereof), the City shall make copies of such reports, returns and other documents it receives available to the requesting party at the expense of such party.

(d) Not later than the 5th day (or the next succeeding Business Day) of the second month following the close of a Collection Month, the City shall send a First Delinquency Notice (subject to subparagraph (e) hereof) to any Centerra Retailer failing to remit PIF Revenues or RSF Revenues during the preceding month and any Centerra Retailer which has remitted what the City believes (which belief may be based solely upon the City's comparison of such Centerra Retailer's sales report to its remittance) to be an incorrect amount of PIF Revenues or RSF Revenues during the preceding month. The City shall prepare and send separate First Delinquency Notices with respect to delinquent PIF Revenues, delinquent Lifestyle RSF Revenues, and delinquent Centerra RSF Revenues, which Notices shall be substantially similar to the forms set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall send copies of all such First Delinquency Notices to the Report Recipients (other than, those described in subparagraphs (iii) and (iv) of the definition thereof) for the related Revenues.

(e) Not later than the 25th day (or the next succeeding Business Day) of the second month following the close of a Collection Month, the City shall send a Second Delinquency Notice to any Centerra Retailer which has failed to pay any PIF Revenues or RSF Revenues due and noticed in a previously distributed First Delinquency Notice. The City shall prepare and send separate Second Delinquency Notices with respect to delinquent PIF Revenues, delinquent Lifestyle RSF Revenues, and delinquent Centerra RSF Revenues, which Notices shall be substantially similar to the forms set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall send copies of all such Second Delinquency Notices to: (i) the PIC, the Trustee, the Service District, and the Centerra Owners, if relating to delinquent PIF Revenues; (ii) Centerra RSF Corp. and the Centerra Owners, if relating to Centerra RSF; and (iii) the Retail Prom and the Centerra Owners, if relating to delinquent Lifestyle RSF Revenues.

(f) Subject to the provisions of this subparagraph (f), the City shall continue its collection efforts, following the sending of the Second Delinquency Notice, in the same manner

in which the City attempts to collect delinquent Sales Tax. Once the City collects any delinquent Sales Tax from a Centerra Retailer, the City will cease its efforts to collect delinquent PIF or RSF Revenues from such Centerra Retailer, and will turn over all relevant information with regard to the delinquent PIF Revenues or RSF Revenues to the PIC, Centerra RSF Corp., or Retail Prom, as applicable. If a Centerra Retailer who has received First and Second Delinquency Notices relating to PIF Revenues or RSF Revenues due in a particular month is still delinquent following receipt of a Second Delinquency Notice, default interest shall automatically accrue on the PIF Revenues or RSF Revenues, as applicable, as set forth in the Second Delinquency Notice, and will continue to accrue until all delinquent PIF Revenues or RSF Revenues, together with interest and late charges are paid in full.

(g) In addition to the notices described above, the City shall, if requested by a Centerra Owner, the PIC, the Service District, the Trustee, Centerra RSF Corp. or Retail Prom, send a written notice to any Centerra Retailer that such requesting entity believes has not fully complied with its obligations with respect to the PIF or the RSF, specifying the nature and extent of such Centerra Retailer's non-compliance and requesting that such Centerra Retailer remedy its non-compliance. The entity requesting such notice shall provide the City with information sufficient to enable the City to prepare and send any such notices. The City shall also provide such notice to a Centerra Retailer if the City has actual knowledge of a violation of the PIF Covenant or RSF Covenants or guidelines and procedures related thereto, including information obtained as a result of City visits to the business establishments as required by Section 2.06(g) hereof. Such notices shall be in a form substantially similar to the form set forth in **Exhibit G** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. The City and any requesting party shall provide a copy of all such communications to the Report Recipients.

(h) It is the intent of the parties hereto that all adjustments, including but not limited to refunds, additions, or other modifications to PIF Revenues or RSF Revenues due from the Centerra Retailers, shall be processed in a manner substantially similar to the process used and required by the City for any appropriate adjustments to Sales Tax. If any subsequent adjustments, additions, or modifications are made to any PIF Revenues or RSF Revenues remitted or paid, or report made, by a Centerra Retailer to the City, that Centerra Retailer shall provide the City with true and complete copies of all revised reports or other written material issued or received by a Centerra Retailer in regard thereto. If any such adjustment increases the amount of PIF Revenues or RSF Revenues which the Centerra Retailer is required to remit or pay, or results in a refund of a PIF Revenues or RSF Revenues overpayment, the Centerra Retailer shall immediately pay such additional PIF Revenues or RSF Revenues in the amount due, or shall receive an appropriate credit against the next PIF Revenues or RSF Revenues due from that Centerra Retailer in the amount of such PIF Revenues or RSF Revenues overpayment. The Centerra Retailer shall claim such credits and/or pay such additional PIF Revenues or RSF Revenues in the next monthly reporting period by use of the standard reporting and remittance forms. All reports made or provided by Centerra Retailers shall be maintained by the respective Centerra Retailers for at least three years from the date of submission thereof to the City and, upon written request, shall be made available to the Report Recipients (other than those described in subparagraphs (iii) and (iv) of the definition thereof).

Section 2.04 Remittance of Revenues by the City. PIF Revenues and RSF Revenues received by the City, in the form of checks or wire transfers payable to the PIC, Centerra RSF Corp. or Retail Prom, shall be disbursed, without deduction for collection costs, by the end of business on the next business day following receipt thereof by the City, as follows:

(a) Checks or wire transfers representing PIF Revenues payable to the PIC shall be deposited by the City into an account of a Loveland, Colorado bank designated by the PIC, in accordance with the District Bond Documents, for so long as the District Bonds are outstanding. The funds in such account shall be applied as described in the applicable District Bond Documents.

(b) Checks or wire transfers representing Centerra RSF Revenues payable to Centerra RSF Corp. shall be deposited by the City into an account of a Loveland, Colorado bank designated by Centerra RSF Corp, the funds in which account shall be under the control of the Centerra RSF Corp..

(c) Checks or wire transfers representing Lifestyle RSF Revenues payable to Retail Prom shall be deposited by the City into an account of a Loveland, Colorado bank designated by, Retail Prom, the funds in which account shall be under the control of Retail Prom.

The PIC, Centerra RSF Corp. and Retail Prom shall cooperate with the City to facilitate such deposits in an efficient manner.

The PIC, Centerra RSF Corp. and Retail Prom may each change the Loveland, Colorado bank to receive the PIF Revenues, Centerra RSF Revenues or Lifestyle RSF Revenues, respectively, in accordance with the foregoing provisions upon 30 days prior written notice to the City. The City shall not be responsible for the payment of fees owing to any such bank receiving PIF Revenues, Centerra RSF Revenues or Lifestyle RSF Revenues.

The PIC, Centerra RSF Corp. and Retail Prom are entitled to receive the PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues, respectively, and apply the same to any lawful purpose as each, in its sole discretion, may determine, subject to the restrictions on use set forth in the applicable Covenants and, with respect to the PIF Revenues, the MFA and the District Bond Documents.

Section 2.05. Enforcement

(a) Upon receipt of any First Delinquency Notice from the City, the PIC (if relating to delinquent PIF Revenues), Centerra RSF Corp. (if relating to delinquent Centerra RSF Revenues), or Retail Prom (if relating to Lifestyle RSF Revenues) shall take all commercially reasonable action necessary to effect a direct cause of action and exercise its full right and authority to enforce the available remedies with respect to a breach by a Centerra Retailer of its obligations imposed by the applicable Covenant, including, if such party deems it appropriate to do so, exercising their rights under the applicable Covenant to require assistance from the Centerra Owner having a Lease with a Centerra Retailer who is the subject of such a Notice. Any such party shall take commercially reasonable efforts to complete collection of delinquent

Revenues, reports, returns and other documents not later than the end of the 5th month following the Collection Month. In the event that any party obligated to do so hereunder fails to diligently pursue legal action to collect delinquent Revenues, the Enforcing Parties with respect to the related delinquent Revenues are authorized to pursue such action. Notwithstanding any of the foregoing, the City has no obligation to pursue such action.

(b) In the event that any party hereto other than the City receives or otherwise possesses any Revenues, including any penalties related thereto (except as a result of an authorized disbursement from the City in accordance with the terms hereof), inadvertently, through efforts to collect delinquent Revenues, the parties hereto hereby agree that each shall hold such funds in trust as an agent for the parties entitled thereto hereunder and under the Covenants, Assignments and District Bond Documents and shall remit to the City, immediately and without demand, all such sums so received or otherwise in its possession, after deduction of any reasonable costs incurred in connection therewith, together with a statement indicating the Centerra Retailer and Collection Month to which such amounts relate and any collection costs deducted. The City shall remit the same to the parties entitled thereto in accordance with Section 2.04 hereof. To the extent that any party hereto does not deduct from such remittance its reasonable costs associated with collecting delinquent Revenues, such party may submit a statement for such amounts as Collection Costs as follows: (i) if related solely to the Lifestyle RSF Revenues, to Retail Prom ; (ii) if related solely to the collection of delinquent Centerra RSF Revenues, to Centerra RSF Corp.; (iii) if related solely to the collection of delinquent PIF Revenues, to the PIC, or entity designated by the PIC (which may include the Trustee); and (iv) if related to the collection of both delinquent RSF Revenues and delinquent PIF Revenues, such Collection Costs shall be divided in half and submitted to the PIC (or entity designated by the PIC) and to the Retail Prom or Centerra RSF Corp., as applicable. Any Collection Costs to be paid by the Service District hereunder shall be payable solely to the extent moneys are available therefore pursuant to the terms of the District Bond Documents.

Section 2.06 Reporting and Auditing.

(a) Subject to subparagraph (c) hereof, the City shall prepare and deliver to the Report Recipients for the related Revenues, on or as soon as practicable after the 15th day of the second calendar month following the close of a Collection Month, a report (i) describing the amount of Reported Taxed Sales and the amount of Sales reported by each Centerra Retailer and the amount of Revenues received by the City from each Centerra Retailer since the date of the immediately preceding report, and (ii) describing the amount of Revenues received by the City since the date of the last report representing delinquent Revenues (including any penalties related thereto) and the Centerra Retailers and Collection Month(s) to which such delinquent Revenues (and penalties, if any) are attributable. The reports described herein shall be separate with respect to PIF Revenues, Centerra RSF Revenues and Lifestyle RSF Revenues and shall be substantially similar to the forms set forth in **Exhibit H** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

(b) At reasonable times during regular business hours, the Report Recipients are hereby authorized to audit or cause audits to be conducted of the City's books and records with

respect to the City's receipt of the Revenues. If an audit uncovers a deficiency in deposits of Revenues which parties are entitled to in accordance with the terms hereof, and such deficiency results from misapplication of moneys by the City as a direct result of the City's willful and wanton conduct or gross negligence, the City shall pay within 60 days of notice of such misapplication the full amount of such misapplication to the party so entitled and, in the event such amount is not paid within such 60 day period, interest thereon shall accrue from the 60th day after such notice until paid, (subject to appropriation by the City Council), the rate of such interest to be equal to ½ of the prime rate published in the Wall Street Journal on the date of notice of such deficiency to the City (not to exceed 10%).

(c) The City shall not be obligated to provide any information or reports described in this Collection Agreement with respect to any particular Centerra Retailer until such time as the City has received with respect to such Centerra Retailer a fully-executed waiver in a form substantially similar to the forms set forth in **Exhibit I** hereto. Any reports or data concerning PIF Sales, RSF Sales, PIF Revenues, RSF Revenues or Reported Taxed Sales received by the Report Recipients will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting Revenues due, enforcing Centerra Retailers' obligations under the PIF Covenant, the RSF Covenants, or their respective Leases and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to Dissemination Agents or Centerra Investors (defined below), and except for such disclosures or publications as may be required by applicable laws. Any information concerning Sales, Revenues or Reported Taxed Sales of Centerra Retailers to be provided hereunder to any Dissemination Agent or any Centerra Investor (as defined in subparagraph (d) hereof) shall be provided on an aggregated basis only with other Centerra Retailers in the same retail Center within Centerra or with all Centerra Retailers, without information specific to any particular Centerra Retailer.

(d) Subject to subparagraph (c) hereof, the City shall also provide any information which would otherwise, pursuant to the provisions of this Collection Agreement, be required to be provided to a Dissemination Agent, to any investor or potential investor in Centerra and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of Centerra (referred to herein as a "**Centerra Investor**"), upon reasonable request therefore by a Centerra Owner, the PIC, Retail Prom or Centerra RSF Corp..

(e) Upon reasonable request, the City agrees to provide the data to be provided in reports described in this Section 2.06 in electronic form to the extent reasonably available.

(f) The City shall visit the business establishments of all Centerra Retailers on a quarterly basis during the first year of operation to ensure compliance with guidelines and procedures relating to the PIF Revenues and RSF Revenues, including but not limited to customer notification of the PIF and RSF. If said establishment is in compliance for four consecutive quarters, the City will visit the establishment once in the subsequent year. In the event that an item of noncompliance is discovered, the City shall provide notice thereof in accordance with Section 2.03(g) hereof, and shall revisit such business establishment within 30 days to determine if such noncompliance has been corrected. The City will visit said

establishment for four consecutive quarters to assure continued compliance. If the noncompliance has not been corrected by such return visit, the City shall continue to revisit such business establishments quarterly and, if necessary, send additional notices of noncompliance, until such noncompliance is corrected. Non-compliance may also result in remedies stipulated in the Centerra Public Improvement Fee Covenants, the Centerra Retail Sales Fee Covenants and any applicable lease and/or sales instruments. The City shall provide a written report to the Report Recipients in a form substantially similar to the forms set forth in **Exhibit G** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom, together with a copy of any such noncompliance notice sent to any Centerra Retailer, in the event that any noncompliance is discovered in any such visit. The PIC, Centerra RSF Corp. and Retail Prom shall, if requested by the City, assist in bringing Centerra Retailers into compliance with such guidelines and procedures.

(g) The City shall investigate each Centerra Retailer to ensure accurate collection and remittance of the PIF Revenues and RSF Revenues according to the following two-phased process:

1. Discovery. The City shall conduct discovery on twenty (20) Centerra Retailers annually. The Centerra Retailers to be subjected to the discovery process shall be selected by the PIC (six (6) total Centerra Retailers of which three (3) shall be located within the Centerra RSF Property and three (3) shall be located within the Lifestyle RSF Property), the Centerra RSF Corp. (seven (7) Centerra Retailers), and Retail Prom (seven (7) Centerra Retailers), and a list of such Centerra Retailers shall be provided to the City not later than November 30 of the year preceding the year in which the discovery is to be conducted. Discovery will consist of comparing reported sales to actual sales for the period that would be subject to audit, reviewing a reasonable sample of daily register transactions for inconsistencies in non-taxable and tax-exempt transactions. If the City does not find material discrepancies, the investigation will end at discovery. If, in doing so, the City determines that delinquent Revenues exist, City shall follow the procedures set forth in Section 2.03(e) hereof. The City shall provide a written report, no later than 30 days after the end of each calendar year to the Report Recipients indicating the identities of the Centerra Retailers subjected to discovery in the preceding calendar year and the results of any discovery indicating that a Centerra Retailer had underpaid PIF Revenues or RSF Revenues (provided that Dissemination Agents and Centerra Investors shall receive only aggregated information as described in subparagraph (c) above).
2. Audit. If the City determines, during the discovery process, that discrepancies exist with a particular Centerra Retailer's compliance with the collection of Revenues described herein, the City shall initiate phase 2 of the investigation, as described in this subparagraph 2.06(g)(2). The City will conduct up to five (5) audits per year of Centerra Retailers. The Centerra Retailers selected for audit shall be first recommended to the PIC, the Centerra RSF Corp., and Retail Prom by the City, based on the results of the City's discovery process.

Following such recommendation, the City, the PIC, the Centerra RSF Corp., and Retail Prom shall collectively agree on which Centerra Retailers are to be audited each year while this Agreement shall remain in effect. In the event that such parties fail to agree on the list of Centerra Retailers to be audited, the PIC, Centerra RSF Corp., and Retail Prom shall each be allowed to select one (1) Centerra Retailer for audit and the City shall be allowed to select two (2) Centerra Retailers for audit. As a part of such audit, the City shall compare the Reported Taxed Sales indicated on reports received by the City to PIF Sales and RSF Sales reported to the City and investigate any discrepancies in the reported amounts. Additional audits, over and above the five (5) annual audits contemplated in this subparagraph 2.06(g)(2), may be conducted upon the mutual agreement of the City, the PIC, the Centerra RSF Corp., and Retail Prom, subject to payment of the applicable hourly fees as set forth in **Exhibit J** hereto.

(h) The parties hereto acknowledge that varied reporting may be required in connection with the District Bonds. The City agrees to provide such additional reports as may be required by the District Bond Documents if reasonably feasible; provided that if such additional reports result in a material increase in time or materials to be supplied by the City, the fees set forth on **Exhibit J** hereto shall be adjusted, and any increased costs shall be borne exclusively by the Service District.

Section 2.07 Covenants of the Parties

(a) For the purpose of reasonably enforcing this Collection Agreement, and to the extent permitted by law, all books and documents in the possession of any party to this Collection Agreement relating to the collection or calculation of actual Revenues shall at all reasonable times be open to inspection by the other parties to this Collection Agreement or their designees, subject to applicable confidentiality restrictions, if any.

(b) No party hereto shall enter into any agreement amending any of the provisions relating to imposition of the PIF or RSF and payment of the Revenues contained in the Covenants or the Leases without the consent of the PIC, each Consent Party, and the City, if pertaining to the PIF Revenues, Centerra RSF Corp., if pertaining to the Centerra RSF Revenues, or Retail Prom, if pertaining to the Lifestyle RSF Revenues. Any such purported amendment or waiver shall be void and of no force and effect.

(c) The parties hereto shall at all times fully perform and comply with any agreements, covenants, terms and conditions imposed upon or assumed by them pertaining to the PIF or the RSF. If either the PIC or the City fails to do so, the Trustee, if authorized by the District Bond Documents, may give written notice of such failure to the parties hereto. If the identified failure is not corrected within ten (10) days of the receipt of any such written notice, the Trustee may (but is not obligated to), if authorized by the District Bond Documents, take any action the Trustee reasonably deems necessary or desirable to prevent or to cure any default by the PIC or the City in the performance of or compliance with any of either party's covenants or obligations pertaining to such Revenues. If authorized by the District Bond Documents, the

Trustee may (but is not obligated to) pay and expend such sums of moneys as the Trustee in its reasonable discretion deems necessary for this purpose.

(d) Pursuant to the Covenants, Centerra Owners are required to provide a listing of all Centerra Retailers that then occupy their Centerra Owned Property as provided in this subparagraph (d) and within ten business days of receipt of a written request therefore from the City. The City shall (i) upon learning of a new Centerra Owner, request such Centerra Owner to provide the name and address of any Centerra Retailer occupying property within the Development owned by such Centerra Owner within 30 days of execution of any such occupation agreement, and shall provide notice of any new Centerra Retailer to the Report Recipients on a periodic basis as agreed to with the PIC, the Centerra RSF Corp. and Retail Prom; (ii) upon a request thereof from any Bank Representative, the Trustee, the PIC, the Centerra RSF Corp. or Retail Prom, request a current listing of all Centerra Retailers then occupying Centerra Owned Property from Centerra Owners (to the extent then known by the City) on a periodic basis as requested by such Report Recipient and provide the resulting listings of Centerra Retailers to all Report Recipients. The parties hereto shall advise the City and all other parties hereto on or before the first day of each month of any new Centerra Owners and Centerra Retailers or change in Centerra Owners and Centerra Retailers of which such party has actual knowledge. Notwithstanding the foregoing, the City shall have primary responsibility for determining the identity of Centerra Retailers from time to time based on information received by it in connection with Centerra Retailers' application for Sales Tax licenses, reports received by Centerra Owners as provided herein and business establishment visits by the City as required by Section 2.06(f) hereof; provided, however, that the City shall not be responsible for any lost Revenues resulting from the failure to determine the identity of a Centerra Retailer and seek collection of Revenues therefrom if the City has made reasonable efforts to determine the identities of all Centerra Retailers as provided herein. The parties hereto shall exercise their rights under the Covenants to obtain from Centerra Owners such other information reasonably requested by the parties hereto to allow them to fulfill their respective obligations under this Collection Agreement.

(e) Pursuant to the Covenants, Centerra Retailers are required to provide to the City a waiver in a form substantially similar to the forms set forth in **Exhibit I** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom. The City shall only be responsible for providing the reports described herein with respect to those Centerra Retailers for which the City has received such a waiver.

(f) In the event any party to this Collection Agreement receives actual notice in writing with respect to any action in bankruptcy by a Centerra Retailer, such party shall as soon as practicable give written notice or convey copies of the written notice it received to the City and all Report Recipients.

(g) In the event that any party hereto receives or otherwise possesses any Revenues to which, pursuant to this Collection Agreement, another party is entitled, the parties hereto hereby agree that each shall hold such funds in trust as an agent for the parties entitled thereto hereunder and under the Covenants, Assignments and the District Bond Documents and shall remit to the City, immediately and without demand, all such sums so received or otherwise in its possession,

together with a statement indicating the source of such Revenues and, if applicable and known to such party, the Centerra Retailer and Collection Month to which such amounts relate. The City shall remit the same to the parties entitled thereto in accordance with Section 2.04 hereof.

Section 2.08 Fees and Reimbursable Expenses. In consideration of its performance of services hereunder, the City shall receive such fees and Reimbursable Expenses as are set forth on **Exhibit J** and as follows:

(a) Subject to subparagraph (b) hereof, the City shall receive, each calendar quarter in advance, in exchange for the services provided by it hereunder, 25% of the total fees and Reimbursable Expenses equal to the amount(s) set forth on **Exhibit J** hereto for any particular calendar year, subject to adjustment as provided in subparagraph (d) hereof. Subject to subparagraph (b) hereof, such fees and Reimbursable Expenses shall be payable on the first business day of each calendar quarter as follows: (i) 55% of the total amount of such fees and Reimbursable Expenses by the Service District, from funds available therefore in accordance with the terms of the District Bond Documents, which the Service District is hereby authorized by the PIC to pay; (ii) 31% of the total amount of such fees and Reimbursable Expenses by Retail Prom; and (iii) 14% of the total amount of such fees and Reimbursable Expenses by Centerra RSF Corp.; provided that such percentages of the total fee to be paid by each such party may be revised in accordance with a written agreement among the PIC, Retail Prom and Centerra RSF Corp., or their successors or assigns, in which event such parties shall only be obligated hereunder to pay to the City such revised percentages. No party shall be obligated to pay any portion of fees payable to the City in excess of the foregoing percentages attributable to such party (as the same may be revised). In the event that any party fails to pay its portion of fees to the City in accordance with the foregoing, the City shall continue to provide the services contemplated hereunder for the benefit of the remaining parties, unless the City has resigned with respect to such services in accordance with Section 3.03 hereof.

(b) Any time a new RSF and a new Primary Recipient for such new RSF is established, the distribution percentages for the payment of fees and Reimbursable Expenses set forth in subsection (a) above shall be reapportioned by the parties. At such time, the parties shall also have the opportunity to review and readjust the fees and Reimbursable Expenses set forth on **Exhibit J**,

(c) Extraordinary Reimbursable Expenses may only be incurred by the City after the receipt of written approval thereof by the PIC, Centerra RSF Corp. and Retail Prom. Upon receipt of such approval, Extraordinary Reimbursable Expenses shall be submitted and payable in the same manner as fees and Reimbursable Expenses set forth in subparagraph (a) hereof.

(d) The amount of the fees and Reimbursable Expenses set forth on **Exhibit J** shall be reviewed on or about June 1 of each year that this Agreement shall remain in effect, and adjustments to such fees and Reimbursable Expenses, by amount and type, may be made by the mutual written consent of all the parties hereto, provided that such adjustments are reasonable and based upon increases or decreases in actual costs of collection. Any such adjustments shall be effective on January 1 of the calendar year following the annual June 1 review.

Section 2.09 Authorization. The PIF Covenant and the RSF Covenants expressly authorize the PIC, Retail Prom and Centerra RSF Corp. to enter into a contract with the City, as a Designated Receiving Entity thereunder, pursuant to which such entity is authorized:

(a) to audit the books and records of the Centerra Retailers in determining compliance with the PIF and RSF collection and remittance obligations of Centerra Retailers under the PIF Covenant, RSF Covenants and Leases; and

(b) to release to the Report Recipients such audited information and any reports, returns and other documents as are delivered to the City by the Centerra Retailers and any relevant information gathered by the City during an audit or in reviewing such reports, returns or other documents.

ARTICLE 3 MISCELLANEOUS

Section 3.01 Beneficiaries Under Covenants and Leases. Notwithstanding the appointment of the City as the Designated Receiving Entity under the Covenants, the PIC, Centerra RSF Corp. and Retail Prom are the lawful recipients of the PIF Revenues, the Centerra RSF Revenues and the Lifestyle RSF Revenues, respectively, and, together with the Centerra Owners, are hereby and under the Covenants and Leases expressly made third party beneficiaries of the Centerra Retailers' obligations under the provisions relating to the payment of Revenues contained therein, including, but not limited to, the assessment, collection, and remittance of Revenues. Furthermore, for as long as the PIF Revenues are pledged to pay all or any portion of the District Bonds and any amounts are owed with respect to such District Bonds, any Bank and any other holder of the District Bond shall each be deemed a third party beneficiary under the Covenants and Leases of the Centerra Retailers' obligations under the provisions relating to the payment of the PIF Revenues contained therein, including, but not limited to, the assessment, collection, and remittance of PIF Revenues. Nothing in this Collection Agreement shall impair a Centerra Owner's right to enforce its rights against Centerra Retailers under the Leases.

Section 3.02 Sovereign Powers and Immunities of the City and the Service District. Nothing in this Collection Agreement shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers or immunities of the City or the Service District.

Section 3.03 Resignation; Removal; Assignment.

(a) The City may resign by written resignation given as provided in this Section 3.03 hereof to the other parties to this Collection Agreement and each Consent Party not less than 180 days before the date when such resignation is intended to take effect; provided, however, that the City may resign from its position as Designated Receiving Entity upon not less than 60 days' written notice given to the same parties before the date such resignation is intended to take effect in the event of nonpayment of any fees, Reimbursable Expenses and Extraordinary Reimbursable Expenses due and payable to the City hereunder. The City's resignation shall take place without the appointment of a successor to its duties hereunder; provided, however, if no agreement is

entered into by the PIC, Centerra RSF Corp., Retail Prom, and the Service District with a successor agent, the PIC and Service District (with respect to the PIF), the Centerra RSF Corp. (with respect to the Centerra RSF) and Retail Prom (with respect to the Lifestyle RSF) shall assume all obligations of the City hereunder prior to the effectiveness of the City's resignation, provided that, in such event, any of the aforementioned entities may engage an agent to carry out its respective duties hereunder. The City may be removed at any time, with 180 days prior written notice, with respect to its duties relating to all of the PIF and RSF Revenues, with mutual consent of the PIC, Service District, Centerra RSF Corp. and Retail Prom, and, with respect to the City's duties relating to the PIF with the consent of each Consent Party and compliance with all applicable provisions of the District Bond Documents, after payment of all outstanding fees and Reimbursable Expenses of the City, by an instrument appointing a successor to perform the City's duties hereunder, executed by the PIC, Service District, Centerra RSF Corp. and Retail Prom, and with respect to the City's duties relating to the PIF with the consent of each Consent Party. The City may also resign or be removed at any time, with 180 days prior written notice for any removal, with respect to its duties hereunder provided in connection with any one of the PIF Revenues (by the direction of the PIC with the consent of the Service District, the Trustee, and each Consent Party), the Lifestyle RSF Revenues (by the direction of Retail Prom) or Centerra RSF Revenues (by the direction of Centerra RSF Corp.). In such event, (i) the PIC (with the consent of the Service District, Trustee and each Consent Party), Retail Prom and Centerra RSF Corp. may each select separately a successor Designated Receiving Entity with respect to PIF Revenues, Lifestyle RSF Revenues and Centerra RSF Revenues, respectively, and (ii) the remaining parties shall pay their proportionate share of the fees and Reimbursable Expenses as set forth in Section 2.08(a) hereof. In the event that the City resigns or is removed as provided herein, the City agrees to provide, no later than 60 days after the notice of such resignation or removal, to the PIC, Centerra RSF Corp, Retail Prom, Service District, any Bank Representative, and the Trustee, an electronic copy of all data files relating to the collection of Revenues hereunder as well as all previously retained documentation relating to the collection of Revenues hereunder (provided such previously retained documentation remains within the custody of the City).

(b) This Collection Agreement may not be assigned by any party hereto for any reason other than to a successor by operation of law or with the prior written consent of the other parties to this Collection Agreement; provided, however, that each of the Retail Prom and Centerra RSF Corp. may assign its rights and obligations hereunder to a successor "Primary RSF Recipient" designated in accordance with the terms of the Centerra RSF Covenant or Lifestyle RSF Covenant, respectively; and further provided that the Service District and the PIC may assign any of their rights hereunder pursuant to the District Bond Documents without the prior consent of any party hereto.

Section 3.04 Continuation After Termination of PIF. The parties hereto acknowledge their current intent that the City continue to collect RSF Revenues following any termination in the collection of PIF Revenues; provided, however, that such acknowledgement shall in no manner alter the rights of any parties hereto with respect to resignation or removal of the City as provided in Section 3.03 hereof; further, it is anticipated that such continuation of collection following termination of the PIF may require the renegotiation of fees and parties responsible for the payment thereof.

Section 3.05 Notices. All notices, certificates or other communications to be given hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail return receipt requested, postage prepaid, or sent by a confirmed facsimile addressed as follows:

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

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

If to Retail Prom: G&I VI Promenade, LLC
c/o DRA Advisors, LLC
ATTN: Peter Janoff
220 E. 42nd St., 27th Floor
New York, NY 10017
Fax: (212) 697-7405

With a copy to: Blank Rome LLP
Attn: Martin Luskin
The Chrysler Building
405 Lexington Avenue
New York, NY 10174-0208
Fax: (917) 332-3714

If to the PIC: Centerra Public Improvement Collection
Corporation
ATTN: Jay Hardy, President
2725 Rocky Mountain Ave, Suite 200
Loveland, CO 80538
Fax: (970) 635-3003

With a copy to: Icenogle Seaver Pogue, P.C.
ATTN: Alan D. Pogue, Esq.
4725 S. Monaco St., Suite 225
Denver, CO 80237

Fax (303) 292-9101

If to
Centerra RSF Corp.:

Centerra Retail Sales Fee Corporation
ATTN: Josh Kane, President
2725 Rocky Mountain Ave, Suite 200
Loveland, CO 80538
Fax: (970) 635-3003

With a copy to:

Icenogle Seaver Pogue, P.C.
ATTN: Alan D. Pogue, Esq.
4725 S. Monaco St., Suite 225
Denver, CO 80237
Fax (303) 292-9101

If to
Service District:

Centerra Metropolitan District No. 1
ATTN: Peggy Dowswell
5110 Granite St., Suite C
Loveland, CO 80538
Fax (970) 669-3612

With a copy to:

Icenogle Seaver Pogue, P.C.
ATTN: Alan D. Pogue, Esq.
4725 S. Monaco St., Suite 225
Denver, CO 80237
Fax (303) 292-9101

Section 3.06 Third Party Beneficiaries of this Collection Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this Collection Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Report Recipients (excluding any Dissemination Agent), and with respect to the PIF, any Bank as well as the Report Recipients, the Enforcing Parties and their respective successors and assigns (including Centerra Investors), and nothing contained in this Collection Agreement shall give or allow any such claim or right of action by any other person with respect to this Collection Agreement.

Section 3.07 Binding Effect. This Collection Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. Notwithstanding anything herein to the contrary: (a) Centerra RSF Corp. and Retail Prom shall have no rights related to the PIF Revenues, including, without limitation, the calculation, collection, or payment thereof; (b) the PIC and Retail Prom shall have no rights related to the Centerra RSF Revenues, including, without limitation, the calculation, collection, or payment thereof; and (c) the PIC and Centerra RSF Corp. shall have no rights related to the Lifestyle RSF Revenues, including, without limitation, the calculation, collection, or payment thereof. By means of example, neither

Retail Prom nor Centerra RSF Corp. shall have any right to inspect the books and documents in possession of the other party under Section 2.07(a) hereof except to the extent that such books and documents are pertinent to the Lifestyle RSF Fees or the Centerra RSF Fees, respectively.

Section 3.08 Amendments. This Collection Agreement may only be amended, changed, modified or altered in writing signed by all parties hereto; provided, however, that:

- (a) Amendments hereto affecting only: (i) PIF Revenues may be affected without the consent of the Centerra RSF Corp. or Retail Prom, but with the consent of the PIC, the Service District, the Trustee, the City, and each Consent Party; (ii) Centerra RSF Revenues, may be affected without the consent of the PIC, the Service District or Retail Prom; and (iii) Lifestyle RSF Revenues, may be affected without the consent of the PIC, the Service District or the Centerra RSF Corp; and
- (b) Amendments to provide for collection of future retail sales fees may be made by the City and the property owner creating the new retail sales fee.

Section 3.09 Computation of Time. In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is not a Business Day, the period is extended to include the next succeeding Business Day. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Section 3.10 Payments Due on a Day other than a Business Day. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Collection Agreement, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Collection Agreement.

Section 3.11 Severability. In the event that any provision of this Collection Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 3.12 Execution in Counterparts. This Collection Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 3.13 Applicable Law and Venue. This Collection Agreement shall be governed by and construed in accordance with the laws of the State. In the event of any dispute arising out of this PIF Covenant, the courts of the State of Colorado shall have exclusive jurisdiction over such dispute and venue shall be in the Larimer County District Courts.

Section 3.14 Indemnification by PIC, Centerra RSF Corp. and Retail Prom. The PIC, Centerra RSF Corp. and Retail Prom each hereby agree to indemnify and defend the City and its officers and employees against all claims or suits, including but not limited to, those for damages

to property and injuries to persons, including accidental death, related to this Collection Agreement; provided, however that neither the PIC, nor Centerra RSF Corp., nor Retail Prom shall be responsible for indemnifying or defending the City for such claims or suits resulting from the negligence of the City or its officers or employees, or in the event that the City is in breach under this Agreement, and provided further, however, that no portion of the PIF Revenue may be used to satisfy the indemnification obligations hereunder.

Section 3.15 No Indemnification by City. The City cannot and does not agree to indemnify, hold harmless or exonerate the Service District, the PIC, Retail Prom, Centerra RSF Corp., any Centerra Owner, or any other person for any purpose whatsoever.

Section 3.16 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Collection Agreement.

This Collection Agreement is entered into and executed by the respective parties hereto as of the day and year first above written.

CITY OF LOVELAND, COLORADO, a
Colorado municipal corporation

By: _____
Cecil Gutierrez, Mayor

ATTEST:

By: _____
Terry Andrews, City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Judith Yost Schmidt, Deputy City Attorney

**CENTERRA METROPOLITAN DISTRICT
NO. 1**

By: _____
Kim L. Perry, President

G&I VI RETAIL PROM, LLC, a Delaware
limited liability company

By: _____
David Luski, President

**CENTERRA RETAIL SALES FEE
CORPORATION**, a Colorado nonprofit
corporation

By: _____
Josh Kane, President

**CENTERRA PUBLIC IMPROVEMENT
COLLECTION CORPORATION**, a Colorado
nonprofit corporation.

By: _____
Jay Hardy, President

EXHIBIT A DEFINITIONS

Set forth below is a compilation of defined terms used in this Collection Agreement. Any terms not specifically defined herein shall have the meanings assigned them in the Indenture.

“*Bank*” means any provider(s) of a letter(s) of credit or other means of credit enhancement securing payment of District Bonds and any one or more lending institutions making a direct loan or loans to the Service District, which loan or loans constitute a District Bond.

“*Bank Representative*” means, initially, U.S. Bank National Association in its capacity as the Administrative Agent pursuant to that certain Loan Agreement dated June 8, 2011 among the Service District, the other Districts party thereto, Compass Bank, U.S. Bank National Association and the other lenders from time to time parties thereto, as the same may be amended or supplemented from time to time, and its successor or assigns pursuant to said Loan Agreement. The term “*Bank Representative*” shall also include any other party authorized in any District Bond Document to receive information or take actions permitted or authorized to be received or taken by the Bank Representative hereunder.

“*Business Day*” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in (i) the State, or (ii) the State of New York are authorized or required by law to close or (b) a day on which the New York Stock Exchange is closed.

“*Centerra Owners*” means any Person who owns fee title to: (i) any portion of the PIF Property, if relating to the PIF Revenues or PIF Covenant; (ii) any portion of the Centerra RSF Property, if relating to the Centerra RSF Revenues or Centerra RSF Covenant; and (iii) any portion of the Lifestyle RSF Property, if relating to the Lifestyle RSF Revenues or Lifestyle RSF Covenant, and any successors thereof

“*Centerra Retailers*” mean retail tenants and business establishments located or to be located within Centerra Project.

“*Centerra RSF Corp.*” means Centerra Retail Sales Fee Corporation, or any successor or assignee thereof to the rights hereunder of Centerra Retail Sales Fee Corporation; provided that Centerra RSF Corp. shall provide notice of any such assignment to the City, the PIC and Retail Prom.

“*Centerra RSF Covenant*” means the Declaration of Covenants Imposing and Implementing the Centerra Retail Sales Fee recorded in the real property records of Larimer County, Colorado on July 6, 2004 at Reception No. 2004-0067082, as the same has been amended and may be amended in the future from time to time.

“*Centerra RSF Recipient*” means any entity so designated by Centerra RSF Corp. to receive all or any portion of the Centerra RSF Revenues; provided that Centerra RSF Corp. provides notice thereof to the City or any successor Designated Receiving Entity.

"*Centerra RSF Revenues*" means the revenues derived from the imposition of the Centerra RSF.

"*Centerra Retail Sales Fee*" or "*Centerra RSF*" means the retail sales fee required pursuant to the Leases and the Centerra RSF Covenant to be assessed by retail tenants and business establishments located or to be located within the Centerra RSF Property on all RSF Sales occurring within the Centerra RSF Property.

"*City*" means the City of Loveland, Colorado.

"*City Sales*" means retail sales transactions subject to the Sales Tax.

"*Collection Month*" means each calendar month in which the Revenues are collected by the Centerra Retailers.

"*Consent Party*" means any party who, under any District Bond Document, has a right to consent to an action taken or proposed to be taken under this Collection Agreement with respect to the PIF or the PIF Revenues.

"*Designated Receiving Entity*" means the entity designated to receive Revenues hereunder or any successor agreement relating to the collection of Revenues (initially, the City). In the event that, pursuant to the terms hereof, the Designated Receiving Entity is not the same for the PIF Revenues, the Centerra RSF Revenues and the Lifestyle Revenues, "*Designated Receiving Entity*" shall mean, with respect to the PIF Revenues, the Centerra RSF Revenues and the Lifestyle Revenues, the entities designated to received such Revenues by the PIC, Centerra RSF Corp. and Retail Prom, respectively.

"*Dissemination Agent*" means any entity charged with distributing information to purchasers of the District Bonds. In the event that other entities issue debt or obligations secured in whole or in part by any of the Revenues, "*Dissemination Agent*" shall also mean, with respect to the revenues securing such debt or obligations, any entity charged with distributing information to purchasers of such debt or obligations.

"*District Bond Documents*" means any bond, resolution, indenture, loan agreement, interest rate exchange agreement, reimbursement agreement or contract, pursuant to which the Service District incurs debt or other financial obligations, the repayment of which is secured, in whole or in part, by PIF Revenues, as contemplated by the MFA, and any other agreement pursuant to which the PIF Revenues are pledged to the repayment of the District Bonds.

"*District Bonds*" means the financial obligations of the Service District, which obligations may be in the form of bonds, notes, loan agreements, commercial paper, or other securities issued by the Service District pursuant to the provisions of the District Bond Documents, which are payable in whole or in part from the PIF Revenues and which payment is

secured by a pledge of and lien on, among other revenues, such PIF Revenues, including without limitation refunding bonds and variable rate bonds.

“*Enforcing Parties*” means (i) Declarants of the Centerra RSF Covenant, Centerra RSF Corp., and any other Centerra RSF Recipients, with respect to the Centerra RSF Revenues; (ii) Retail Prom and any other Lifestyle RSF Recipients, with respect to the Lifestyle RSF Revenues; and (iii) the PIC, the PID, the City, the Trustee, the Bank Representative, the Loveland Urban Renewal Authority, and the Service District, with respect to the PIF Revenues.

“*Extraordinary Reimbursable Expenses*” means any Reimbursable Expenses in excess of the amounts set forth on **Exhibit J** hereto reasonably incurred when performing extraordinary services under this Collection Agreement (for example, reasonable expenses incurred by the City in assisting in the receipt of delinquent Revenues).

“*First Delinquency Notice*” means a written notice sent by first class mail providing the following (to the extent applicable): (A) the Centerra Retailer has failed to remit Revenues during the preceding month; (B) the Centerra Retailer has remitted an incorrect amount of Revenues (C) requesting immediate payment of delinquent Revenues or any shortfall in Revenues; (D) advising that if the City does not receive such amounts by the 15th of the month (as evidenced by postmark), a late fee in the amount of the greater of 10% of the delinquent Revenues or \$15 will be owed and default interest will be imposed at the rate of 1% per month (the “Default Rate”) commencing on the 20th day of the first month following the close of the Collection Month. Such notice shall be substantially similar to the form set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

“*Information Booklets*” means, collectively, the Centerra Information Booklet and the Lifestyle Information Booklet, as described in Section 2.02(a), as such Information Booklets may be changed from time to time in accordance with the provisions hereof.

“*Leases*” means the leases entered into or to be entered into by Centerra Owners with retail tenants and business establishments located or to be located within the PIF Property (including the Lifestyle RSF Property and the Centerra RSF Property). The term “*Leases*” shall also include any occupancy agreement, licenses, sales contracts or similar arrangements under which a Person may become a Centerra Retailer.

“*Lifestyle RSF Covenant*” means the Declaration of Covenants Imposing and Implementing the Lifestyle Retail Sales Fee recorded in the real property records of Larimer County, Colorado, as the same may be amended from time to time.

“*Lifestyle RSF Recipient*” means any entity so designated by Retail Prom to receive all or any portion of the Lifestyle RSF Revenues; provided that Retail Prom provides notice thereof to the City or any successor Designated Receiving Entity.

"*Lifestyle RSF Revenues*" means the revenues derived from the imposition of the Lifestyle RSF.

"*Lifestyle Retail Sales Fee*" or "*Lifestyle RSF*" means the retail sales fee required pursuant to the Leases and the Lifestyle RSF Covenant to be assessed by retail tenants and business establishments located or to be located within the Lifestyle RSF Property on all RSF Sales occurring within the Lifestyle RSF Property.

"*Person(s)*" means an individual, firm, corporation, partnership, company, limited liability company, association, joint stock company, trust, body politic or any other unincorporated organization or any trustee, receiver, assignee, or other similar representative thereof.

"*Public Improvement Fee*" or "*PIF*" means the public improvement fee required pursuant to the Leases and the PIF Covenant to be assessed by retail tenants and business establishments located or to be located within the PIF Property on all PIF Sales occurring within the PIF Property.

"*PIF Covenant*" means the Declaration of Covenants Imposing and Implementing the Centerra Public Improvements Fee Centerra recorded in the real property records of Larimer County, Colorado on July 6, 2004 at Reception No. 2004-0067081, as the same has been amended and may be amended in the future from time to time.

"*PIF Revenues*" means the revenues derived from the imposition of the PIF.

"*PIF Sales*" shall mean and refer to any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property which are on the date of recording of this Covenant subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, plus any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the PIF Property which are from time to time in the future subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, less any sales transactions specified by the PIC, with the consent of the City, as exempt from the Public Improvement Fee from time to time. Notwithstanding any of the foregoing, "PIF Sales" shall at no time include internet sales made from internet terminals in the business establishment of a Centerra Retailer within any portion of the PIF Property or catalog sales placed by telephone from the business establishment of a Centerra Retailer within any portion of the PIF Property.

"*Reimbursable Expenses*" means those reasonable expenses incurred by the City in the performance of its obligations under this PIF Collection Agreement, including, but not limited to, expenses relating to computer equipment, programming, software, licensing, Internet access, office supplies, including paper, pencils, notebooks, office equipment, including file cabinets, printers/copier costs, other expenses, including but not limited to postage, personal auto mileage, travel, legal fees, training, vendor education, printing, staff salaries and proportionate benefits.

"*Reported Taxed Sales*" means, for any period specified herein, net taxable sales (meaning the total of amount of sales less sales not subject to the Sales Tax) occurring from or within the Centerra in such period, based on monthly reports received by the City from Centerra Retailers.

"*Report Recipients*" mean: (i) (a) the City, the Districts, the Trustee, the Bank Representative, the PID, CPW and the PIC, if relating to the PIF Revenues or PIF Covenant; (b) Centerra RSF Corp., any Centerra RSF Recipient and any trustee for bonds secured by Centerra RSF Revenues, if relating to the Centerra RSF Revenues or Centerra RSF Covenant; and (c) Retail Prom and any Lifestyle RSF Recipient if relating to the Lifestyle RSF Revenues or Lifestyle RSF Covenant; (ii) with respect to the specific information of any particular Centerra Retailer, the Centerra Owner or Centerra Occupant leasing, subleasing or otherwise granting rights to such Centerra Retailer to occupy such Centerra Owner's or Centerra Occupant's Owned/Leased Centerra PIF or RSF Property, (iii) any Dissemination Agent; and (iv) any investor or potential investor in Centerra and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of Centerra or a prospective purchaser of any interest in CPW.

"*Retail Prom*" means G&I VI Retail Prom, LLC, a Delaware limited liability company, and its successors and assigns.

"*Revenues*" means, collectively, the RSF Revenues and the PIF Revenues.

"*RSF*" means collectively the Centerra RSF and the Lifestyle RSF, and any additional RSF added to this Collection Agreement by amendment.

"*RSF Covenants*" means, collectively, the Centerra RSF Covenant and the Lifestyle RSF Covenant, together with any additional retail sales fee covenants that may be added to this Agreement by amendment.

"*RSF Revenues*" means, collectively, the Centerra RSF Revenues and the Lifestyle RSF Revenues, together with any revenues from any additional retail sales fee covenants that may be added to this Agreement by amendment.

"*RSF Sales*" means any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the RSF Property which are on the date of recording of any RSF Covenant subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, plus any and all retail sales transactions by any Centerra Retailer of personal property initiated, consummated, conducted, transacted or otherwise occurring from or within any portion of the RSF Property which are from time to time in the future subject to a retail Sales Tax pursuant to the Sales Tax Ordinances, less any sales transactions specified by the Primary RSF Recipient as exempt from the Retail Sales Fee from time to time; provided, however, that RSF Sales shall not include any transaction relating to passenger vehicles, whether new or used (except that this exclusion does not apply to transactions relating to automotive parts). Notwithstanding any of the foregoing, "RSF Sales"

shall at no time include internet sales made from internet terminals in the business establishment of a Centerra Retailer within any portion of the RSF Property or catalog sales placed by telephone from the business establishment of a Centerra Retailer within any portion of the RSF Property. References in this definition to “RSF Property” shall mean, with respect to the imposition of the Centerra RSF, the Centerra RSF Property, with respect to imposition of the Lifestyle RSF, the Lifestyle RSF Property, and with respect to the imposition of any additional retail sales fee added to this Agreement by amendment, the property subjected to such RSF Covenant.

“*Sales*” means RSF Sales and PIF Sales.

"*Sales Tax*" means that tax levied by the City pursuant to the Sales Tax Ordinances.

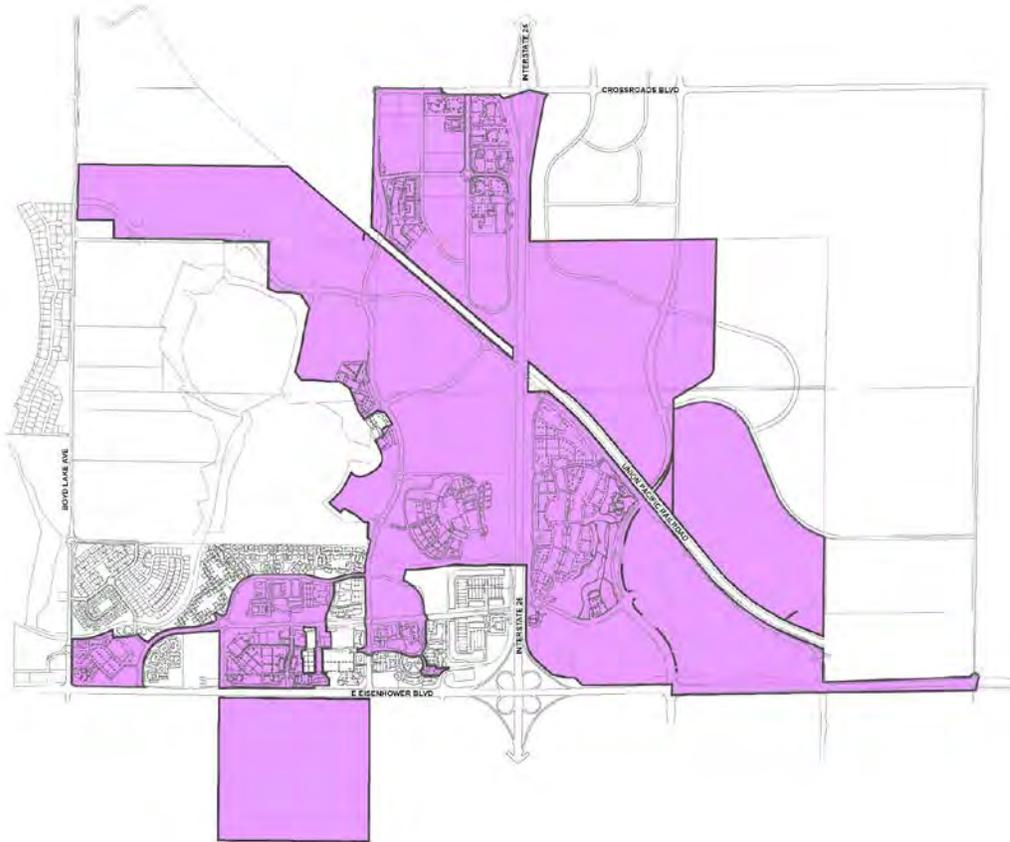
"*Sales Tax Ordinances*" means the Chapter 3.16 of the City’s Municipal Code, but only to the extent pertaining to sales tax and not use tax, and regulations promulgated thereto, but only to the extent pertaining to sales tax and not use tax, both as amended from time to time.

"*Second Delinquency Notice*" means a written notice sent by first class mail providing the following (to the extent applicable): (A) the Centerra Retailer has failed to remit Revenues during the preceding month; (B) the Centerra Retailer has remitted an incorrect amount of Revenues (C) requesting immediate payment of delinquent Revenues or any shortfall in Revenues; (D) advising that a late fee in the amount of the greater of 10% of the delinquent PIF Revenues or \$15 is now owed and default interest at the rate of 1% per month (the “Default Rate”) is accruing from the 20th day of the first month following the close of the Collection Month. Such notice shall be substantially similar to the form set forth in **Exhibit F** hereto, as the same may be modified from time to time upon consent of the PIC, Centerra RSF Corp. and Retail Prom.

"*Trustee*" means any trustee under any indenture of trust or similar agreement, which provides for the application of PIF Revenues in connection with any District Bonds. Trustee shall also mean any custodian under any custodial or similar agreement, which provides for application of PIF Revenues in connection with any District Bonds. As of the effective date of this Agreement, U.S. Bank National Association acting in a capacity as a Custodian under that certain Custodial Agreement dated as of June 8, 2011 among the Service District, the PIC, U.S. Bank National Association (as successor to UMB Bank, n.a.), as Custodian, and U.S. Bank National Association, as Administrative Agent on behalf of the Lenders. The Service District shall notify the City and the PIC of any change in the Trustee within ten (10) days of such change.

"*Waiver of Confidentiality*" means the Waiver of Confidentiality, in a form substantially similar to the form set forth in **Exhibit I** hereto.

EXHIBIT B PIF PROPERTY



CENTERRA PUBLIC IMPROVEMENTS FEE (PIF) AREA

LEGEND

 Public Improvements Fee (PIF) Area

Date: October 14, 2011

Prepared By:



(Not To Scale)

NOTE: This information is not guaranteed, although intended to be reliable. It is conceptual in nature and McWhinney and/or its affiliates make no warranty or representation. The information herein is subject to change at any time.

EXHIBITS C AND D CENTERRA AND LIFESTYLE RSF PROPERTY



CENTERRA COMMUNITY RETAIL SALES FEE (RSF) AREAS

LEGEND

-  Promenade Shops RSF Area
-  Centerra RSF Area

Date: October 11, 2011

Prepared for:



(Not To Scale)

Note: This information is not intended to constitute an offer, and is not intended to be used as a basis for any investment decision. The information is provided for informational purposes only. The information is not intended to be used as a basis for any investment decision. The information is provided for informational purposes only. The information is not intended to be used as a basis for any investment decision.

EXHIBIT E REPORTING FORMS PIF REVENUES FORM

CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION
PUBLIC IMPROVEMENT FEE ADMINISTRATION
C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
PO BOX 892 · LOVELAND, CO 80539
(970) 962-2707

PIF PAYMENT FORM

	PERIOD	DUE DATE	CITY ACCT #
COMPUTATION OF PUBLIC IMPROVEMENT FEE			

1.	GROSS SALES and SERVICES	
2.	Less Sales/Services not subject to the Public Improvement Fee (Retain your records for three years)	
3.	Net Sales Subject to Public Improvement Fee (Line 1 minus Line 2)	
4.	Public Improvement Fee Collected (1.25% of Line 3)	
5.	Excess Public Improvement Fee Collected	
6.	Total Public Improvement Fee Due and Payable (Add Line 4 and Line 5)	
7.	Adjustments <u>ADD</u> (Additional Amount Due) Prior Periods <u>Deduct</u> (Credit Due to Merchant)	
8.	Late Filing Penalty: 10% of line 6 or \$15.00 whichever is greater Interest: 1% of line 6 per month	
9.	TOTAL PUBLIC IMPROVEMENT FEE DUE AND PAYABLE Payable to: CENTERRA PUBLIC IMPROVEMENT COLLECTION CORP	

PIF Payment Form Instructions

Line 1: Report all sales made during the period covered
 Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.
 Line 3: To calculate sales subject to PIF, subtract Line 2 from Line 1
 Line 4: To calculate the PIF due, multiply Line 3 by 1.25%
 Line 5: Any excess PIF collected must be reported on Line 5 and remitted
 Line 6: To calculate the total PIF due, add Line 4 and Line 5
 Line 7: Add or deduct any under or overpayment from previous periods
 Line 8: Add 10% or \$15.00 whichever is greater and Interest is calculated at 1% per month
 Line 9: To calculate, total PIF due, add Line 6, 7 and 8
Make Checks Payable To: CENTERRA PUBLIC IMPROVEMENT COLLECTION CORP

NEW BUSINESS DATE MO. DAY YEAR DISCONTINUED DATE MO. DAY YEAR	1.If ownership has changed, give date of change and new owner's name. 2.If business has been permanently discontinued, give date discontinued. 3.If business location has changed, give new address. 4.If business is temporarily closed, give date to be closed. 5.If business is seasonal, give months of operation.	SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC _____ _____ _____ _____ <input type="checkbox"/> BUS. ADDRESS <input type="checkbox"/> MAILING ADDRESS	I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct. By: _____ Company: _____ Phone: _____ Title: _____ Date: _____
--	--	--	---

LIFESTYLE RSF REVENUES FORM

G & I VI PROMENADE LLC
 RETAIL SALES FEE ADMINISTRATION
 C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
 PO BOX 1386 · LOVELAND, CO 80539
 (970) 962-2707

RSF PAYMENT FORM

	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">PERIOD</td> <td style="width: 33%;">DUE DATE</td> <td style="width: 33%;">CITY ACCT #</td> </tr> <tr> <td colspan="3" style="text-align: center; background-color: black; color: white; padding: 5px;">COMPUTATION OF RETAIL SALES FEE</td> </tr> </table>	PERIOD	DUE DATE	CITY ACCT #	COMPUTATION OF RETAIL SALES FEE		
PERIOD	DUE DATE	CITY ACCT #					
COMPUTATION OF RETAIL SALES FEE							

1.	GROSS SALES and SERVICES	
2.	Less Sales/Services not subject to the Retail Sales Fee (Retain your records for three years)	
3.	Net Sales Subject to Retail Sales Fee (Line 1 minus Line 2)	
4.	Retail Sales Fee Collected (1.0% of Line 3)	
5.	Excess Retail Sales Fee Collected	
6.	Total Retail Sales Fee Due and Payable (Add Line 4 and Line 5)	
7.	Adjustments: ADD (Additional Amount Due) Prior Periods: Deduct (Credit Due to Merchant)	
8.	Late Filing Penalty: 10% of line 6 or \$15.00 whichever is greater Interest: 1% of line 6 per month	
9.	TOTAL RETAIL SALES FEE DUE AND PAYABLE Payable to: G & I VI PROMENADE LLC	

RSF Payment Form Instructions

Line 1: Report all sales made during the period covered
 Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.
 Line 3: To calculate sales subject to RSF subtract Line 2 from Line 1
 Line 4: To calculate the RSF due, multiply Line 3 by 1.0%
 Line 5: Any excess RSF collected must be reported on Line 5 and remitted
 Line 6: To calculate the total RSF due, add Line 4 and Line 5
 Line 7: Add or deduct any under or overpayment from previous periods
 Line 8: Add 10% or \$15.00 whichever is greater and Interest is calculated at 1% per month
 Line 9: To calculate, total RSF due, add Line 6, 7 and 8

Make Checks Payable To: G & I VI PROMENADE LLC

NEW BUSINESS DATE MO. DAY YEAR DISCONTINUED DATE MO. DAY YEAR	1. If ownership has changed, give date of change and new owner's name. 2. If business has been permanently discontinued, give date discontinued. 3. If business location has changed, give new address. 4. If business is temporarily closed, give dates to be closed. 5. If business is seasonal, give months of operation.	SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC. <input type="checkbox"/> BUS. ADDRESS <input type="checkbox"/> MAILING ADDRESS	I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct. By: _____ Company: _____ Phone: _____ Title: _____ Date: _____
--	--	---	--

CENTERRA RSF REVENUES FORM

CENTERRA RETAIL SALES FEE CORPORATION
 RETAIL SALES FEE ADMINISTRATION
 C/O CITY OF LOVELAND SALES TAX ADMINISTRATION
 PO BOX 1405 · LOVELAND, CO 80539
 (970) 962-2707

RSF PAYMENT FORM

	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; border-bottom: 1px solid black;">PERIOD</td> <td style="width: 33%; border-bottom: 1px solid black;">DUE DATE</td> <td style="width: 33%; border-bottom: 1px solid black;">CITY ACCT #</td> </tr> <tr style="background-color: black; color: white; text-align: center;"> <td colspan="3">COMPUTATION OF RETAIL SALES FEE</td> </tr> </table>	PERIOD	DUE DATE	CITY ACCT #	COMPUTATION OF RETAIL SALES FEE		
PERIOD	DUE DATE	CITY ACCT #					
COMPUTATION OF RETAIL SALES FEE							

1.	GROSS SALES and SERVICES	
2.	Less Sales/Services not subject to the Retail Sales Fee <i>(Retain your records for three years)</i>	
3.	Net Sales Subject to Retail Sales Fee <i>(Line 1 minus Line 2)</i>	
4.	Retail Sales Fee Collected (1.0% of Line 3)	
5.	Excess Retail Sales Fee Collected	
6.	Total Retail Sales Fee Due and Payable <i>(Add Line 4 and Line 5)</i>	
7.	Adjustments: ADD (Additional Amount Due) Prior Periods: Deduct (Credit Due to Merchant)	
8.	Late Filing Penalty: 10% of line 6 or \$15.00 whichever is greater Interest: 1% of line 6 per month	
9.	TOTAL RETAIL SALES FEE DUE AND PAYABLE Payable to: CENTERRA RETAIL SALES FEE CORPORATION	

RSF Payment Form Instructions

Line 1: Report all sales made during the period covered

Line 2: Deduct only those exempted sales allowed. These exemptions are the same as the City of Loveland's sales tax exemptions.

Line 3: To calculate sales subject to RSF subtract Line 2 from Line 1

Line 4: To calculate the RSF due, multiply Line 3 by 1.0%

Line 5: Any excess RSF collected must be reported on Line 5 and remitted

Line 6: To calculate the total RSF due, add Line 4 and Line 5

Line 7: Add or deduct any under or overpayment from previous periods

Line 8: Add 10% or \$15.00 whichever is greater and Interest is calculated at 1% per month

Line 9: To calculate, total RSF due, add Line 6, 7 and 8

Make Checks Payable To: CENTERRA RETAIL SALES FEE CORPORATION

NEW BUSINESS DATE MO. DAY YEAR DISCONTINUED DATE MO. DAY YEAR	1. If ownership has changed, give date of change and new owner's name. 2. If business has been permanently discontinued, give date discontinued. 3. If business location has changed, give new address. 4. If business is temporarily closed, give dates to be closed. 5. If business is seasonal, give months of operation.	SHOW BELOW CHANGE OF OWNERSHIP, NAME AND/OR ADDRESS, ETC. _____ _____ _____ <input type="checkbox"/> BUS. ADDRESS <input type="checkbox"/> MAILING ADDRESS	I, hereby certify, under penalty of perjury, that the statements made herein are to the best of my knowledge true and correct. By: _____ Company: _____ Phone: _____ Title: _____ Date: _____
--	--	--	--

**EXHIBIT F
FORM OF FIRST DELINQUENCY NOTICE
FORM OF SECOND DELINQUENCY NOTICE**



CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name] [currentDate]
[Primary DBA] [Account Number: xxxx]
[Address 1]
[Address 2]
[City, State Zip]

Re: [primaryDBASname] Public Improvement Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period\$description] Public Improvement Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent PIF Revenues or \$15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to Centerra Public Improvement Collection Corporation and mailed to PO Box 892, Loveland, CO 80539.

Please contact me if you need PIF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXXX
Revenue & Licensing Agent
City of Loveland
XXXXXX@ci.loveland.co.us

cc: File
Report Recipients



CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name] [currentDate]
[Primary DBA] [Account Number: xxxx]
[Address 1]
[Address 2]
[City, State Zip]

Re: [primaryDBASname] Public Improvement Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period5description] Public Improvement Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent PIF Revenues or \$15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to Centerra Public Improvement Collection Corporation and mailed to PO Box 892, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXXX
Revenue & Licensing Agent
City of Loveland
XXXXXX@ci.loveland.co.us

cc: File
Report Recipients



CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name] [currentDate]
[Primary DBA] [Account Number: xxxx]
[Address 1]
[Address 2]
[City, State Zip]

Re: [primaryDBASname] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period's description] Retail Sales Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent RSF Revenues or \$15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to G & I VI Promenade, LLC and mailed to PO Box 1386, Loveland, CO 80539.

Please contact me if you need RSF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXXX
Revenue & Licensing Agent
City of Loveland
XXXXXX@ci.loveland.co.us

cc: File
Report Recipients



CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBASname] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [periodsdescription] Retail Sales Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent RSF Revenues or \$15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to Centerra Lifestyle Center LLC Sales Fee Corporation and mailed to PO Box 1386, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXXX
Revenue & Licensing Agent
City of Loveland
XXXXXX@ci.loveland.co.us

cc: File
Report Recipients



CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

First Delinquency Notice

[Business Name]
[Primary DBA]
[Address 1]
[Address 2]
[City, State Zip]

[currentDate]
[Account Number: xxxx]

Re: [primaryDBASname] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [period's description] Retail Sales Fee Schedule and payment. If you are experiencing difficulty preparing the Schedule, please feel free to contact me with any questions. I am also available by appointment for individual assistance.

As a result you are being charged a late fee in an amount equal to the greater of 10% of the delinquent RSF Revenues or \$15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid.

Payment must be made payable to Centerra Retail Sales Fee Corporation and mailed to PO Box 1386, Loveland, CO 80539.

Please contact me if you need RSF Schedules mailed or faxed. Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXXX
Revenue & Licensing Agent
City of Loveland
XXXXXX@ci.loveland.co.us

cc: File
Report Recipients



CITY OF LOVELAND
REVENUE DIVISION
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2708 • FAX (970) 962-2994 • TDD (970) 962-2620

Second Delinquency Notice

[Business Name] [currentDate]
[Primary DBA] [Account Number: xxxx]
[Address 1]
[Address 2]
[City, State Zip]

Re: [primaryDBASname] Retail Sales Fee Payment Past Due

Dear Tenant:

Our records indicate that you have not submitted your [periodsdescription] Retail Sales Fee Schedule and payment as requested in our First Delinquency Notice on [date of first notice]. As a result, a late fee is now due in an amount equal to the greater of 10% of the delinquent RSF Revenues or \$15.00, and interest in the amount of 1% per month or portion of a month from the due date, that the fee deficiency remains unpaid, accruing since [date period was due].

Payment must be made payable to Centerra Retail Sales Fee Corporation and mailed to PO Box 1386, Loveland, CO 80539.

If you are experiencing difficulty preparing your schedule, please feel free to contact me with any questions.

Your prompt attention to this matter will help avoid assessment of additional penalties and interest.

Best Regards,

XXXXXX
Revenue & Licensing Agent
City of Loveland
XXXXXX@ci.loveland.co.us

cc: File
Report Recipients

**EXHIBIT G
NOTICE OF VIOLATION OF COVENANT**

OFFICIAL NOTICE

**VIOLATION OF PUBLIC IMPROVEMENT FEE
AND/ OR RETAIL SALES FEE REQUIREMENTS**

This letter serves as official notice that on _____ (date), at _____ (time)

_____ (business) located in Suite _____ (number) at
_____, is in violation of the Public Improvement Fee and/or
Retail Sales Fee requirements as described in the Collection Agreement as follows:

- ⌋ Placard not displayed by sales register.
- | Public Improvement Fee combined with Sales Tax Receipt.
- | Retail Sales Fee combined with Sales Tax Receipt
- | Public Improvement Fee not charged on receipt.
- ⌋ Retail Sales Fee not charged on receipt.
- ⌋ PIF and or RSF fee rate is incorrect. PIF should be 1.25%, RSF should be 1.0% of all tangible personal property sales (See Attached Detail for corrections)
- ⌋ Tenant does not have a Public Improvement Fee or Retail Sales Fee Account registered with the City.
- | Other _____

This violation must be resolved by _____

If you have any questions on your PIF or RSF requirements, please contact _____
at _____.

Store Recipient _____
Print Name

Recipient Signature: _____

Inspector Initials: _____

U:\5 PROJECTS\Collection Agreement\2011 Negotiations\Exhibit H - Forms\Draft-ViolationNotice revised PIF - RSF combined.docx

EXHIBIT H FORM OF MONTHLY REPORTS

Promenade Shops
Monthly Sales and Public Improvement Fee Collection
June 2011 Reporting Period

Store/ Company	Net Sales Subject to PIF	PIF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Aeropostale						
Als Formal Specialties						
American Eagle Outfitters						
Amy's Hallmark						
Ann Taylor						
Benana Republic						
Barnes & Noble						
Bath & Body Works						
Bebe						
Bent Fork Grill						
Best Buy						
Bleaq's						
Build A Bear Workshop						
Charlotte Russe Inc						
Chicos						
Christopher & Banks						
Cingular Wireless						
The Buckle Inc						
The Childrens Place						
The Finish Line						
The Great Frame Up						
Victoria's Secret						
White House Black Market						
Yankee Candle						
Zales						
Zumiez						
New Store						

SUBTOTAL - - - -

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to PIF	PIF Paid	Period	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Aeropostale					
Als Formal Specialties					
American Eagle Outfitters					
Amy's Hallmark					
Ann Taylor					
Benana Republic					
Barnes & Noble					
Bath & Body Works					
Bebe					
Bent Fork Grill					
Best Buy					
Bleaq's					
Build A Bear Workshop					
Charlotte Russe Inc					
Chicos					
Christopher & Banks					
Cingular Wireless					
The Buckle Inc					
The Childrens Place					
The Finish Line					
The Great Frame Up					
Victoria's Secret					
White House Black Market					
Yankee Candle					
Zales					
Zumiez					
New Store					

SUB TOTAL - - - -

GRAND TOTAL - - -

Centerra Marketplace
 Monthly Sales and Public Improvement Fee Collection
 June 2011 Reporting Period

Store/ Company	Net Sales Subject to PIF	PIF Paid	Credit Balance	Non PIF	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Barber's Pet Hospital						
Bed Bath & Beyond						
CAFFE 2500						
Cycle-B-A						
Capezio Mexican Grill						
Colorado College						
CO's B&B						
Devon's						
First Star Hair						
First Star Pharmacy						
Good Day Pharmacy						
Good Times						
Laredo Gilberts						
Lovain Stone						
Larkie						
Long GMC						
Lowe's Home						
Martell's						
Merlot's						
Medical Center of the Rockies						
Mina's						
Novartis & Company						
Northern Cole Fitness Club						
OK Chicago						
OK Family						
Parsons Dental						
Parsons Shoe Store						
Reflexion						
Rite Way						
RVAD Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Central						
Shops						
T-Mobile						
The Market Place at MCR						
USM Sewing						
New Skies						
SUB TOTAL						

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to PIF	PIF Paid	Period	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Barber's Pet Hospital					
Bed Bath & Beyond					
CAFFE 2500					
Cycle-B-A					
Capezio Mexican Grill					
Colorado College					
CO's B&B					
Devon's					
First Star Hair					
First Star Pharmacy					
Good Day Pharmacy					
Good Times					
Laredo Gilberts					
Lovain Stone					
Larkie					
Long GMC					
Lowe's Home					
Martell's					
Merlot's					
Medical Center of the Rockies					
Mina's					
Novartis & Company					
Northern Cole Fitness Club					
OK Chicago					
OK Family					
Parsons Dental					
Parsons Shoe Store					
Reflexion					
Rite Way					
RVAD Home Medical Supply					
Residence Inn					
Ross					
Sally Beauty					
Shoe Central					
Shops					
T-Mobile					
The Market Place at MCR					
USM Sewing					
New Skies					
SUB TOTAL					

GRAND MONTHLY TOTAL

Promenade Shops
 Monthly Sales and Retail Sales Fee Collection
 June 2011 Reporting Period

Store/ Company	Net Sales Subject to RSF	RSF Paid	Credit/ Balance	Non Filer	Gross Sales Reported to City of Loveland
Aeropostale					
Als Formal Specialties					
American Eagle Outfitters					
Amy's Hellmark					
Ann Taylor					
Benetton Republic					
Barnes & Noble					
Bath & Body Works					
Bebe					
Bent Fork Grill					
Best Buy					
Blugg's					
Build A Bear Workshop					
Charlotte Russe Inc					
Chicos					
Christopher & Banks					
Cingular Wireless					
The Buckle Inc					
The Childrens Place					
The Finish Line					
The Great Frame Up					
Victoria's Secret					
White House Black Market					
Yankee Candle					
Zales					
Zumiez					
New Store					

SUBTOTAL - - - - -

Previous Months & Deficiencies

Store/ Company	Net Sales Subject to RSF	RSF Paid	Period	Gross Sales Reported to City of Loveland
Aeropostale				
Als Formal Specialties				
American Eagle Outfitters				
Amy's Hellmark				
Ann Taylor				
Benetton Republic				
Barnes & Noble				
Bath & Body Works				
Bebe				
Bent Fork Grill				
Best Buy				
Blugg's				
Build A Bear Workshop				
Charlotte Russe Inc				
Chicos				
Christopher & Banks				
Cingular Wireless				
The Buckle Inc				
The Childrens Place				
The Finish Line				
The Great Frame Up				
Victoria's Secret				
White House Black Market				
Yankee Candle				
Zales				
Zumiez				
New Store				

SUB TOTAL - - - - -

GRAND TOTAL - - - - -

Centerra Marketplace
 Monthly Sales and Retail Sales Fee Collection
 June 2011 Reporting Period

Store Company	Net Sales Subject to RSF	RSF Paid	Credit Balance	Non PFR	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Barrie's Pet Hospital						
Bed Bath & Beyond						
CAFFE 2500						
Cycle-B-A						
Capezio Mexican Grill						
Colorado College						
CO's B&B						
Devon's						
First Star Hair						
First Star Pharmacy						
Good Day Pharmacy						
Good Times						
James Gilberts						
JoAnn Stores						
Junkies						
King GMC						
Lane Bryant						
Martins						
Merlot's						
Medical Center of the Rockies						
Mina's						
Novitas & Company						
Northern Cole Fitness Club						
OK Chicago						
OK Fanny						
Parsons Bread						
Posters Plus Books						
Reflexion						
Rite Aid						
RVN Home Medical Supply						
Residence Inn						
Ross						
Sally Beauty						
Shoe Central						
Shops						
T. Marlin						
The Market Place at MCR						
USM Sewing						
New Skins						
SUB TOTAL						

Previous Months & Deficiencies

Store Company	Net Sales Subject to RSF	RSF Paid	Period	Gross Sales Reported to City of Loveland	Net Sales Reported to City of Loveland
Barrie's Pet Hospital					
Bed Bath & Beyond					
CAFFE 2500					
Cycle-B-A					
Capezio Mexican Grill					
Colorado College					
CO's B&B					
Devon's					
First Star Hair					
First Star Pharmacy					
Good Day Pharmacy					
Good Times					
James Gilberts					
JoAnn Stores					
Junkies					
King GMC					
Lane Bryant					
Martins					
Merlot's					
Medical Center of the Rockies					
Mina's					
Novitas & Company					
Northern Cole Fitness Club					
OK Chicago					
OK Fanny					
Parsons Bread					
Posters Plus Books					
Reflexion					
Rite Aid					
RVN Home Medical Supply					
Residence Inn					
Ross					
Sally Beauty					
Shoe Central					
Shops					
T. Marlin					
The Market Place at MCR					
USM Sewing					
New Skins					
SUB TOTAL					

GRAND MONTHLY TOTAL

**EXHIBIT I
FORM OF WAIVER OF CONFIDENTIALITY**

PARTIES TO LEASE:
 LANDLORD: _____

TENANT: _____

DATE OF LEASE: _____

LEASE TERM: _____

PROPERTY/STORE
 DESCRIPTION OR NAME: _____

ADDRESS OF TENANT: _____

Tenant hereby acknowledges that it is a party to the above referenced Lease which contains provisions regarding the duty to impose and collect a Public Improvement Fee ("PIF") and a Retail Sales Fee ("RSF"), as specifically addressed in Sections 14.6 and 14.7, respectively, and also in Section 14.8 of said Lease. The undersigned is fully authorized to act on behalf of the Tenant in the matters covered by this Waiver of Confidentiality and, in such capacity, does hereby agree to the terms of Sections 14.6, 14.7 and 14.8 of the Lease. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in Exhibit A attached hereto.

With respect to the PIF, the Tenant specifically authorizes the PIF Designated Receiving Entity and any other PIF Enforcing Party to:

(i) audit the books and records of the Tenant in determining compliance with the PIF collection and remittance obligations of Tenant under the Lease; and

(ii) release to the PIF Report Recipients (but not to any other person or entity, except as required by law) such audited information and any reports, returns and other documents as are delivered to the PIF Designated Receiving Entity by the Tenant relating to the PIF and the sales tax imposed by the City of Loveland and any relevant information gathered by the PIF Designated Receiving Entity and any other PIF Enforcing Party during an audit or in reviewing such reports, returns or other documents relating to the PIF and the sales tax imposed by the City of Loveland; provided, however that any such information pertaining specifically to the Tenant provided to PIF Report Recipients described in subparagraph (iii) or (iv) of the definition of PIF Report Recipient (including Dissemination Agents) will be made only on an aggregated basis with the similar information submitted by other retailers in the same retail center in the Centerra development and/or all retailers in the Centerra development, and without separate identification (direct or indirect) of the PIF, the Sales (as defined in Section 14.8 of the Lease) or City or State sales taxes of such Tenant. Tenant hereby acknowledges that any such information will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting PIF Revenues due, enforcing Tenant's obligations under the Lease and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to PIF Report Recipients described

in subparagraph (iii) or (iv) of the definition of PIF Report Recipient, and except for such disclosures or publications as may be required by applicable laws.

With respect to the RSF, the Tenant specifically authorizes the RSF Designated Receiving Entity and any other RSF Enforcing Party to:

(i) audit the books and records of the Tenant in determining compliance with the RSF collection and remittance obligations of Tenant under the Lease; and

(ii) release to the RSF Report Recipients (but not to any other person or entity, except as required by law) such audited information and any reports, returns and other documents as are delivered to the RSF Designated Receiving Entity by the Tenant relating to the RSF and the sales tax imposed by the City of Loveland and any relevant information gathered by the RSF Designated Receiving Entity and any other RSF Enforcing Party during an audit or in reviewing such reports, returns or other documents relating to the PIF and the sales tax imposed by the City of Loveland; provided, however that any such information pertaining specifically to the Tenant provided to RSF Report Recipients described in subparagraph (iii) or (iv) of the definition of RSF Report Recipient (including Dissemination Agents) will be made only on an aggregated basis with the similar information submitted by other retailers in the same retail center in the Centerra development and/or all retailers in the Centerra development, and without separate identification (direct or indirect) of the RSF, the Sales (as defined in Section 14.8 of the Lease) or City or State sales taxes of such Tenant. Tenant hereby acknowledges that any such information will remain confidential, to the extent permitted or required by law, and be used only for purposes of collecting RSF Revenues due, enforcing Tenant's obligations under the Lease and otherwise monitoring compliance with the provisions thereof, except with respect to information provided to RSF Report Recipients described in subparagraph (iii) or (iv) of the definition of RSF Report Recipient, and except for such disclosures or publications as may be required by applicable laws.

In addition, all audited information, reports, returns and other documents provided to the PIF Designated Receiving Entity and the RSF Designated Receiving Entity by Tenant shall be maintained by the Tenant for at least three (3) years from the date of submission thereof to the PIF Designated Receiving Entity or the RSF Designated Receiving Entity, respectively, and, upon written request, shall be made available to any PIF Enforcing Party and to any RSF Enforcing Party, respectively, for inspection and audit at the Tenant's place of business.

This waiver shall be in effect for any period of time during which a lease is in effect between the Tenant and Landlord, regardless of whether an initial term, a separate term or extension thereof, plus a period of three years beyond the termination of any such lease.

TENANT: _____ (Name)

By: _____
Its: _____

EXHIBIT A
DEFINITIONS APPLICABLE TO TENANT WAIVER OF CONFIDENTIALITY

“**City**” shall mean and refer to the City of Loveland, Colorado.

“**Metro Districts**” shall mean and refer to Centerra Metropolitan District Nos. 1 through 4, inclusive, quasi-municipal corporations and political subdivisions of the State of Colorado to be organized and acting pursuant to the provisions of the Colorado Special District Act.

“**PIC**” shall mean and refer to The Centerra Public Improvement Collection Corporation, a non-profit corporation organized under the laws of the State of Colorado for the sole and exclusive purpose of collecting, holding and disbursing the Public Improvement Fee, and its successors and assigns.

“**PID**” shall mean and refer to The Centerra Public Improvement Development Corporation, or in the event of the dissolution or bankruptcy of such corporation, any other non-profit corporation organized by Centerra Properties West, LLC, under the laws of the State of Colorado for the purpose of constructing certain public improvements generally in the vicinity of Centerra and otherwise applying the Public Improvement Fees to the purposes permitted herein, and any such entity’s successors and assigns

“**PIF Bond Trustee**” shall mean and refer to the trustee or trustees for the holders of any other obligations secured in whole or in part by the PIF revenues.

“**PIF Covenant**” means a Declaration of Covenants Imposing and Implementing the Centerra Public Improvement Fee relating to the PIF and recorded or to be recorded against certain real property, including the real property leased by Tenant under the Lease.

“**PIF Designated Receiving Entity**” shall mean and refer to any entity designated by the PIC from time to time to receive the Public Improvement Fee revenues and perform any other functions in connection with the Public Improvement Fee revenues, which may include the City. The designation of any such entity by the PIC shall be subject to the prior written approval of the City Manager, which approval shall not be unreasonably withheld; provided, however that if the City Manager’s written approval is not received within 20 days of request therefore by the PIC, the City Manager shall be deemed to have given such approval. If no such entity has been designated by the PIC (and approved by the City Manager), references herein to “PIF Designated Receiving Entity” shall mean the PIC.

“**PIF Dissemination Agent**” shall mean and refer to any entity charged with providing information to purchasers of debt or obligations secured in whole or in part by the PIF revenues, which may include the PIF Bond Trustee.

“**PIF Enforcing Party**” shall mean and refer to any one (1) or more of the Declarants of the PIF Covenant, the Centerra Metropolitan District No. 1, the City, the Loveland Urban Renewal Authority, the PIF Bond Trustee, the PID, the PIC, any PIF Designated Receiving Entity, or any third party designated by any of the foregoing.

“**PIF Report Recipient**” (i) the PIC, the PIF Bond Trustee, the PID, Centerra Properties West, LLC, the Metro Districts, and the City, (ii) with respect to the specific information of the Tenant, the Landlord, (iii) any PIF Dissemination Agent; and (iv) any investor or potential investor in the Centerra development and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of the Centerra development or a prospective purchaser of any interest in Centerra Properties West, LLC.

“**Primary RSF Recipient**” shall mean and refer to [Centerra Retail Sales Fee Corporation][G&I VI Retail Prom, LLC] or any entity to whom the [Centerra Retail Sales Fee Corporation] [G&I VI Retail

Prom, LLC], or any subsequent Primary RSF Recipient, has assigned its rights in and control over, as provided in the RSF Covenant, the RSF revenues.

“**RSF Bond Trustee**” shall mean and refer to the trustee or trustees for the holders of any other obligations secured in whole or in part by the RSF revenues, if any.

“**RSF Covenant**” means a Declaration of Covenants Imposing and Implementing the [Centerra Retail Sales Fee] [Lifestyle Retail Sales Fee] relating to the RSF and recorded or to be recorded against certain real property, including the real property leased by Tenant under the Lease.

“**RSF Designated Receiving Entity**” shall mean and refer to any entity designated by the Primary RSF Recipient from time to time to receive the RSF revenues and perform any other functions in connection with the RSF revenues, which may include the City. If no such entity has been designated by the Primary RSF Recipient, references herein to “RSF Designated Receiving Entity” shall mean the Primary RSF Recipient.

“**RSF Dissemination Agent**” shall mean and refer to any entity charged with providing information to purchasers of debt or obligations secured in whole or in part by the RSF revenues, which may include the RSF Bond Trustee.

“**RSF Enforcing Party**” shall mean and refer to [Centerra Retail Sales Fee: any one (1) or more of the Declarants of the RSF Covenant, the Primary RSF Recipient, any RSF Designated Receiving Entity and other RSF Recipient, or any third party designated by any of the foregoing] [Lifestyle Retail Sales Fee: any one (1) or more of the Primary RSF Recipient, any RSF Designated Receiving Entity and other RSF Recipient, or any third party designated by any of the foregoing].

“**RSF Recipient**” shall mean and refer to any entity to whom the Declarants of the RSF Covenant, the Primary RSF Recipient or any other RSF Recipient has assigned all or any portion of its rights in and to the RSF Revenues.

“**RSF Report Recipient**” shall mean and refer to: (i) the Primary RSF Recipient, the RSF Bond Trustee, and any other RSF Recipient; (ii) with respect to the specific information of the Tenant, the Landlord, (iii) any RSF Dissemination Agent; and (iv) any investor or potential investor in the Centerra development and its consultants, any mortgagee, prospective mortgagee, encumbrancer or purchaser of any part of the Centerra development or a prospective purchaser of any interest in Centerra Properties West, LLC.

**EXHIBIT J
SCHEDULE OF CITY'S FEES AND REIMBURSABLE EXPENSES**

Exhibit J

Basic Collections Agreement

Services		Estimated Annual Hours
Register Checks	Per the terms in the recited Collection agreement dated March 18, 2008 (Once per year per store unless a new store is found non-compliant.)	184
New Store set-up and Minor Enforcement	Store visits by Auditors to train and enforce fee collection policies and/or ensure payment of past due fees.	152
Deposits	Per the City's separation of duties policies, an auditor prepares daily deposits 15-31 times each month.	204
Daily and Monthly Accounting & Reporting	Manage returns, complete daily/monthly/annual reports, field vendor questions, all daily administration, Special one time events.	1040
General Administration and Supervision	Overview and supervision by Revenue Manager and Sales Tax Manager.	114
Total Estimated Hours - Collection		1694
Annual Cost for 2012		\$ 67,000

Discovery and Additional Enforcement

Discovery	20 discoveries per year to be defined the prior November.	240
Collection Calls and Additional Enforcement	Full participation in the City's Delinquency Process.	204
General Administration and Supervision	Overview and supervision by Revenue Manager and Sales Tax Manager.	150
Total Estimated Hours - Discovery/Enforcement		594
Annual Cost for 2012		\$ 24,000

Total Direct and Indirect Costs	Personal Services, Supplies, Purchased Services, (IT) Information Technology, Telecommunications, Legal & Facilities	\$ 91,000
--	--	------------------

Total Estimated Hours - Collections/Discovery/Enforcement		2,288
Your Total Annual Cost for 2012		\$ 91,000
Percentage base on \$4.3 million Total Collections		2.12%

Extraordinary Reimbursable Expenses

Audits	In Excess of 5 audits per year (hourly rate)	\$ 45,000
---------------	--	------------------



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: 12
MEETING DATE: 11/15/2011
TO: City Council
FROM: Bettie Greenberg, Human Resources/Risk Management
PRESENTER: Bettie Greenberg

TITLE: Award the City's property and liability insurance coverage for 2012 to CIRSA

RECOMMENDED CITY COUNCIL ACTION:

Approve a motion to award the City's property and liability insurance coverage for 2012 to CIRSA and to authorize the City to continue the Intergovernmental Agreement with CIRSA and establish a purchase order in the amount of \$861,978.

OPTIONS:

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

DESCRIPTION:

This is an administrative action to authorize the City to continue its Intergovernmental Agreement with CIRSA for 2012 property and liability insurance coverage and establish a purchase order in the amount of \$861,978 for premium, claims administration, and payment of estimated claims for 2012 and remaining open claims or new claims from prior years.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

These insurance costs are included in the approved 2012 City of Loveland budget

SUMMARY:

Risk Management conducted a Request for Proposal (RFP) for the City's 2012 property and liability insurance. The RFP consisted of two phases: proposals from brokers and then having selected brokers obtain insurance quotes. Four (4) insurance brokers and CIRSA received the RFP. One firm declined the opportunity to submit a quote. Another broker did not respond.

Flood and Peterson, Ewing-Leavitt, and CIRSA submitted proposals seeking to obtain insurance quotes.

Insurance quotes were due by September 30, 2011. On September 28, Ewing-Leavitt informed Risk that none of the insurers that they solicited, including Hartford, were willing to provide a quote for the City's liability insurance due to high risk exposures such as police operations. In addition to CIRSA's renewal quotation, Flood and Peterson submitted quotes for property/liability from Travelers and Alteris (Agronaut). Risk Management then reviewed the quotes provided and compared the insurance coverage included, deductibles, coverage limits, and the overall cost for the property and liability programs of each carrier.

CIRSA's provided the best price at \$326,978 with a \$200,000 per occurrence deductible and \$5,000,000 in general liability limits; the nearest competitor, Alteris, quoted \$478,717 with a \$250,000 per occurrence deductible, but \$10,000,000 in limits. CIRSA's premium also included value added services, such as a liability hotline to discuss potential issues with CIRSA's general counsel, and loss control services, which Alteris did not offer. Travelers offers loss control; however, their costs were significantly higher.

In October, the Citizens Finance Advisory Commission reviewed the proposals RFP, responses to the RFP, and quotes provided by CIRSA and Flood and Peterson. CFAC recommended that the City remain with CIRSA for the City's property and liability insurance coverage. Staff agrees with this recommendation.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Quote from Alteris and Travelers
2. Quote from CIRSA
3. Comparison of programs
4. Comparison of premium

NAMED INSURED SUMMARY

City of Loveland

SCHEDULE OF LOCATIONS

Per City Schedule

INSURANCE COMPANY

**Travelers Insurance
(Best Rating A+15)**

**Alteris – Argonaut
(Best Rating A15)**

Effective: January 1, 2012 – January 1, 2013

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information.

5

STATE OF IOWA

PROPERTY

<i>Coverage</i>	Blanket Buildings and Blanket Personal Property including Furniture, Fixtures, and Equipment, including Stock and Improvements and Betterments.
<i>Limits</i>	\$125,210,592 Blanket Limit \$101,038,288 Buildings \$ 24,375,109 Personal Property \$ 3,400,000 Business Income \$ 1,000,000 Extra Expense \$ 1,800,000 Accounts Receivable
<i>Cause of Loss</i>	Special Form: Risks of Physical Loss unless the Loss is subject to an Exclusion or Limitation.
<i>Agreed Value</i>	The blanket coverage is subject to the Agreed Value Clause, which is an acknowledgment by the insurance company that the amount of coverage purchased is proper, and acts to waive the coinsurance requirements in the policy for the policy period .
<i>SIR</i>	\$ 250,000 Per Occurrence
<i>Valuation</i>	Replacement Cost.
<i>Remarks</i>	Equipment breakdown coverage is included in policy form. Supplemental Property Coverages Included (not listed) <u>Priced Separately:</u> \$ 54,665,219 Agilent Blanket Building \$ 5,000,000 Flood (per loss and aggregate) \$ 5,000,000 Earthquake (per loss and aggregate)

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

EXCLUDED EQUIPMENT

INLAND MARINE

Coverage

Fine Arts

\$10,696,655

Electronic Data Processing Equipment

\$ 6,471,910 Hardware

\$ 50,000 Media

Contractors Equipment

\$ 100,000 Rented/Leased/Borrowed Equipment

\$ 7,362,240 Contractor's Scheduled Equipment

\$ 250,000 Newly Acquired Contractors Equipment

\$34,300,100 Miscellaneous Property

SIR

\$ 100,000 Travelers

\$ 250,000 Alteris

Causes of Loss

Risks of Direct Physical Loss or Damage unless the Loss is subject to any Exclusions or Limitations

Valuation

Replacement Cost applies to Computer Hardware
 Reproduction Cost applies to Computer Data & Media

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

CRIME

Coverage & Limits

\$2,000,000

Employee Dishonesty resulting in Loss of Money, Security and Other Property

SIR

\$ 250,000

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information [®]

**LIABILITY POLICIES WILL CONTAIN THE AN ENDORSEMENT REGARDING
THE COLORADO IMMUNITY LAW AND LIMITATIONS**

<i>Statutory Cap Limits of Coverage Endorsement</i>	\$ 150,000	Colorado personal injury each person statutory cap limit
	\$ 600,000	Colorado personal injury statutory cap total limit
	\$ 150,000	Colorado advertising injury each person statutory cap limit
	\$ 600,000	Colorado advertising injury statutory cap total limit
	\$ 150,000	Colorado bodily injury and property damage each person statutory cap limit
	\$ 600,000	Colorado bodily injury and property damage statutory cap total limit

CLAIMS MADE VERSUS OCCURRENCE

Liability policies that change from Claims Made to Occurrence form will be discussed further for exposure and determination of whether the City elects to purchase a "tail" or "nose" policy.

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

~~1979 VERSION~~
COMMERCIAL GENERAL LIABILITY
Occurrence Form

Coverage	Provides coverage for damage you are legally obligated to pay because of Bodily Injury or Property Damage caused by an occurrence.
Limits	<p>\$1,000,000 Each Event Limit</p> <p>\$1,000,000 Personal Injury Each Person Limit</p> <p>\$1,000,000 Advertising Injury Each Person Limit</p> <p>\$1,000,000 Premises Damage</p> <p>\$3,000,000 General Aggregate Limit (Other than Products & Completed Operations)</p> <p>\$3,000,000 Products & Completed Operations Aggregate Limit</p> <p>\$ 250,000 Failure to Supply</p> <p>Included Cemetery Professional Liability</p> <p>\$1,000,000 Sexual Abuse/Molestation Each Person</p> <p>\$1,000,000 Sexual Abuse/Molestation Aggregate</p> <p>\$ 100,000 Damage to Premises Rented to you</p> <p>\$1,000,000 Sewer Back-up (resulting from negligence)</p> <p>Included Extended Bodily Injury</p> <p>Included Broad Form Property Damage</p> <p>Included Broad Form Contractual Liability for covered contracts</p> <p>Included Host Liquor Liability</p> <p>Included Liquor Liability</p> <p>Included Special Events</p> <p>Included Intentional Injury or Damage resulting from the use of reasonable force to protect people/property</p> <p>Included Non-Owned Watercraft (less than 75 feet)</p> <p>Included Bodily Injury & Property Damage Pollution Coverage for:</p> <ul style="list-style-type: none"> • Pesticide/herbicide application • Application of chlorine or sodium hypochlorite in sewage/water treatment or swimming pools • Hostile fire heat, fumes or smoke • Mobile equipment operating fluids
SIR	<p>\$ 200,000 Travelers (option \$250,000)</p> <p>\$ 250,000 Alteris</p>
Comments	<p>Choice of counsel</p> <p>Consent to settle</p>

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

UNITED INSURANCE

EMPLOYEE BENEFIT LIABILITY

Claims Made Form

<i>Coverage</i>	Coverage for liability arising out of a wrongful act committed in the administration of certain types of employee benefit plans. Administration includes; advise, interpretation and calculation of benefits, except as excluded. No Retroactive Date applies. Coverage does not apply if the entity knew of a wrongful act prior to the effective date of this policy and could have reasonably foreseen that it would result in a suit or a claim against the entity.	
<i>Retroactive Date</i>	None	
<i>Limits</i>	\$1,000,000	Each Employee
	\$3,000,000	Aggregate
<i>SIR</i>	\$ 200,000	Each Employee – Travelers (option \$250,000)
	\$ 250,000	Each Employee - Alteris
<i>Comments</i>	<p>Choice of counsel</p> <p>Consent to settle</p> <p>Not subject to audit</p>	

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

CITY OF LOUISIANA

LAW ENFORCEMENT LIABILITY
Claims Made Form

<i>Coverage</i>	Coverage for the premises and operations exposures and the professional liability of law enforcement agencies, including jail operations. It covers amounts any protected person is legally required to pay as damages for covered injury or damage that result from the conduct of law enforcement duties by or for your law enforcement agency and is caused by a wrongful act (error or omission).																				
<i>Limits</i>	<table border="0"> <tr> <td>\$1,000,000</td> <td>Each Wrongful Act</td> </tr> <tr> <td>\$1,000,000</td> <td>Total Limit</td> </tr> </table> <table border="0"> <tr> <td>Included</td> <td>Bodily Injury, Personal Injury and Property Damage</td> </tr> <tr> <td>Included</td> <td>Authorized Moonlighting</td> </tr> <tr> <td>Included</td> <td>Canine & Equine Exposures</td> </tr> <tr> <td>Included</td> <td>False Arrest, Detention or Imprisonment</td> </tr> <tr> <td>Included</td> <td>False or Improper Service of Process</td> </tr> <tr> <td>Included</td> <td>Handling and treatment of corpses and dispensing of medication</td> </tr> <tr> <td>Included</td> <td>Injury due to the use of mace, pepper spray or tear gas</td> </tr> <tr> <td>Included</td> <td>Mental Anguish, Emotional Distress, Humiliation</td> </tr> </table>	\$1,000,000	Each Wrongful Act	\$1,000,000	Total Limit	Included	Bodily Injury, Personal Injury and Property Damage	Included	Authorized Moonlighting	Included	Canine & Equine Exposures	Included	False Arrest, Detention or Imprisonment	Included	False or Improper Service of Process	Included	Handling and treatment of corpses and dispensing of medication	Included	Injury due to the use of mace, pepper spray or tear gas	Included	Mental Anguish, Emotional Distress, Humiliation
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Included	Mental Anguish, Emotional Distress, Humiliation																				
<i>Retroactive Date</i>	TBD																				
<i>SIR</i>	<table border="0"> <tr> <td>\$ 200,000</td> <td>Each Claim – Travelers (option \$250,000)</td> </tr> <tr> <td>\$ 250,000</td> <td>Each Claim - Alteris</td> </tr> </table>	\$ 200,000	Each Claim – Travelers (option \$250,000)	\$ 250,000	Each Claim - Alteris																
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\$ 250,000	Each Claim - Alteris																				

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

TRIPOLI LUTHERAN

EMPLOYMENT PRACTICES LIABILITY
Claims Made Form

<i>Coverage</i>	Coverage for damages (other than bodily injury or property damage) any protected person is legally required to pay for covered employment injury to employees or independent contractors that results from a wrongful employment practice offense first committed after the retroactive date. Wrongful employment practice offense is defined to include discrimination, termination, harassment, retaliation, discipline, hiring, supervision, demotion, promotion, defamation, libel, slander, invasion of privacy.
<i>Retroactive Date</i>	TBD
<i>Limits</i>	\$1,000,000 Each Employee \$1,000,000 Aggregate
<i>SIR</i>	\$ 200,000 Each Claim – Travelers (option \$250,000) \$ 250,000 Each Claim - Alteris
<i>Comments</i>	Choice of counsel Consent to settle Not subject to audit.

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

PUBLIC ENTITY MANAGEMENT LIABILITY
Claims Made Form

<i>Coverage</i>	Coverage for damages (other than bodily injury, personal injury, advertising injury or property damage) any protected person is legally required to pay for covered loss that results from the conduct of duties by or for a public entity and is caused by a wrongful act. Wrongful act is defined as any act, error or omission. However, wrongful employment practice offenses are not covered.
<i>Limits</i>	\$1,000,000 Each Wrongful Act \$1,000,000 Total Limit
<i>SIR</i>	\$ 200,000 Each Wrongful Act – Travelers (option \$250,000) \$ 250,000 Each Wrongful Act - Alteris
<i>Retroactive Date</i>	TBD
<i>Comments</i>	Choice of counsel Consent to settle Not subject to audit

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

Umbrella Liability
UMBRELLA LIABILITY

Coverage Provides excess liability limits above primary coverage for bodily injury, property damage, personal injury and advertising injury resulting from a catastrophic event. "Drop Down" coverage responds to a reduction in the available primary insurance limit as a result of an event limit and replaces the primary insurance should the underlying total limit be exhausted.

Limits

<u>Travelers</u>	
\$4,000,000	Each Occurrence
\$4,000,000	General Aggregate
\$4,000,000	Specialty Coverage Aggregate
\$4,000,000	Personal & Advertising Injury
\$4,000,000	Products & Completed Operations Aggregate
<u>Alteris</u>	
\$9,000,000	Each Occurrence
\$9,000,000	General Aggregate
\$9,000,000	Specialty Coverage Aggregate
\$9,000,000	Personal & Advertising Injury
\$9,000,000	Products & Completed

Excess of Primary Insurance of

General Liability
 \$ 1,000,000 Commercial General Liability - Per Occurrence

Law Enforcement Liability
 \$ 1,000,000 Each Wrongful Act

Automobile Liability
 \$ 1,000,000 Combined Single Limit

Employment Practices Liability
 \$ 1,000,000

Employee Benefits Liability
 \$ 1,000,000

Public Entity Liability
 \$ 1,000,000

Retained Limit \$ 10,000 (applies only to losses covered by the Umbrella/Excess but not covered by the primary)

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

PREMIUM SUMMARY

Coverage Description	1/1/2012-1/1/2013 Travelers \$200,000 SIR Liability Net Premium	1/1/2012-1/1/2013 Travelers \$250,000 SIR Liability Net Premium	1/1/2012-1/1/2013 Alteris Public Risk Solutions (Argonaut) Net Premium
• Property	\$168,806	\$168,806	\$166,615
• Equipment Breakdown	Included	Included	TBD
• Inland Marine	\$23,346	\$23,346	Included
• General Liability	\$61,859	\$57,638	\$155,345
• Employee Benefits Liability	\$181	\$165	Included
• Public Entity Management	\$18,444	\$16,792	Included
• Law Enforcement Liability	\$50,839	\$47,035	Included
• Employment Practices Liability	\$37,229	\$34,441	Included
• Automobile	\$38,229	\$33,762	Included
• Crime	Included	Included	Included
• Umbrella – \$4,000,000 Limit	\$27,175	\$27,175	Included
• Umbrella - \$9,000,000 Limit	N/A	N/A	Included
• Third Party Administrator Services	<u>Included</u>	<u>Included</u>	*****
	\$426,108	\$408,880	\$321,960
• Broker Fee Additional 8%	\$34,100	\$32,700	\$25,760
• Third Party Administrator Estimate (Rates are negotiated at per claim or annual flat fee. See attached sample)	N/A	N/A	\$15,000
– <i>Total (Estimated)</i>	<i>\$460,208</i>	<i>\$441,580</i>	<i>\$362,720</i>
– Non Premium Items			
• Loss Fund - Claims Handling Est	\$70,000	\$70,000	\$70,000
• Terrorism is not included and is available at an additional premium.			
• Agilent Property \$54,665,219	\$57,398	\$57,398	\$55,000
• Flood & Earthquake \$5,000,000	\$26,810	\$26,810	\$25,000

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Third Party Administrator Example

TPA service is based on a fee per claim pricing model. As claims are reported, the following fee per claim schedule applies against the minimum negotiated fee. Account Management fee is inclusive of expenses to manage the account.

Claim Type	Fee Per Claimant
General Liability	\$615
General Liability- Resolved within 30 days of report	\$260
Automobile Liability Bodily Injury	\$615
Automobile Property Damage/Med Pay/Physical Damage	\$338
Real Property/Inland Marine	\$540
Public Officials	\$962
Law Enforcement/Employment Practices	\$962
Record Only/Incident Only	\$50

Multiple Claimants: 40% of prevailing fee per claimant in excess of five - from same incident.

A flat annual fee may be negotiated for all claims.

MARKET ANALYSIS

Workers Compensation

Pinnacle: Quoted

Travelers: Not competitive on large deductibles/SIR's and not enough time

Property/Casualty

Travelers: Quoted

One Beacon: Not competitive against CIRS

Glatfelter: Not able to write deductibles over \$25,000 and not competitive on forms and price

Excess/Reinsurance

Aleris: Quoted

Manich Re: Pricing indications at \$550,000

Genesis Management & Insurance Services Corp: Pricing indications at \$500,000+

Swiss Re: Will take excess of first layer if needed

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LOVELAND LARIMER BUILDING AUTHORITY

PROPERTY

<i>Coverage</i>	Blanket Buildings and Blanket Personal Property including Furniture, Fixtures, and Equipment, including Stock and Improvements and Betterments.
<i>Limits</i>	\$17,988,455 Blanket Limit \$ 1,000,000 Extra Expense
<i>Cause of Loss</i>	Special Form: Risks of Physical Loss unless the Loss is subject to an Exclusion or Limitation.
<i>Agreed Value</i>	The blanket coverage is subject to the Agreed Value Clause, which is an acknowledgment by the insurance company that the amount of coverage purchased is proper, and acts to waive the coinsurance requirements in the policy for the policy period .
<i>Deductible</i>	\$ 5,000 Per Occurrence
<i>Valuation</i>	Replacement Cost.
<i>Remarks</i>	Equipment breakdown coverage is included in policy form. Sublimits: <ul style="list-style-type: none"> • Debris removal: \$250,000 • Pollution Clean-up and Removal: \$100,000 • Spoilage: \$250,000 • Building Ordinance and Law <ul style="list-style-type: none"> ○ Demolition: \$500,000 ○ Increased Cost of Construction: \$500,000

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

CITY OF LOVELAND

LOVELAND LARIMER BUILDING AUTHORITY

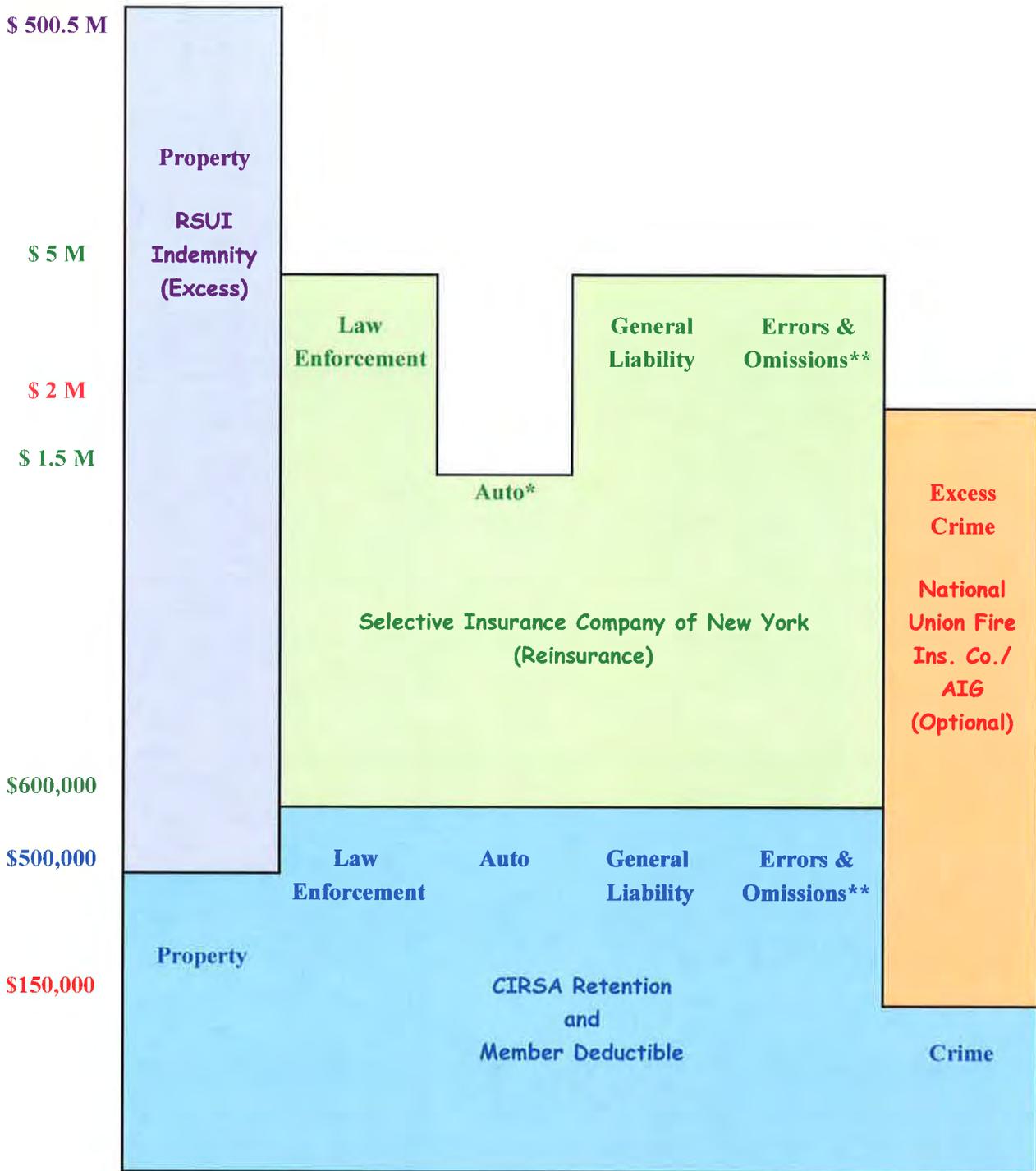
COMMERCIAL GENERAL LIABILITY

Occurrence Form

<i>Coverage</i>	Provides coverage for damage you are legally obligated to pay because of Bodily Injury or Property Damage caused by an occurrence.
<i>Limits</i>	<p>\$1,000,000 Each Event Limit</p> <p>\$1,000,000 Personal Injury Each Person Limit</p> <p>\$1,000,000 Advertising Injury Each Person Limit</p> <p>\$1,000,000 Premises Damage</p> <p>\$2,000,000 General Aggregate Limit (Other than Products – Completed Operations)</p> <p>\$2,000,000 Products & Completed Operations Aggregate Limit</p> <p>\$ 250,000 Failure to Supply</p> <p>Included Cemetery Professional Liability</p> <p>\$1,000,000 Sexual Abuse/Molestation Each Person</p> <p>\$1,000,000 Sexual Abuse/Molestation Aggregate</p> <p>\$ 100,000 Damage to Premises Rented to you</p> <p>Included Extended Bodily Injury</p> <p>Included Broad Form Property Damage</p> <p>Included Broad Form Contractual Liability for covered contracts</p> <p>Included Host Liquor Liability</p> <p>Included Intentional Injury or Damage resulting from the use of reasonable force to protect people/property</p> <p>Included Non-Owned Watercraft(less than 75 feet)</p> <p>Included Bodily Injury & Property Damage Pollution Coverage for:</p> <ul style="list-style-type: none"> • Pesticide/herbicide application • Application of chlorine or sodium hypochlorite in sewage/water treatment or swimming pools • Hostile fire heat, fumes or smoke • Mobile equipment operating fluids
<i>Deductible</i>	\$ 2,500

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

**2011 PROPERTY/CASUALTY COVERAGE PLAN
 COVERAGE STRUCTURE
 (As of January 1, 2011)**



* Total automobile liability limits are \$1.5 M per claim/occurrence

** There is a \$10M annual per-member aggregate on errors & omissions coverage, and on class-action suits arising out of discrimination

THIS DIAGRAM IS FOR GENERAL ILLUSTRATION PURPOSES ONLY; FOR ACTUAL COVERAGES AND LIMITS SEE THE APPLICABLE EXCESS POLICY, MEMBERSHIP AND BOARD POLICIES AND CIRSA BYLAWS.

PROPOSED 2012 PROPERTY/CASUALTY COVERAGES

The types and monetary limits of the proposed coverages to be provided to CIRSA Property/Casualty members for the coverage period of January 1, 2012 to January 1, 2013 are generally described below. The scope, terms, conditions, and limitations of the coverages are governed by the applicable excess and/or reinsurance policies, the CIRSA Bylaws and Intergovernmental Agreement, and other applicable documents.

I. TYPES OF COVERAGES (subject to the limit on CIRSA's liability as described in Section II below):

- A. Property coverage (including auto physical damage)
- B. Liability coverage:
 - 1. General liability
 - 2. Automobile liability
 - 3. Law enforcement liability
 - 4. Public officials errors and omissions liability
- C. Crime coverage (including employee dishonesty and theft of money and securities)

II. CIRSA RETENTIONS, LOSS FUNDS, AGGREGATE LIMITS, AND MEMBER DEDUCTIBLES:

For the coverages described in Section I, CIRSA is liable only for payment of the applicable self-insured retentions and only to a total annual aggregate amount for CIRSA members as a whole of the amount of the applicable CIRSA loss fund for the coverage period. There is no aggregate excess coverage over any loss fund.

Coverages in excess of CIRSA's self-insured retentions are provided only by the applicable excess insurers and/or reinsurers in applicable excess and/or reinsurance policies, and shall be payable only by those excess insurers and/or reinsurers. The limits of coverage provided by the excess insurers and/or reinsurers for the coverage period shall be described in the coverage documents issued to the members. Aggregate and other limits shall apply as provided in said documents.

A. CIRSA PROPOSED SELF-INSURED RETENTIONS FOR THE COVERAGE PERIOD:

- 1. \$500,000 per claim/occurrence property
- 2. \$600,000 per claim/occurrence liability
- 3. \$600,000 each and every claim Public Officials liability
- 4. \$150,000 per claim/occurrence crime

B. CIRSA LOSS FUND AMOUNTS FOR THE COVERAGE PERIOD:

Loss fund amounts are as adopted or amended from time to time by the Board of Directors based on the members in the Property/Casualty Pool for the year and investment earnings on those amounts. Information on the current loss fund amounts is available from the Chief Financial Officer.

*Proposed Coverages (continued)***C. PROPOSED EXCESS INSURANCE LIMITS FOR THE COVERAGE PERIOD:**

1. Excess property: to \$500.5 million each claim/occurrence
2. Excess liability: to \$5 million each claim/occurrence (except excess auto liability: to \$1.5 million each claim/occurrence); \$10 million annual aggregate for public officials errors and omission liability
3. Excess crime (optional): to \$2 million per claim/occurrence

D. MEMBER DEDUCTIBLES:

A member-selected deductible shall apply to each of the member's claims/occurrences. Payment of the deductible reduces the amount otherwise payable under the applicable CIRSA retention. Allocated loss adjustment expenses are included in the member deductible.

EXPLANATION OF CREDITS AVAILABLE AND ACCEPTANCE OR WITHDRAW PROCEDURES

LOSS CONTROL AUDIT SCORE CREDIT

CIRSA members who received a Loss Control Audit Score of 80 or higher in 2011, and renew their membership in 2012, are eligible for a Loss Control Audit Score Credit. This credit is offered to all members that take an active role in preventing or reducing their losses by complying with the CIRSA Loss Control Standards.

If you did not receive a credit for 2012 and would like to receive one in future years, please contact your Loss Control Representative.

LOSS CONTROL CREDIT ACCOUNT

The CIRSA Board of Directors has approved members' use of any balance in the Loss Control Credit Account, except any Special Credit monies, to pay 2012 contributions. Your entity's balance in this account on August 31, 2011, if any, is shown on the quote letter.

MEMBER EQUITY ACCOUNT ADJUSTMENT

In response to the difficult economic conditions affecting our members, the CIRSA Board of Directors approved a special distribution from your Member Equity Accounts to reduce 2012 contribution costs. This adjustment is available to those members who have fully funded their share of the pool's actuarially determined loss funding requirements. No member who joined after 2006 qualifies for the adjustment since capitalization charges are spread over the first few years of membership. For those members that qualify, the adjustment is greater as their Equity Account balance and years of active participation increase. Please note that this is an optional adjustment, and your equity position in the pool will be reduced by this amount. You can elect to use all or a portion of the adjustment available. If elected, the adjustment can only be applied to your 2012 Property/Casualty contribution or remain in your equity account.

ACCEPTANCE PROCEDURES

Please complete the enclosed acceptance form indicating your decision for 2012, and return it to the CIRSA office *on or before Monday, October 3, 2011*. **Failure to return the form in time may result in the imposition of penalties under CIRSA Bylaw Article XIV upon withdrawal.**

WITHDRAWAL PROCEDURES *(if applicable)*

The enclosed Article XIV of the CIRSA Bylaws describes withdrawal procedures from CIRSA. **Written notice of withdrawal must be received by CIRSA no later than Monday, October 3, 2011, for a withdrawal without penalty effective January 1, 2012.** No withdrawing member shall be eligible for the above-described credits.

Article XIV should be read in its entirety for any penalties which would otherwise apply. Withdrawing members who subsequently apply to rejoin CIRSA may be subject to such terms and conditions as established by the CIRSA Board of Directors.

**CIRSA Property/Casualty Pool
Preliminary 2012 Contribution Quotation for:
Loveland**

Current Deductibles:

Liability *	Auto Liability	Physical Damage	Property **	To Continue This Deductible Option for 2012 Initial Here:
\$200,000	\$200,000	\$250,000	\$250,000	

(or choose another option below)

Contribution Before Reserve and Loss Experience: \$354,621
 Reserve Fund Contribution: \$0
 Impact of Loss Experience: (\$6,447)

Total 2012 Preliminary Quotation Before Credits: \$348,174 *Credit Options: You must write in the amount that you wish to use. Amounts may be split between available options.*

Credit PC Contribution	Deposit / Leave in Account	Send Check	Credit WC Contribution

2011 Loss Control (LC) Audit Credit: (\$7,877)
 Balance Remaining from Prior Year's LC Credits: \$0
 PC Member Equity Account Adjustment: (\$15,810)

**Preliminary Quotation At Current Deductible
With All Available Credits Applied: \$324,487**

Or, select a different deductible option:

Liability *	Auto Liability	Physical Damage	Property **	Revised Quote (Before Credits)	To Accept a New Deductible Option for 2012, Initial Next to the Option (Choose Only One):
\$200,000	\$200,000	\$200,000	\$200,000	\$356,574	
\$250,000	\$250,000	\$250,000	\$250,000	\$332,792	

DO NOT PAY THE AMOUNT SHOWN ON PAGE 1. AN INVOICE WILL BE SENT ON JANUARY 1, 2012.

This preliminary quotation includes all exposures reported on your entity's 2012 Property/Casualty Renewal Application and any Application Amendment Requests received by CIRSA before **August 23, 2011**.

* Regarding the Liability Deductible shown on page 1, a \$500 deductible quotation is offered to members, if requested, for general liability. However, police professional and public officials errors and omissions deductibles cannot go below \$1,000.

** Regarding the Property Deductible shown on page 1, an additional property deductible will apply separately to each location in a National Flood Insurance Program (NFIP) Zone A if total building and contents values at that location are in excess of \$1,000,000. The deductible will be the maximum limit of coverage which could have been purchased through NFIP, whether it is purchased or not.

Based upon the selections made in your 2012 Property/Casualty Renewal Application, the City of Loveland has elected not to participate in Uninsured/Underinsured Motorist Coverage.

*** Indicates the selection is a change from your entity's selection in 2011.

If this is incorrect, or you wish to change your selection at this time, please contact your Underwriting Representative at (800) 228-7136 or (303) 757-5475.

The undersigned is authorized to accept this preliminary quotation on behalf of the City of Loveland.

We accept this preliminary quotation for January 1, 2012 to January 1, 2013. We understand our final invoice may increase or decrease depending upon the number of CIRSA Property/Casualty members for 2012, actual excess insurance premiums, and any changes made to our 2012 renewal application.

Signature: _____

Title: _____

Date: _____

Signature must be that of the Mayor, Manager, Clerk or equivalent (such as President of a Special District.)

Both pages of this form must be returned by Monday, October 3, 2011. A mailed, faxed or e-mailed copy is acceptable. Please return to:

Catherine Wegman, Underwriting Administrative Assistant
3665 Cherry Creek North Drive
Denver, CO 80209
Fax: (303) 757-8950 or (800) 850-8950
E-Mail: Catherine.W@cirsa.org

Insurance Coverage Included	Travelers/Alteris Limits/Aggregate	Travelers Umbrella	Alteris Umbrella	Travelers Deductible	Alteris Deductible	CIRSA Limits (No umbrella)	CIRSA Deductible
Each Event	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Personal Injury	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Advertising Injury Each Person	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Premises Damage-Damage to others	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
General Aggregate -Other Than Products & Completed Ops	2,000,000	4,000,000	9,000,000	200,000		\$5,000,000 - no aggregate	200,000
Products & Completed Ops Aggregate	2,000,000	4,000,000	9,000,000	200,000		\$5,000,000 - no aggregate	200,000
Failure to Supply - 3rd party claims arising out of the damage tangible property used to process or transmit the water or electricity	Travelers has a \$250,000 sublimit.Can go up to \$1m. Alteris has no sublimit.		9,000,000	200,000	250,000	\$5,000,000 - no aggregate	200,000
Cemetery Professional Liability	Included	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Sexual Abuse/Molestation -Each Person	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000

Sexual Abuse/Molestation - Aggregate	1,000,000	4,000,000	9,000,000	200,000	250,000	no aggregate	200,000
Damage to Premises Rented to you	100,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Sewer backups-resulting from negligence	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Dam Failure for Loveland Water Storage Dam and the Idlewilde Dam	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Extended Bodily Injury	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Broad Form Property Damage	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Broad Form Contractual Lailbity for Covered Contracts	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Host Liquor	1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Liquor Liability	Included for Aletris, avail with Travelers at AP	available at AP	9,000,000	n/a	250,000	5,000,000	200,000
Fellow Employee Exclusion - Exception for	Included for Aletris, avail with Travelers with AP	available	9,000,000	n/a	250,000	5,000,000	200,000
Special Events	Included	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000

Intentional Injury or Property Damage from Use of Reasonable Force to Protect Property	Included	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Non-owned Watercraft	Included	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
BI and Property Damage Pollution for: * Pesticide/herbicide application	Included	4,000,000	9,000,000	200,000	250,000	5,000	200,000
* Application of chlorine or sodium hypochlorite in treatment plants and pools	Included	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
* Hostile fire, heat, fumes or smoke	Included	4,000,000	9,000,000	200,000	250,000	5,000,000	200,000
Employee Benefits	1,000,000/3,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000-no aggreg	200,000
Police Professional	1,000,000/1,000,000	4,000,000	9,000,000	200,000	250,000	5,000,000-no aggreg	200,000
Employment Practices	1,000,000/1,000,000	4,000,000	9,000,000	200,000	250,000	Included in E&O- no aggreg	200,000
E&O/Public Mgt Liability	1,000,000/1,000,000	4,000,000	9,000,000	200,000	250,000	\$5,000,000/\$10,000,000	200,000
Automobile Liability	1,000,000	4,000,000	9,000,000	200,000	250,000	1,500,000	200,000
Crime	2,000,000			250,000	250,000	5,000,000	150,000
Property Coverages							
Inland Marine	varies on the property			100,000	250,000	blanket	250,000

Building/Contents	125,210,592	250,000	250,000	blanket -even if value is off	250,000
Earthquake and Flood	5,000,000	250,000	250,000	10,000,000	250,000
E&F Aggregate	5,000,000			50,000,000	

Notes

Only CIRSA provides all Inland Marine at replacement cost

Travelers/Alteris - property is on agreed value. CIRSA replacement is automatic

Property & Liability Insurance Quotes and cost estimates for 2012

	Travelers	Alteris	CIRSA
Premium	\$426,108	\$321,960	\$324,487
Claims Handling	Included	18,000	Included
Loss Fund Deposit	\$70,000	\$70,000	\$0
Crime	Included	Included	\$2,491
Broker Fees	\$34,089	\$25,757	\$0
Earthquake & Flood	\$26,810	\$25,000	included
	\$557,007	\$460,717	\$326,978



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: 13
MEETING DATE: 11/15/2011
TO: City Council
FROM: Bettie Greenberg, HR/Risk Management
PRESENTER: Bettie Greenberg

TITLE: Award the workers' compensation contract for 2012 to Pinnacol Assurance

RECOMMENDED CITY COUNCIL ACTION:

Approve a motion to award the workers' compensation contract to Pinnacol Assurance and to authorize the City Manager to execute a contract on behalf of the City with Pinnacol not to exceed \$1,727,920.

OPTIONS:

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

DESCRIPTION:

This is an administrative action to authorize the City Manager to enter into a contract with Pinnacol Assurance for up to \$1,727,920 for 2012 workers' compensation coverage. Under the terms of the contract, Pinnacol will adjust workers' compensation claims and bill the City for the amounts paid under the \$200,000 per occurrence deductible. Firefighter cancer claims, however, are not subject to a deductible. The contract amount includes an estimated premium of \$367,688 which is comprised of estimated claims for 2012, open claims and new or reopened claims from prior years, the loss fund payment, and approximately a 6% increase in the event that the City does not receive the cost containment certification from the State and differences in the rates approved by the state. The premium charged for 2011 was \$376,961.

The contract requires the continuation of a security agreement granting Pinnacol a security interest in the form of collateral of a \$1 million US Treasury note held as part of the City's investment portfolio to secure the City's financial obligations under the insurance contract. Pinnacol will also provide loss control services to the City, including but not limited to industrial hygiene and training programs.

BUDGET IMPACT:

- Positive
 Negative

X Neutral or negligible; these costs have been included in the approved 2012 budget.

SUMMARY:

A Request for Proposal was conducted for the City's 2012 workers' compensation program. The RFP consisted of two phases: proposals from brokers and then having selected brokers obtain insurance quotes.

Four (4) insurance brokers and CIRSA received the RFP. One firm declined the opportunity to submit a quote. Another broker did not respond. Flood and Peterson, Ewing-Leavitt, and CIRSA submitted proposals seeking to obtain insurance quotes.

Insurance quotes were due by September 30, 2011. On September 28, Ewing-Leavitt informed Risk that none of the insurers that they solicited, including Hartford, would bid on workers' compensation insurance due to high risk exposures: police, fire, and electrical line workers.

Flood and Peterson received a quote only from Pinnacol; the other insurers approached, including Travelers, declined to quote workers' compensation due to the City's high risk exposures. Originally, CIRSA also declined to quote workers' compensation; however, after receiving no other bids, Risk specifically requested that CIRSA provide a quote.

In October, the Citizens' Finance Advisory Commission reviewed the proposals RFP, responses to the RFP, and quotes provided by CIRSA and Flood and Peterson. CFAC recommended that the City remain with Pinnacol for the workers' compensation.

Staff recommends continuing with workers' compensation coverage through Pinnacol; the premium structure is more advantageous to the City. Additionally, Pinnacol's claim handling procedures are very streamlined; diagnostic testing and treatment occurs more promptly and employees return to work faster. The premium cost for Pinnacol is \$367,688; however, when the average annual dividend rebate of \$43,000 is factored into the premium, the estimated cost is approximately \$324,688. For the three years that the City has been eligible for a dividend rebate, \$130,687 has been received. Additionally, Pinnacol's firefighter cancer premium collects extra funds to cover cancers presumptively considered to be work-related under the Colorado Workers' Compensation Act. These cancer claims are not subject to the City's \$200,000 deductible. CIRSA quoted \$375,372; the firefighter cancer claims are subject to the deductible and there is no dividend rebate program.

The quotes are estimates as the state needs to approve the rates in order for final quotes to be issued. Also, the State needs to determine whether the City is eligible for the 5% cost containment credit, which is not generally done until December.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. The workers' compensation quote from Pinnacol
2. The workers' compensation quote from CIRSA
3. The cost comparison between Pinnacol and CIRSA

CITY OF LOVELAND

WORKERS' COMPENSATION

INSURER: PINNACOL ASSURANCE COMPANY

<i>Coverage & Limits</i>	<table border="0"> <tr> <td>Workers' Compensation</td> <td style="text-align: right;">Statutory</td> </tr> <tr> <td>Employers' Liability --</td> <td></td> </tr> <tr> <td> Bodily Injury by Accident - Each Accident</td> <td style="text-align: right;">\$2,000,000</td> </tr> <tr> <td> Bodily Injury by Disease - Each Employee</td> <td style="text-align: right;">\$2,000,000</td> </tr> <tr> <td> Bodily Injury by Disease - Policy Limit</td> <td style="text-align: right;">\$2,000,000</td> </tr> </table>	Workers' Compensation	Statutory	Employers' Liability --		Bodily Injury by Accident - Each Accident	\$2,000,000	Bodily Injury by Disease - Each Employee	\$2,000,000	Bodily Injury by Disease - Policy Limit	\$2,000,000
Workers' Compensation	Statutory										
Employers' Liability --											
Bodily Injury by Accident - Each Accident	\$2,000,000										
Bodily Injury by Disease - Each Employee	\$2,000,000										
Bodily Injury by Disease - Policy Limit	\$2,000,000										
<i>States</i>	COLORADO ONLY										
<i>Comment(s)</i>	<p>a. Anyone excluded from this policy should review alternative benefits.</p> <p>b. Subcontractors: Most Workers' Compensation laws provide that you are responsible for injury to employees of your subcontractors who are not otherwise covered by Workers' Compensation insurance. In addition, your insurance company may charge additional premium for them as employees.</p> <p style="padding-left: 40px;">To avoid this situation, we recommend you require all subcontractors to provide Certificates of Insurance evidencing proper coverage, and these be maintained in your files.</p> <p>c. Rates for certain states are subject to pending rate change.</p> <p>d. If you commence operations in states other than those listed above, we must be notified or there will be no coverage in those states.</p> <p>e. Higher limits may be available. Please contact us if you are interested in pursuing them.</p> <p>f. The premium shown is auditable, and is based on the following payroll estimates:</p>										

CITY OF LOVELAND

Code	Description	2012-2013 Estimated Remuneration	2011-2012 Rates per \$100	2012-2013 Estimated Premium
5506	Street & Road	\$1,331,610	3.770	\$50,164
6325	Cable Laying	\$479,232	3.200	\$15,335
7380	Drivers	\$538,152	3.400	\$18,297
7382	Bus Co - All Other	\$402,594	4.490	\$18,076
7520	Waterworks Operators	\$1,729,492	2.780	\$48,080
7539	Electric Light/Power	\$1,840,203	1.260	\$23,187
7580	Sewage Disposal	\$1,030,125	2.210	\$22,766
7710	Firefighters	\$4,964,755	3.216	\$159,666
7711	Firefighters - volunteer	\$25,000	3.216	\$804
7720	Police Officers	\$7,854,719	2.520	\$197,939
8380	Auto Service	\$760,200	2.000	\$15,204
8810	Office	\$15,871,392	.160	\$25,394
8811	Non Salaried Board Members	\$72,000	.040	\$29
8811	Non Salaried Board Members	\$2,964,000	.040	\$1,186
8868	Colleges/Schools	101,170	.520	\$526
9015	Building Operation by Owner	1,499,910	2.740	\$41,098
9060	Clubs - Country	1,480,530	1.330	\$19,591
9102	Parks NOC	2,616,657	2.280	\$59,660
9220	Cemetery Operations	\$130,968	3.720	\$4,872
9402	Street Cleaning	\$94,505	3.070	\$2,901
9403	Garbage	\$1,297,199	5.700	\$73,940
9410	Municipal/Town	\$2,352,139	1.070	\$25,168
	Totals	\$46,375,552		\$823,769
100810	Firefighters Cancer Load	\$4,964,755	.804	\$39,917
100811	Firefighters - volunteers Cancer Load	\$100,000	.804	\$804
		\$51,437,307		\$864,490
	Ratable Manual Premium			\$823,769
	Estimated 1/1/2012 Rate Increase (possible 3% to 9% increase)		.09	\$897,909
	Increased Limits		1.043	\$936,519
	Experience Modifier (Preliminary)		.740	\$694,024
	Schedule Rating & Designated Provider		.875	\$606,396
	Cost Containment Credit		.950	\$576,077
	Premium Discount		.859	\$494,851
	Subtotal			\$494,851
	Deductible Premium (\$200,000)		.527	\$260,787
	Other Additional Charges:			
	Firefighters Cancer Load (adjusted 9%)			\$44,386
	Annual Policy Fee			\$165
	Foreign Terrorism			\$4,925
	DTEC-Cat Loss Charge			\$4,925
	Total Estimated Due			\$315,188

This presentation is intended as a summary only and does not include all of the policy terms, conditions and exclusions. Please refer to insurers actual policies for specific coverage information

ATTACHMENT A
2012 Proposed Workers' Compensation Coverages

The types and monetary limits of the coverages to be provided to CIRSA workers' compensation members for the applicable coverage period are generally described below. The scope, terms, conditions, and limitations of the coverages are governed by the applicable coverage documents and/or excess or reinsurance policies, the CIRSA Bylaws and Intergovernmental Agreement, and other applicable documents.

I. TYPES AND LIMITS OF COVERAGES:

- A. Workers' Compensation Coverage (to statutory limits)
- B. Employer's Liability Coverage (to \$1,000,000 per occurrence)

II. CIRSA LOSS FUND, AGGREGATE LIMITS, AND RETENTION

The coverages described in Section I shall be provided in accordance with the Colorado Workers' Compensation Act. The CIRSA loss fund shall be liable for coverage to \$500,000 per claim. Claims exceeding said amount, to statutory limits, shall be subject to reinsurance through New York Marine and General Insurance Company. A member-selected deductible shall apply to each claim.

The CIRSA loss fund is as adopted or amended from time to time by the Board of Directors based on the members in the Workers' Compensation Pool for the year and investment earnings on those amounts. Information on the current loss fund amounts is available from the CIRSA Chief Financial Officer.

If you decide to join CIRSA for workers' compensation coverage for the applicable coverage period, you will be requested to adjust the payroll figures provided on your application to actual payroll at the end of the coverage period. Differences between actual and submitted payrolls will result in a debit or credit to contribution.

ATTACHMENT B
Workers' Compensation Contribution Quote

The following preliminary quote is for the coverages described in ATTACHMENT A, along with administrative costs, claims servicing fees, and a reserve fund contribution. It also reflects any Deductible/Special Contribution Plan (SCP) options requested. Contribution rates are calculated utilizing a loss experience factor for your entity.

The reserve fund contribution is an amount required to increase surplus in the Pool. This amount is designated as equity attributable to your entity, and will be accounted for separately, as will the interest earnings.

DEDUCTIBLE/SCP OPTION of \$200,000** for January 1, 2012 through January 1, 2013.

	<u>Annual</u>
2012 Contribution (Net of Reserve Fund)	\$ 357,931
2012 Reserve Fund Contribution	\$ <u>17,441</u>
Total 2012 Preliminary Quotation	\$ 375,372

* **Please Note:** Deductible/SCP levels are limited to .025 times the total payroll. If this quote exceeds your Deductible/SCP limitations, it would require Board approval should you choose this Deductible/SCP level.

** Selection of this SCP option requires a \$5,000 deposit, which is not included in the Total 2012 Quotation amount shown above.

	Pinnacol	CIRSA
Deductible	\$200,000	\$200,000
Premium	\$315,188	\$375,372
Claims Handling	Included	Included
Loss Fund Deposit	\$30,000	\$0
Broker Fees	\$22,500	\$0
Subtotal	<u>\$367,688</u>	<u>\$375,372</u>
Premium Dividends *	\$43,000	
Estimated Grand Total	<u>\$324,688</u>	<u>\$375,372</u>

*estimate based on 3 yr average

Difference \$50,684



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: 14
MEETING DATE: 11/15/2011
TO: City Council
FROM: Terry Andrews, City Clerk
PRESENTER: Terry Andrews

TITLE: Approval of Council Minutes from October 25 and November 1, 2011

RECOMMENDED CITY COUNCIL ACTION:

Adopt a motion to approve the minutes from October 25 study session, October 25 special meeting and November 1, 2011 regular meeting.

OPTIONS:

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

DESCRIPTION:

This is an administrative action to approve the Council minutes from the study session and special meeting held on October 25 and the regular meeting held on November 1. Four Councilors were sworn into office on November 8, 2011. As they were not present for the October 25 and November 1, 2011 meetings, staff recommends they take no action on this item. This item is on the regular agenda to allow the Councilors who were present to take action. This is a standard administrative action that will be on the consent agenda for future meetings.

BUDGET IMPACT:

- Positive
 Negative
 Neutral or negligible

SUMMARY:

No additional summary required.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

- a) Minutes from October 25, 2011 study session
- b) Minutes from October 25, 2011 special meeting
- c) Minutes from November 1, 2011 regular meeting

City Council Study Session
October 25, 2011
Page 1 of 1

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Heckel, Solt, Klassen, McEwen, Rice, Johnson and Shaffer. Councilor McKean was absent. City Manager, Bill Cahill was also present.

1. DEVELOPMENT SERVICES

Community Sustainability Plan Discussion

Public Works Director, Keith Reester introduced this item to Council. Keith reviewed the work and concepts related to developing a community sustainability plan. The objective of the discussion as to clarify City Council direction with further development of policies and action plans for the City. Council directed Staff to continue to explore policies and steps to move toward a viable community sustainability plan.

2. DEVELOPMENT SERVICES

2011 Comprehensive Plan Update

This item is an informative presentation on the 2011 update of the 2005 Comprehensive Plan. Development Services Director, Greg George, Planners Karl Barton and Bethany Clark presented this item to Council. Sixteen of the 25 City Boards and Commissions have completed the three phase process to consolidate and edit their Comp Plan objectives. The rest of the boards and commissions have completed the process up through Phase two and it is anticipated that these boards and commissions will have completed Phase Three by the end of October. The new objectives resulting from this update will be presented to City Council in December with recommendation for approval by the City Boards and Commissions and City staff. City Council approved objectives would constitute the 2011 Comprehensive Plan Implementation Plan. The reduced number of specific and actionable objective is intended to be a valuable tool for facilitating effective direction setting and decision making by City Council. It is envisioned that City Council would consider these new Comp Plan objective in setting priorities during their annual advance and budget process.

The study session was adjourned at 7:58 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

CALL TO ORDER Mayor Gutierrez called the Special meeting of the Loveland City Council to order on the above date at 8:08 PM.

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

1. CITY MANAGER

A report from the Economic Development Director and consideration of any needed action concerning the ACE Manufacturing and Innovation Park

At 8:18 p.m., Councilor Johnson moved for the City Council go into executive session as authorized in CRS Sections 24-6-402(4)(a), (45)(b), 4(e) and 4(g) and City Charter Sections 4-4(c)(1), (c)(3) and (c)(6). This executive session will concern the ACE Manufacturing and Innovation Park being located in Loveland, and related to the ACE Park, the City's proposed sale of the Agilent property recently purchased by the City, to Cumberland & Western Resources, LLC under the proposed Purchase and Sale Agreement dated October 25, 2011. And related to these matters: to receive reports from negotiators, determine negotiation positions, develop negotiation strategy, and to instruct negotiators concerning such positions and strategy; to receive legal advice from the City Attorney; and to receive and review documents and information that are 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 all councilors present voting in favor thereof. Council reconvened from Executive Session at 9:04 p.m.

Bill Murphree Vice president of Cumberland & Western, LLC spoke to Council.

Ordinance Mayor Gutierrez opened the public hearing at 9:22 p.m. Hearing no comment the public hearing was closed at 9:22 p.m. Councilor Johnson moved to approve and ordered published on one reading an "Emergency Ordinance of the City Council of the City of Loveland, Colorado, approving the Purchase and Sale Agreement dated October 25, 2011, between the City of Loveland and Cumberland & Western Resources, LLC for the City's sale and conveyance of the property described in the agreement." The motion, seconded by Councilor Klassen carried with all Councilors present voting in favor thereof.

ADJOURNMENT Having no further business to come before Council, the October 25, 2010 Special Meeting was adjourned at 9:23 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

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

PLEDGE OF ALLEGIANCE

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

PROCLAMATION Councilor Shaffer read the proclamation which was received by Mary McCambridge, Rotary District Governor and Jerry Westbrook, Loveland Rotary Club President.

PROCLAMATION

WHEREAS, Rotary International, founded on February 23, 1905 in Chicago, Illinois USA, is the world's first and one of the largest non-profit service organizations; and

WHEREAS, there are over 1.2 million Rotary club members comprised of professional and business leaders in over 31,000 clubs in more than 165 countries; and

WHEREAS, the Rotary motto "Service Above Self" inspires members to provide humanitarian service, encourage high ethical standards, and promote good will and peace in the world; and

WHEREAS, Rotary funds club projects and sponsors volunteers with community expertise to provide medical supplies, health care, clean water, food production, job training, and education to millions in need, particularly in developing countries; and

WHEREAS, Rotary in 1985 launched Polio Plus and spearheaded efforts with the World Health Organization, U.S Centers for Disease Control and Prevention, and UNICEF to immunize the children of the world against polio; and

WHEREAS, polio cases have dropped by 99 percent since 1988 and the world stands on the threshold of eradicating the disease; and

WHEREAS, Rotary is the world's largest privately-funded source of international scholarships and promotes international understanding through scholarships, exchange programs and humanitarian grants; and

WHEREAS, more than 35,000 students from 110 countries have studied abroad since 1947 as Rotary Ambassadorial Scholars; and

WHEREAS, Rotary's Group Study Exchange program has helped more than 46,000 young professionals explore their career fields in other countries; and

WHEREAS, 8,000 secondary-school students each year experience life in another country through Rotary's Youth Exchange Program; and

WHEREAS, there are over 300 Rotary club members in 3 clubs throughout this city sponsoring service projects to address such critical issues as poverty, health, hunger, illiteracy, and the environment in their local communities, and abroad.

NOW, THEREFORE, we, the City Council of Loveland, do hereby proclaim October 24th, 2011 as

ROTARY INTERNATIONAL DAY IN LOVELAND

and encourage all citizens to join us in recognizing Rotary International for 100 years of service to improving the human condition in local communities around the world.

Signed this 1st day of November, 2011

Cecil A. Gutierrez, Mayor

PROCEDURAL INFORMATION

Mayor Gutierrez made the following procedural announcement: Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it. Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the

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

CONSENT AGENDA

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

1. MINUTES

- a) Minutes for the October 11, 2011 Study Session were approved.
- b) Minutes for the October 18, 2011 Regular Meeting were approved.

2. CITY MANAGER

Board & Commission Appointments

Motion

Administrative Action: The following appointments were approved:

Affordable Housing Commission: Angie Shafranek was appointed to a term effective until June 30, 2014.

Community Marketing Commission: Kurt Albers was appointed to a partial term effective until June 30, 2012.

Human Services Commission: Amy Olinger was appointed to a partial term effective until June 30, 2013.

2. AIRPORT

Supplemental Appropriation - Small Community Air Service Development Program Grant

Ordinance #5648

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 FT. COLLINS-LOVELAND AIRPORT BUDGET FOR THE SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM GRANT" was approved and ordered published on second reading.

4. AIRPORT

Supplemental Appropriation – Facilities Remodeling Project

Ordinance #5649

Administrative Action: "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2011 FT. COLLINS-LOVELAND AIRPORT BUDGET FOR A GENERAL AVIATION FACILITIES REMODELING PROJECT" was approved and ordered published on second reading.

5. CITY MANAGER

Municipal Code Amendment – Investment Policy

Ordinance #5650

Legislative Action: "AN ORDINANCE AMENDING LOVELAND MUNICIPAL CODE SECTION 3.04.070 REGARDING INVESTMENT OF City Funds And The City Investment Policy" was approved and ordered published on second reading.

6. WATER & POWER

Amendment to Contract for Conveyance of Water

Resolution #R-68-2011

Administrative Action: Resolution #R-68-2011 of the City Council of the City of Loveland, Colorado approving an amendment to contract No. 01WR6C0252 among the United States of America, the City of Loveland, Colorado, the Northern Colorado Water Conservancy District, and the City of Loveland, Colorado, Water Enterprise for

Conveyance of non-Project Municipal and Industrial Water Through the facilities of the Colorado-Big Thompson Project was approved and ordered published on first reading.

RESOLUTION #R-68-2011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING AN AMENDMENT TO CONTRACT NO. 01WR6C0252 AMONG THE UNITED STATES OF AMERICA, THE CITY OF LOVELAND, COLORADO, THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AND THE CITY OF LOVELAND, COLORADO, WATER ENTERPRISE FOR CONVEYANCE OF NON-PROJECT MUNICIPAL AND INDUSTRIAL WATER THROUGH THE FACILITIES OF THE COLORADO-BIG THOMPSON PROJECT

WHEREAS, on September 30, 2001, the United States of America, acting through the Bureau of Reclamation ("Reclamation"), the Northern Colorado Water Conservancy District (the "District"), the City of Loveland, Colorado (the "City"), and the City of Loveland, Colorado, Water Enterprise (the "Water Enterprise") entered into a contract for carriage of the City's non-project water through the Colorado Big-Thompson Project facilities (the "Carriage Contract"); and WHEREAS, when the Carriage Contract was signed, Reclamation and the District did not agree on which entity was to receive certain payments to be made by the City under the Carriage Contract; and

WHEREAS, to facilitate signature of the Carriage Contract, Reclamation and the District agreed that Reclamation would receive the payments, but that the District would be entitled to seek administrative or judicial relief, and that the Carriage Contract would later be modified to the extent necessary to be consistent with any subsequent administrative or judicial order; and

WHEREAS, on August 28, 2007, the District filed suit against Reclamation in the United States Court of Federal Claims to resolve the issue; and

WHEREAS, the United States Court of Federal Claims issued an order stating that the payments must be divided equally between Reclamation and the District; and

WHEREAS, the parties desire to amend the Carriage Contract to be consistent with the order of the United States Court of Federal Claims; and

WHEREAS, pursuant to C.R.S. § 29-1-203, the City is authorized to cooperate or contract with other governmental entities 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 "Contract Amendment Among the United States of America, the City of Loveland, Colorado, the Northern Colorado Water Conservancy District, and the City of Loveland, Colorado, Water Enterprise for Conveyance of Non-Project Municipal and Industrial Water Through the Facilities of the Colorado-Big Thompson Project," attached hereto as Exhibit A and incorporated herein by reference (the "Amendment"), is hereby approved.

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

Section 3. That the Mayor and the City Clerk are hereby authorized and directed to execute the Amendment on behalf of the City.

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

ADOPTED this 1st day of November, 2011

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

AT 6:35 P.M. CITY COUNCIL ADJOURNED AND CONVENED AS THE WATER ENTERPRISE BOARD

7. WATER & POWER

Amendment to Contract for Conveyance of Water

Resolution # R-69-2011

Administrative Action: Resolution of the Board of the City of Loveland, Colorado, Water Enterprise approving an amendment to Contract No. 01WR6C0252 among the United States of America, the City of Loveland, Colorado, the Northern Colorado Water Conservancy District, and the City of Loveland, Colorado, Water Enterprise for

conveyance of non-project municipal and industrial water through the facilities of the Colorado-Big Thompson Project was approved.

RESOLUTION #R-69-2011

A RESOLUTION OF THE BOARD OF THE CITY OF LOVELAND, COLORADO, WATER ENTERPRISE APPROVING AN AMENDMENT TO CONTRACT NO. 01WR6C0252 AMONG THE UNITED STATES OF AMERICA, THE CITY OF LOVELAND, COLORADO, THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AND THE CITY OF LOVELAND, COLORADO, WATER ENTERPRISE FOR CONVEYANCE OF NON-PROJECT MUNICIPAL AND INDUSTRIAL WATER THROUGH THE FACILITIES OF THE COLORADO-BIG THOMPSON PROJECT

WHEREAS, on September 30, 2001, the United States of America, acting through the Bureau of Reclamation ("Reclamation"), the Northern Colorado Water Conservancy District (the "District"), the City of Loveland, Colorado (the "City"), and the City of Loveland, Colorado, Water Enterprise (the "Water Enterprise") entered into a contract for carriage of the City's non-project water through the Colorado Big-Thompson Project facilities (the "Carriage Contract"); and

WHEREAS, when the Carriage Contract was signed, Reclamation and the District did not agree on which entity was to receive certain payments to be made by the City under the Carriage Contract; and

WHEREAS, to facilitate signature of the Carriage Contract, Reclamation and the District agreed that Reclamation would receive the payments, but that the District would be entitled to seek administrative or judicial relief, and that the Carriage Contract would later be modified to the extent necessary to be consistent with any subsequent administrative or judicial order; and

WHEREAS, on August 28, 2007, the District filed suit against Reclamation in the United States Court of Federal Claims to resolve the issue; and

WHEREAS, the United States Court of Federal Claims issued an order stating that the payments must be divided equally between Reclamation and the District; and

WHEREAS, the parties desire to amend the Carriage Contract to be consistent with the order of the United States Court of Federal Claims; and

WHEREAS, pursuant to C.R.S. § 29-1-203, the Water Enterprise is authorized to cooperate or contract with other governmental entities to provide any function, service, or facility lawfully authorized to each.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE CITY OF LOVELAND, COLORADO, WATER ENTERPRISE:

Section 1. That the "Contract Amendment Among the United States of America, the City of Loveland, Colorado, the Northern Colorado Water Conservancy District, and the City of Loveland, Colorado, Water Enterprise for Conveyance of Non-Project Municipal and Industrial Water Through the Facilities of the Colorado-Big Thompson Project," attached hereto as Exhibit A and incorporated herein by reference (the "Amendment"), is hereby approved.

Section 2. That the President of the Water Enterprise Board is hereby authorized, following consultation with the City Attorney, to modify the Amendment in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the Water Enterprise.

Section 3. That the President and the Secretary of the Water Enterprise Board are hereby authorized and directed to execute the Amendment on behalf of the Water Enterprise.

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

ADOPTED this 1st day of November, 2011

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

Exhibit A is available in the City Clerk's Office

AT 6:35 P.M. THE WATER ENTERPRISE BOARD ADJOURNED AND CITY COUNCIL RECONVENED

8. ECONOMIC DEVELOPMENT

Revise the meeting dates for Community Marketing Commission

Resolution # R-70-2011

Administrative Action: Resolution #R-70-2011 amending the scheduled meeting dates and location of the Community Marketing Commission was approved.

RESOLUTION #R-70-2011

A RESOLUTION AMENDING THE SCHEDULED MEETING DATES AND LOCATION OF THE COMMUNITY MARKETING COMMISSION

WHEREAS, on December 7, 2010, City Council adopted Resolution #R-67-2010 setting forth the 2011 meeting dates and location for the City's boards and commissions, including the City of Loveland Community Marketing Commission (the "CMC"); and

WHEREAS, the CMC regular meeting time is currently set on the first Thursday of each month at 6:00 p.m. in the City Manager's Conference Room, 500 East Third Street, Loveland, Colorado; and

WHEREAS, the CMC desires to change the regular meeting time to the third Wednesday of each calendar month and the meeting location commencing with the November, 2011 meeting as set forth in this Resolution.

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

Section 1. That the meeting dates and location adopted in Resolution #R-67-2010 are hereby amended to change the CMC's regular meeting dates and location from the first Thursday of each calendar month in the City Manager's Conference Room to the third Wednesday of each calendar month in the Council Chambers commencing with the November, 2011 meeting. The meeting time shall remain the same: 6:00 p.m. The Council Chambers is located at 500 East Third Street, Loveland, Colorado.

Section 2. That Resolution #R-67-2010, as amended herein and by prior resolutions, shall remain in full force and effect.

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

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

ADOPTED this 1st day of November, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

9. HUMAN RESOURCES

2012 Compensation of City Manager and City Attorney

a) Resolution #R-71-2011

Administrative Action: Resolution #R-71-2011 of the Loveland City Council regarding the compensation of the City Manager was approved.

RESOLUTION #R-71-2011

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 October 5, 2011, 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 2011, and determined that Cahill's compensation for 2012 should be increased by two percent (2.0%) of Cahill's current annual base salary.

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

Section 1. Cahill's compensation for 2012 should be increased by two percent (2.0%) 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 1st day of November, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

b) Resolution #R-72-2011 Administrative Action: Resolution #R-72-2011 of the Loveland City Council regarding the compensation of the City Attorney was approved.

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 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 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-107-2009 that increased Duval's vacation benefits by 5 days annually and 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 compensation; and

WHEREAS, on May 17, 2011, City Council adopted Resolution #R-35-2011 that increase 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 October 5, 2011, pursuant to the terms of the Agreement and Loveland City Charter Section 9-1(g), City Council conducted its annual evaluation of the Duval for 2011, and determined that Duval's compensation for 2012 should be increased by two percent (2.0%) of Duval's current annual base salary, excluding the one-time merit-based payment reflected in the Fourth Addendum.

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

Section 1. Duval's compensation for 2012 should be increased by two percent (2.0%) of Duval's current annual base salary, excluding the one-time merit-based payment reflected in the Fourth Addendum.

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 1st day of November, 2011.

Cecil A. Gutierrez, Mayor

Attest: Teresa G. Andrews, City Clerk

10. HUMAN RESOURCES

Contract Award for Employee Medical Coverage

Motion

Administrative Action: A motion to award the contract for City employee medical coverage administration to CIGNA HealthCare for an amount not to exceed \$1,212,000

and authorize the City Manager to execute the contract on behalf of the City was approved.

11. FINANCE

Supplemental Appropriation – City' 2011 Budget

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE CITY OF LOVELAND, COLORADO 2011 BUDGET" was approved and ordered published on first reading.

12. FINANCE

Supplemental Appropriation – 2011 Special Improvement District #1 Budget

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE LOVELAND SPECIAL IMPROVEMENT DISTRICT #1 2011 BUDGET" was approved and ordered published on first reading.

13. PUBLIC WORKS

Sale of the Bishop House

1st Rdg Ord & P.H.

Administrative Action: A public hearing was held and "AN ORDINANCE AUTHORIZING THE SALE OF THE BISHOP HOUSE AND THE SALE OF REAL PROPERTY OWNED BY THE CITY OF LOVELAND PURSUANT TO SECTION 4-7 OF THE CITY OF LOVELAND MUNICIPAL CHARTER" was approved and ordered published on first reading.

14. FINANCE

September 2011 Financial Report

This is an information only item. No action is required. The Snapshot Report includes the City's preliminary revenue and expenditures including detailed reports on tax revenue, health claims and cash reserves for the nine months ending September 30, 2011.

15. CITY MANAGER

Investment Report for September 2011

This is an information only item. No Council action is required. The budget estimate for investment earnings for 2011 is \$3,163,130. For the first nine months of 2011, the amount posted to the investment account is \$2,900,744 including realized gains. Actual year-to-date earnings are higher than the year-to-date projection by \$528,396. Based on September's monthly statement, the estimated annualized yield on the U.S. agencies and corporates was up to 1.58%, well under the annual target rate and also under the budget target for 2012. Reinvestment rates are now significantly lower.

END OF CONSENT AGENDA

CITY CLERK READ TITLES OF ORDINANCES ON THE CONSENT AGENDA.

CITY COUNCIL

a) Citizens' Reports

Ed Klen, Loveland resident, asked for an update on his previous issue regarding the safety of the building on 209 2nd St.

b) Business from Council

- McKean Councilor McKean commended volunteers and City employee on their actions during Wednesday's snow storm. Councilor McKean congratulated the team from Carrie Martin Elementary School competing in the Lego robotics challenge.
- Solt Councilor Solt expressed his thanks to City staff and the rest of Council for a great experience during his time serving on Council.
- Heckel Councilor Heckel thanked Public Works Director Keith Reester and staff for their service to the community. Keith thanked the Council for their support. Councilor Heckel thanked staff and the rest of Council for a great 36 years of serving the community.
- McEwen Councilor McEwen thanked the Councilors who were leaving for their service.
- Klassen Councilor Klassen complimented the outgoing Councilors for their service.
- Shaffer Councilor Shaffer acknowledged Susan Ison who won the prestigious Julie J. Boucher Award for Intellectual Freedom from the Colorado Association of Libraries.
- Rice Councilor Rice thanked staff for all they did during the recent snowstorm.
- Gutierrez Mayor Gutierrez thanked staff for their quick responses in handling the issues related to the snow storm. Mayor Gutierrez strongly encouraged citizens to apply for the various openings on the City's Boards and Commissions.

c) City Manager Report

City Manager Cahill discussed the scale of the snow storm and its impact on the community. He thanked Council for their leadership and city staff for their hard work and dedication.

d) City Attorney Report

None

PROCEDURAL INFORMATION

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

ADJOURNMENT

Having no further business to come before Council, the November 1, 2011 Regular Meeting was adjourned at 7:07 p.m.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor



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: 15
MEETING DATE: 11/15/2011
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Greg George

TITLE:

A public hearing and an ordinance to enact a new Code Chapter 7.38 to prohibit air pollution nuisances

RECOMMENDED CITY COUNCIL ACTION:

The following motion is recommended for City Council action:

Move to adopt on first reading: AN ORDINANCE TO ENACT A NEW CODE CHAPTER 7.38 TO PROHIBIT AIR POLLUTION NUISANCES

OPTIONS:

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

DESCRIPTION:

A public hearing to consider a legislative action to adopt, on first reading, an ordinance amending Title 7 of the Loveland Municipal Code to protect the health, safety, and welfare of the residents of the City by prohibiting unreasonable emissions into the air. The proposed ordinance would declare it to be unlawful for any person to cause, permit or maintain a public nuisance resulting from the emission of smoke, ashes, fumes, odors and other substances in such a manner as to: (i) unreasonably endanger the public's health, safety, or welfare; (ii) cause physical injury to any person or damage to any property; (iii) or interfere with any person's comfortable enjoyment of that person's real property or the normal conduct of that person's business.

BUDGET IMPACT:

- Positive:
- Negative:
- Neutral or negligible

City staff in Code Administration, the City Attorney's Office and the Municipal Court would be required to enforce the new code provisions.

SUMMARY:

Under the proposed nuisance smoke regulations, activities such as agricultural burning, use of outdoor cooking appliances, and operation of a crematorium would not be unlawful provided such activities do not result in an unlawful public nuisance. The proposed regulation would not apply to the burning or flaring of methane and other flammable gases at the City's wastewater treatment plant.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

- A. Ordinance amending Title 7
- B. Staff Memorandum

FIRST READING: November 15, 2011

SECOND READING: _____

ORDINANCE No. _____

AN ORDINANCE TO ENACT A NEW CODE CHAPTER 7.38 TO PROHIBIT AIR POLLUTION NUISANCES

WHEREAS, City Council desires to amend the City Code to prohibit air pollution within the City that adversely affects the public’s health, safety and welfare by declaring such air pollution a public nuisance; and

WHEREAS, C.R.S. Section 31-15-401 and the City’s home rule powers under Article XX, Section 6 of the Colorado Constitution grant the Council the power to declare what is a public nuisance, abate the same, and to impose penalties on persons who cause, permit or maintain public nuisances; and

WHEREAS, City Council finds and determines that adding a new Chapter 7.38 to the City Code to address air pollution nuisances is necessary and required in the interest of the public’s health, safety and welfare.

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

Section 1. That Title 7 the City Code is hereby amended by the enactment of a new Chapter 7.38 to read in full as follows:

Chapter 7.38

AIR POLLUTION NUISANCES

- 7.38.010 Legislative intent and purpose.**
- 7.38.020 Air pollution nuisances prohibited.**
- 7.38.010 Legislative intent and purpose.**

The purpose of this chapter is to protect the health, safety and welfare of the public by prohibiting emissions into the air that create a public nuisance as prohibited in this chapter, but it is not intended to create a ban on all uses of solid fuel-burning appliances, such as woodstoves, fireplaces or other indoor or outdoor solid fuel-burning devices that are otherwise lawfully operated within the city in accordance with this chapter.

- 7.38.020 Air pollution nuisances prohibited.**

- A. The emission into the atmosphere, from any source or sources within the city's boundaries and in any manner or amount, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors or any other substance, or any combination thereof, shall be deemed a public nuisance prohibited under this paragraph A. if, under the totality of the circumstances and in the judgment of a reasonable person, any such emission:
- (1) unreasonably endangers or tends to endanger the public's health, safety or welfare; or
 - (2) unreasonably causes physical injury to any person or physical damage to any property; or
 - (3) unreasonably interferes with any person's comfortable enjoyment of that person's real property or the normal conduct of that person's business.

It is unlawful for any person to cause, permit or maintain any public nuisance within the city that is prohibited by this section. Notwithstanding the foregoing, the provisions of this chapter shall not apply to the operation, maintenance or construction of the city's parks and recreation facilities or of the facilities of the city's water, wastewater, electric, stormwater and solid waste utilities.

- B. Provided that an emission into the atmosphere does not result in an unlawful public nuisance as provided in paragraph A. above, it shall not be unlawful under this section for any person to cause, permit or maintain any such emissions, including, without limitation, emissions resulting from:
- (1) the indoor or outdoor burning of any solid fuel in a solid fuel-burning appliance provided that the solid fuel-burning appliance is operated in accordance with the appliance manufacturer's specifications, any other applicable provision of this code and state law, and is only used to burn clean, dry, untreated wood or wood products, or other solid fuel products specifically manufactured for the purpose of space heating;
 - (2) agricultural burning, operation of a crematorium or operation of an incinerator for the burning of trash, refuse, rubbish or waste within the city that is otherwise authorized pursuant to and conducted in accordance with this code and state law; or
 - (3) use of a solid fuel-burning appliance that is manufactured for the sole purpose of outdoor cooking, operated in accordance with the manufacturer's specifications, and operated in accordance with any other applicable provisions of this code and state law.

- C. No person alleged to have violated this section shall be charged with a violation of any provision of this section unless said person has first received a written warning issued pursuant to paragraph E below from a city police officer, fire official or code enforcement officer within the twelve (12) months immediately preceding the issuance of the summons and complaint. The warning shall satisfy the requirements of paragraph D below. The decision to issue the warning shall be within the discretion of the city police officer, fire official or code enforcement officer.
- D. The written warning process to be employed prior to a charge being instituted for a violation of any provision of this section shall satisfy all of the following requirements:
- (1) The written warning must relate to an incident separate from the subsequently charged violation;
 - (2) The city police officer, fire official or code enforcement officer issuing the written warning is doing so only after the city receives an air pollution complaint from a citizen and such official or officer reasonably believes that a violation of this section has occurred for which the warning is being issued;
 - (3) The complainant must clearly identify himself or herself by stating his or her name, address and telephone number to the enforcing officer;
 - (4) The complainant shall further state, if known, the name, address and telephone number of the person alleged to be in violation of this section, a description of the offense, and the date, time, place and duration of the offense;
 - (5) A record of the report or incident shall be kept by the city for any such complaint and investigation for at least eighteen (18) months;
 - (6) The written warning shall state that a complaint has been received, recite the date of the alleged offense, and specifically warn the person to whom the notice is served how that person has violated this section;
 - (7) The written warning shall further advise the person of the possible penalties for a violation of this section and advise the person that the next complaint may result in a summons and complaint being issued to the person; and
 - (8) The written warning shall state that it is being issued by a police officer, fire official, or code enforcement officer empowered by the city to enforce the provisions of this section.

- E. The person alleged to have violated any provisions of this section shall be deemed to have received the required written warning, if the warning meets the requirements of paragraph D above and is provided to that person by one or more of the following methods:
 - (1) personal service to said person or a member of the person’s household over the age of eighteen;
 - (2) the warning is sent to the person by certified mail to the address of premises from which the alleged violation occurred; or
 - (3) the warning is posted in a conspicuous place on the real property from which the alleged violation occurred.

- F. The identity of the complainants for both the prior warning and for the violation to be charged, shall be kept confidential until a violation of any provision of this section is charged. Before such a violation is charged and the summons and complaint are served, the complainant shall provide to the enforcing officer the complainant’s signed, sworn and notarized affidavit attesting to the facts constituting the violation.

- G. No person shall be convicted at trial for violating any provision of this section unless some testimonial evidence is presented and entered into evidence corroborating the complaining citizen’s allegations. A corroborating witness providing such testimonial evidence shall not include the complaining citizen or a member of the citizen’s household.

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).

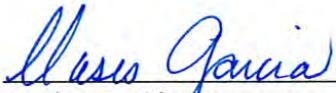
Dated this _____ day of _____, 2011.

 Cecil A. Gutierrez, Mayor

ATTEST:

 City Clerk

APPROVED AS TO FORM:


Assistant City Attorney

**DEVELOPMENT SERVICES
ADMINISTRATION**

500 East Third Street, Suite 210 • Loveland, CO 80537
(970) 962-2346 • Fax (970) 962-2903 • TDD (970) 962-2620
www.cityofloveland.org

MEMORANDUM

TO: City Council

FROM: Greg George, Development Services Director

DATE: November 15, 2011

RE: Ordinance Amending Title 7 Regarding Unreasonable Emissions of Air Pollution

I. DESCRIPTION

- A. Initial Complaint:** In April 2011, City staff received a complaint from a Loveland citizen concerning health effects she and her husband were suffering from smoke emissions from a neighboring property.
- B. Response:** Starting in early May 2011, City staff met with representatives of the Larimer County Health Department, City of Loveland Fire Department and the City Attorney's office to explore options for addressing the complaint based on existing provisions in the Loveland Municipal Code. The representative from the County Health Department felt that his office would have difficulty taking enforcement action in this situation based on current County codes. City staff reached the conclusion that current City code regulations would not provide an effective enforcement option. The only code provision that has any application is Section 7.26.050, which states:

No person shall cause or allow the disposal of refuse or rubbish by burning except in an incinerator that is designed for such purpose and pursuant to an operating permit from the state Department of Health. In no event may rubbish or refuse be burned in a stove or fireplace except for clean, dry, untreated wood.

Enforcement under these provisions would be very difficult unless there was evidence to prove beyond a reasonable doubt that a resident is burning rubbish.

- C. Conclusions:** City staff concluded that new code provisions would be necessary to effectively deal with this matter as a public nuisance. Research found that several cities in Colorado, including Fort Collins and Greeley, have provisions to address this issue as a general public nuisance. The Code amendments being proposed are similar to those in effect in Fort Collins.
- D. Proposed Code Provisions:**
- 1. Purpose:** The purpose is to protect the health, safety and welfare of the residents of Loveland by prohibiting unreasonable emissions into the air, but the provisions are not intended to create a general or area-specific ban on the use of woodstoves, fireplaces or other indoor or outdoor, solid fuel-burning appliances that are otherwise lawfully operated within the City.
 - 2. Prohibited Emissions:** The new provisions would make it unlawful for any person to cause the emission of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or odors in such a manner as to endanger the health, comfort, safety, or welfare of the public or to cause unreasonable injury to property or to interfere with the comfortable enjoyment of property.
 - 3. Lawful Burning of Solid Fuel:** The new provisions specifically allow the burning of solid fuels consisting of clean, dry, untreated wood or wood product in a fuel-burning appliance operated in accordance with the appliance manufacturer's specifications.
 - 4. Lawful Activities:** The following activities would not be unlawful, provided they are not otherwise a public nuisance:
 - Agricultural burning, operation of a crematorium or operation of an incinerator for burning trash, refuse, or rubbish otherwise authorized pursuant to the Loveland Municipal Code
 - Solid fuel-burning appliances manufactured for outdoor cooking
 - 5. Exemptions:** The proposed regulation would not apply to the burning or flaring of methane and other flammable gases at the City's wastewater treatment plant.
 - 6. Written Warning:**
 - Warnings would be issued only after a police officer, fire official or code administrator receives a complaint from a citizen and the City official reasonably believes that a violation has occurred
 - The complaining citizen must identify himself or herself and provide description of offense
 - Warning will inform person:
 - that he or she has violated these new code provisions;
 - of possible penalties; and
 - that the next complaint may result in a summons.
 - 7. Identity of Complainant:** The identity of complaining citizen is kept confidential until a violation has been charged and a summons has been issued to appear in Municipal Court.

8. **Corroboration of Complaint:** No person may be convicted at trial unless evidence is presented at trial corroborating the complaining citizen's allegations from someone other than a member of the citizen's household.



CITY OF LOVELAND
POLICE DEPARTMENT

810 East 10th Street • Loveland, Colorado 80537
(970) 667-2151 • FAX (970) 962-2917 • TDD (970) 962-2620

AGENDA ITEM: 16
MEETING DATE: 11/15/2011
TO: City Council
FROM: Luke Hecker, Police Chief
PRESENTER: Luke Hecker

TITLE:

- a) A Resolution approving an increase in the Larimer Humane Society's animal licensing fees for the City of Loveland
- b) Approval of the 2012 Larimer Humane Society Contract for Services

RECOMMENDED CITY COUNCIL ACTION:

- A) Adopt a motion to approve the Resolution
- B) Adopt a motion to approve the 2012 Contract for Services

OPTIONS:

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

DESCRIPTION:

These are administrative actions. The resolution approves Larimer Humane Society's request to increase the licensing fees for spayed and neutered animals from \$10.00 to \$12.00 and for all other animals (intact and unaltered animals) from \$27.00 to \$35.00. These fee increases reflect increased operational costs including wages, animal food, vaccinations, utilities, building maintenance, vans, fuel and equipment for animal control officers and the shelter. The second action approves the contract for Larimer Humane Society services as revised for the 2012 calendar year.

BUDGET IMPACT:

- Positive
- Negative
- Neutral or negligible

SUMMARY:

The City Council's adoption of the Financial Sustainability Strategy in June 2011 included a \$100,000 reduction to the Larimer County Humane Society contract. Following Council's discussion and public input, the Council directed staff to review the contracted services with the Humane Society and determine whether a lesser reduction could be made or services maintained.

Three actions respond to these concerns:

- Funding of \$10,000 is contributed to the contract cost by the Solid Waste program, as compensation for the Humane Society's pick up of animal carcasses.
- The Humane Society fee increases will generate roughly \$24,000 in additional resources.
- The City and the Humane Society have worked out a contract for a reduced amount. The Humane Society has signed the agreement and supports it.

The net effect is reduced resources of about \$66,000. Services will continue 5 days per week and emergency services will still be provided all seven days.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Resolution
Larimer Humane Society Letter
2012 Larimer Humane Society Contract for Services

RESOLUTION # R-76-2011

A RESOLUTION APPROVING AN INCREASE IN THE LARIMER HUMANE SOCIETY’S ANIMAL LICENSING FEES FOR THE CITY OF LOVELAND

WHEREAS, the City of Loveland, a home rule municipality (the “City”) and the Larimer Humane Society, a Colorado non-profit corporation (the “Humane Society”) entered into an Agreement for Animal Control Services dated January 1, 2010, for services through the 2010 calendar year and a Renewal for Animal Control Services dated December 16, 2010, for services through the 2011 calendar year (together, the “Agreement”); and

WHEREAS, City Code Section 6.08.050 A. establishes that licensing fees for animals shall be set by resolution of the Loveland City Council (the “Council”) and Section 9 of the Agreement authorizes the Humane Society to collect license and impound fees established by the Council; and

WHEREAS, beginning January 1, 2012, the Humane Society desires to increase the licensing fees for spayed and neutered animals from \$10.00 to \$12.00 and for all other animals (intact/unaltered animals) from \$27.00 to \$35.00 to reflect its increased operational costs including wages, animal food, vaccinations, utilities, building maintenance, vans, fuel and equipment for animal control officers and the shelter; and

WHEREAS, the Humane Society is facing a budget shortfall because licensing fees have not changed for spayed and neutered animals since 1996 and for all other animals since 2002, and revenue from the Agreement with the City has not increased since 2008; and

WHEREAS, the Council finds that the Humane Society’s request for an increase in licensing fee is reasonable and that such increase is in the best interests of the City and its citizens to maintain the services provided by the Humane Society; and

WHEREAS, the Humane Society, which also serves the City of Fort Collins and Larimer County, has received approval from Larimer County for the proposed licensing fee increase.

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

Section 1. That beginning January 1, 2012 at 12:01 a.m., the Humane Society fee to license an animal in the City shall be as follows:

	<u>License Fee</u>
Spayed or Neutered Animal	\$12.00
Intact/Unaltered Animal	\$35.00

Section 2. That all other Humane Society fees authorized by Council for the City shall remain in effect.

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

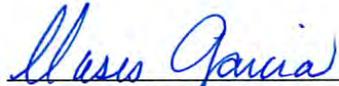
ADOPTED this _____ day of November, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Assistant City Attorney

A RESOLUTION APPROVING AN INCREASE IN THE LARIMER HUMANE SOCIETY'S ANIMAL LICENSING FEES FOR THE CITY OF LOVELAND



LARIMER HUMANE SOCIETY

PROJECT DESCRIPTION AND ACTION PLAN

PROJECT LEADER: Bill Porter, Captain, Animal Control, Larimer Humane Society

PROJECT TEAM MEMBERS: Tim Brown, Lieutenant, Loveland Police Department
Judy Calhoun, Executive Director, Larimer Humane Society

PROJECT: Humane Society License Fee Increase

Purpose of Project: To coordinate approval of an increase in license fees for pet animals by the City of Fort Collins, City of Loveland and Larimer County concurrently in 2011.

Amount of Increase: The average fees for spayed and neutered animals in Colorado with populations greater than 50,000 is \$13, and \$36 for unaltered animals. The Larimer Humane Society will propose the following fee increases:

- \$12 for spayed and neutered animals
- \$35 for unaltered animals

Justification for Increases: Current license fees for pet animals have been in effect since 1996, with one exception—in 2002 unaltered (domestic animals not spayed or neutered) fees were increased by \$2.00. Proposed license fee increases are necessary because of:

- Loveland Contract revenue has not increased since 2008 in addition to substantial proposed cuts for 2012. Increased licensing rates will help reduce potential cuts or elimination in service due to reductions in the Loveland payments.
- Current license fees for pet animals have been in effect since 1996, Consumer Price Index shows that it now costs \$1.44 to purchase what \$1.00 did in 1996.
- Increase in operating costs since 1996 include:
 1. Salaries and benefits for staff, animal food and vaccination costs, Utilities, building maintenance, vans and equipment for Animal Control and shelter, fuel and insurance for vans. For example, gasoline prices have gone from an approximate average of \$1.20 per gallon in 1996 to over \$3.50 per gallon this year.

Standardized license fees by all jurisdictions is important because:

- Consistency is established for over 40 veterinarians who sell licenses
- Insures current rabies vaccinations which is a requirement to have a valid license
- Animal Control Officers are able to return lost animals to owners with proper ID
- Charging a higher fee for unaltered animals is an incentive to spay and neuter which cuts over-population of unwanted animals in Northern Colorado
- Spaying and neutering decreases animal aggression and the desire to wander
- Keeping animals off streets for safety in communities

Timeline:

TBD 2011 Work session with City Council—Bill Porter to do presentation. Ask City Council if they want to **have an advertised "public hearing" to take testimony from citizens about the increase. If not,** council resolution can be approved/signed at an open meeting. (**6.08.050 License fees.** A license shall be issued upon compliance with the application requirements of Section 6.08.020 and payment of the applicable license fees as established by resolution of city council.)

TBD 2011 Adopt resolution increasing fee

6317 Kyle Avenue (shelter)
5137 S. College Avenue (mail)
Fort Collins, CO 80525

www.larimerhumane.org
A Non-profit Organization

Phone: (970) 226-3647
Fax: (970) 226-2968

**AGREEMENT
For Animal Control Services**

THIS AGREEMENT ("Agreement") is made and entered into this 1st day of January, 2012, by and between the CITY OF LOVELAND, COLORADO, a home-rule municipality ("City"), and the LARIMER HUMANE SOCIETY, a Colorado non-profit corporation ("Society").

WHEREAS, the Society is dedicated to the safe and humane treatment of animals consistent with the Loveland Municipal Code and City policies; and

WHEREAS, the Society employs trained, qualified persons to handle animals within its custody; and

WHEREAS, the City desires to engage the Society to furnish animal-control services for the City;

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

1. Term. This Agreement shall be effective from the date first above written until December 31, 2012, unless earlier terminated or extended as provided herein.
2. Services. During the term of this Agreement, the Society shall:
 - a. Provide the City with animal shelter services as set forth in paragraph 6, below.
 - b. Engage the services of a doctor of veterinary medicine licensed to practice in the State of Colorado to provide twenty-four (24) hour emergency services to animals impounded from the City.
 - c. Employ animal-control officers to be assigned to the City and commissioned by the City's Chief of Police to enforce the City's animal-control ordinances.
 - d. Provide animal-control officers with uniforms that clearly identify them as such.
 - e. Provide and maintain equipment, instruments, and supplies necessary to the effective, efficient performance of animal control officers and operation of the shelter.
 - f. Provide a public education program to City residents regarding the Society's services and the City's animal-control ordinances.

- g. Subject to payment of a deposit, daily rental fee, and availability, furnish to City residents humane animal traps for trapping domestic animals, and, at the discretion of the Society, trapping wild animals.
 - h. Retrieve and dispose of dead animals weighing less than one hundred pounds (100 lbs) from public areas, including streets and parks.
 - i. Upon the payment of a pre-determined fee based on the animal's weight, dispose of dead dogs, cats, and other animals of similar size that are brought to the Society's facilities by City residents.
 - j. Respond to calls regarding livestock within the City and remove livestock from roadways and temporarily confine or restrain livestock, if possible, pending action by the Loveland Police Department or State Brand Inspector.
 - k. Establish procedures to address City residents' complaints regarding the Society's services and correct deficiencies, if any. Such procedures shall provide that complaints be reviewed by Society personnel not directly involved in the situation giving rise to the complaint and, if a satisfactory resolution cannot be reached, for mediation by a disinterested third party. The City shall immediately forward all residents' complaints to the Society for resolution according to the procedures established pursuant to this subparagraph.
3. Compensation. In consideration of the services provided by the Society hereunder, the City shall pay the Society the sum of Three Hundred Seventy Thousand Five Hundred and Forty-nine Dollars (\$370,549). Said sum shall be paid in twelve (12) monthly installments of Thirty Thousand, Eight Hundred and Seventy-nine Dollars (\$30,879) on or before the 15th day of the month for which such installment is owed. Said payments may be reduced by any amounts then owed to the City by the Society for fuel and vehicle servicing as set forth in paragraph 17, below.
4. Commission to Enforce Ordinances. The City's Chief of Police shall commission the Society's animal-control officers to enforce the City's animal-control ordinances. All costs associated with such commissions shall be paid by the City. Commissioned animal-control officers shall be authorized to serve summonses and complaints, which shall be filed in the Loveland Municipal Court. The City shall instruct said officers regarding enforcement of the City's animal-control ordinances. Said officers shall not enforce or be authorized to enforce any City ordinance other than those related to animal control.
5. Enforcement Schedule.
- a. Regular Schedule. One (1) animal-control officer and vehicle shall be in service eight (8) hours per day, five (5) days per week, provided, however,

that this requirement may be waived for exigent circumstances (e.g., weather conditions). The Society shall notify the City as soon as practicable when unable to place an animal control officer in service due to exigent circumstances. Service schedules shall be based upon call load studies of the Society's animal control activities within the City and shall be flexible to enable the Society to provide animal control services to the City in the most effective and efficient manner. Once set, service hours may be adjusted to address changing needs by written agreement of the City's Chief of Police and the Society's Executive Director. Notwithstanding anything herein to the contrary, the Society shall not be required to provide services on Christmas, Thanksgiving, or New Year's Day if designated as a holiday pursuant to subparagraph 5.e, below.

- b. Emergencies. The Society shall provide the City with after-hours emergency services. Time spent on emergency calls may be flexed from regular duty hours. Animal control officers shall not be required to be within the City while on call to provide emergency services, provided, however, that such officers must be able to respond to emergencies within the City in a timely manner. The following shall constitute emergency requiring after-hours services:
- (i) Injured domestic animals. The Society shall attempt to provide emergency medical treatment to all injured domestic animals. Injured animals that, in the opinion of a licensed veterinarian, have sustained terminal injuries and are suffering may be euthanized prior to the end of the impoundment period set forth in the Loveland Municipal Code.
 - (ii) Animals acting in a vicious manner, as defined in the Loveland Municipal Code.
 - (iii) An animal whose owner has been detained by law-enforcement officials or any governmental agency and whose welfare depends on being placed into protective custody. If the owner is arrested, impoundment fees may apply. Where protective custody is taken of an animal in the event of an emergency or natural disaster, impoundment fees may be waived.
 - (iv) Any other situation reasonably deemed to be an emergency by the Loveland Police Department and approved by the Society's Executive Director or Director of Animal Protection and Control and reasonably related to the services provided hereunder.
- c. Holidays. The Society may designate up to ten (10) days per year as holidays on which calls relating to animal control shall be handled on an emergency basis only, provided, however, that no two days in a row shall be designated as holidays unless one of the two days is Christmas Day or

Thanksgiving Day, and provided further, that the Fourth of July shall not be designated as a holiday due to the many animal-related problems that occur on that day.

- d. Officers to Remain in City. Except as provided in subparagraph 5.b above, animal control officers assigned to enforce the City's animal control ordinances shall remain within the City during their assigned work schedule and shall leave only when necessary to return to the shelter or respond to a non-City emergency, provided, however, that response to non City emergencies shall not significantly impair the Society's provision of services hereunder.

6. Animal Shelter Operation.

- a. The Society shall operate an animal shelter at 6317 Kyle Avenue, Fort Collins, Colorado. In operating the shelter, the Society shall:
 - (i) Comply with all applicable laws, regulations, ordinances, and administrative directives.
 - (ii) Provide and maintain such facilities, instruments, and equipment necessary to operate the shelter in a sanitary, safe, and efficient manner.
 - (iii) Accept for impoundment dogs, cats, and other animals of similar size from the City.
 - (iv) Establish, keep, and maintain a daily register and case history of all animals impounded from the City and released from the shelter on forms mutually acceptable to the parties. Said registry shall meet the requirements of the Loveland Municipal Code.
- b. The Society shall not release or otherwise dispose of any non-suffering animal impounded at the shelter by the City or pursuant to the City's ordinances under the terms of this Agreement unless and until all impoundment periods prescribed by the Loveland Municipal Code have been satisfied.
- c. In the event any animal is held for the purpose of observation for the presence of rabies, the animal shall be held for such time as directed by the City, which time shall not be less than ten (10) days or such greater time as may be provided in the Loveland Municipal Code and Colorado Revised Statutes. Any compensation received by the City from an owner for the holding of an animal as provided in this paragraph shall be paid to the Society.

- d. No animal shall be released to its owner by the Society unless all requirements of the Loveland Municipal Code, including payment of impoundment fees and license fees, have been complied with. Notwithstanding the above, the Society shall be entitled to waive impoundment fees in the case of hardship or protective custody.
- e. The Society shall submit reports to the City on a quarterly and annual basis that include the following information in regard to the previous quarter or year, as applicable:
 - (i) Number of licenses issued to City residents.
 - (ii) Number of calls from City residents for Society services.
 - (iii) Average response time per call for non-priority calls and priority calls.
 - (iv) Number of animals impounded from the City.
 - (v) Number of impound days for animals impounded from the City.
 - (vi) Number of hours spent by Society personnel on City emergency calls.
 - (vii) Number of animals from the City euthanized on premises.
 - (viii) Number of City residents participating in Society educational programs.
 - (ix) Number of complaints received from City residents regarding enforcement or other services provided by the Society and the disposition of such complaints.
- f. The Society shall provide the City with quarterly and annual financial reports that shall include, without limitation, an accounting of all license and impoundment fees collected hereunder.
- g. The Society shall routinely send copies to the City of all special reports or studies that the Society provides to its members or the public.

7. Audits.

- a. The Society shall cause an independent accounting audit to be performed by a certified public accountant on an annual basis at the Society's sole cost. A copy of the audit shall be available to the City in the first quarter of the calendar year.

- b. The Society agrees to make its financial and statistical records available to the City upon request for the purpose of conducting an audit to assess the Society's performance of the terms of this Agreement. Such audit shall be conducted during the Society's normal business hours on the Society's premises at the City's sole cost.
8. Weapons.
- a. Animal control officers shall not carry guns, rifles, or firearms, other than tranquilizer guns, while working within the City. In the event an animal control officer finds it necessary to use a weapon to destroy a vicious animal, the officer shall notify the Loveland Police Department to respond and assist prior to the animal's destruction.
- b. Animal-control officers shall carry bite sticks and pepper spray for the sole purpose of defending themselves against vicious animals. Said officers shall be required to attend and successfully complete training on the use of bite sticks and pepper spray.
9. License and Impoundment Fees. The Society shall charge and collect all license and impoundment fees established by the City Council. The Society shall be entitled to retain all license and impoundment fees collected hereunder.
10. Legal Process. When appropriate, the Society shall write and serve legal process upon persons desiring to reclaim impounded animals.
11. Court Fines. The parties understand and agree that all fines collected by the Loveland Municipal Court resulting from a criminal violation of the Loveland Municipal Code shall be retained by the City.
12. Timely Performance. The parties understand and agree that that timely performance of the provisions of this Agreement is of the essence, and the failure of either party to so perform shall constitute a breach of this Agreement.
13. Loveland Municipal Code. The Society shall comply with all applicable provisions of the Loveland Municipal Code, as amended from time to time and available via the City's website. The parties acknowledge that the terms and conditions of this Agreement are, in part, based upon the Society's expectation that the City's ordinances authorizing license and impoundment fees shall remain in effect and that the Society may retain said fees in accordance with paragraph 9, above.
14. Monitoring and Evaluation. The City reserves the right to monitor and evaluate the Society's performance to ensure that the terms of this Agreement are being satisfactorily met in accordance with the City's and other applicable monitoring and

evaluating criteria and standards. The Society shall cooperate with the City relating to such monitoring and evaluation.

15. Independent Contractor. The parties agree that the Society shall be an independent contractor and shall not be an employee, agent, or servant of the City. **The Society is not entitled to workers' compensation benefits from the City and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement.** The Society shall be solely responsible for the Society's employees' compensation and benefits.
16. Appropriation. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. City shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made.
17. Fuel and Vehicle Servicing. The Society may purchase fuel and vehicle servicing from the City at rates set by the City. The Society shall pay the costs of such purchases within twenty (20) days of billing. Amounts not paid on or before said date may be set-off against the monthly payment due to the Society as set forth in paragraph 3, above.
18. Insurance.
 - a. Comprehensive General Liability Insurance. The Society shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring the Society and naming the City as an additional insured against any liability for personal injury, bodily injury, or death arising out of the performance of the services with at least One Million Dollars (\$1,000,000) each occurrence. The limits of said insurance shall not, however, limit the liability of the Society hereunder.
 - b. Comprehensive Automobile Liability Insurance. The Society shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring the Society and naming the City as an additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by the Society which are used in connection with this Agreement, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least One Million Dollars (\$1,000,000). The limits of said insurance shall not, however, limit the liability of the Society hereunder.

- c. Other Insurance. During the term of this Agreement, the Society shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law.

 - d. Terms of Insurance.
 - (i) Insurance required by this Agreement shall be with companies qualified to do business in the State of Colorado with a general policyholder's financial rating of not less than A+3A as set forth in the most current edition of "Best's Insurance Reports" and may provide for deductible amounts as Consultant deems reasonable for the Services, but in no event greater than Twenty Thousand Dollars (\$20,000). No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the City. The Society shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the Society changes to "occurrence," the Society shall carry a six (6)- month tail. The Society shall not do or permit to be done anything that shall invalidate the policies.

 - (ii) The policies described in subparagraphs 18.a and b above shall be for the mutual and joint benefit and protection of the Society and the City. Such policies shall provide that the City, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its officers, employees, and agents by reason of negligence of the Society, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the City may carry.

 - e. Evidence of Coverage. Before commencing work under this Agreement, the Society shall furnish to the City certificates of insurance policies evidencing insurance coverage required by this Agreement. The Society understands and agrees that the City shall not be obligated under this Agreement until the Society furnishes such certificates of insurance.
19. Indemnification. The Society shall protect, indemnify, and save harmless the City, its officers, employees, and agents from any and every action, cause of action, claim, or demand of any person, natural or corporate, resulting from or arising out of any negligent act, omission, or tortuous conduct of the Society, its officers, employees, or agents relating to the performance of any of the obligations of this Agreement. The Society shall not, however, be liable for the acts, claims, or demands that may arise from the negligent acts of the City, its officers, employees, or agents, nor for acts, claims, or demands based upon the operation of the shelter by the Society in

compliance with instructions or orders given to the Society by the City, its officers, employees, or agents, and the City shall hold the Society harmless therefrom to the extent permitted by law.

20. Governmental Immunity Act. Nothing herein shall be deemed to be a waiver of the City's sovereign immunity or the limitations on liability set forth in the Colorado Governmental Immunity Act or other applicable laws granting similar protection.

21. Termination.

a. For Convenience. The City has the right and option to terminate this Agreement by action of the City Council, and the Society has the right and option to terminate this Agreement by action of its Board of Directors. The effective day of any such termination shall be no less than ninety (90) days from the date of delivery of the notice that such action has been taken.

b. For Cause. If, through any cause, either party fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this Agreement, or violates any applicable law, the non-breaching party shall have the right to terminate this Agreement for cause upon thirty (30) days written notice; provided, however, that the breaching party shall have the right to cure such breach within said thirty (30) day period. In the event of such termination by the City, the City shall be liable to pay the Society for services performed as of the effective date of termination, but shall not be liable to the Society for anticipated profits. Notwithstanding the above, the Society shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement, and the City may withhold payment to the Society for the purposes of setoff until such time as the exact amount of damages due to the City from the Society is determined.

22. Renewal.

a. The parties desire that this arrangement be of an ongoing nature, but it is understood and agreed that the City and the Society shall annually renegotiate the terms and sums to be paid under future agreements based upon the prior year's experience and the funds budgeted and appropriated by the City for the fiscal year.

b. If the parties are unable to reach an agreement for the next year by the end of the year covered by this Agreement, then upon the expiration of the term of this Agreement, the parties may agree to extend this Agreement on a month-to-month basis, and the City shall pay to the Society the sum of Thirty-one Thousand Eight hundred and Five Dollars (\$31, 805) (which sum represents one hundred and three percent (103%) of the monthly payment set forth in paragraph 3, above) per month for each month the services are performed.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement the day and year first above written.

CITY OF LOVELAND, COLORADO

By: _____
City Manager

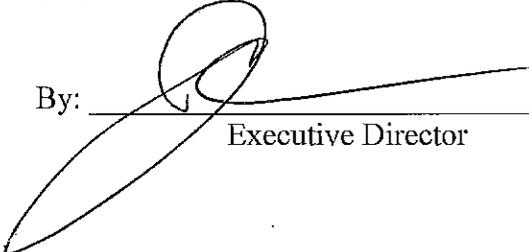
ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney (Assistant)

LARIMER HUMANE SOCIETY

By:  _____
Executive Director

ATTEST:

Secretary



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: 17
MEETING DATE: 11/15/2011
TO: City Council
FROM: Betsey Hale, Economic Development Director
PRESENTER: Betsey Hale

TITLE: A public hearing and four items related to the Community Marketing Commission (CMC) and the lodging tax.

RECOMMENDED CITY COUNCIL ACTIONS:

1. Conduct a public hearing.
2. Adopt a motion to approve a Resolution approving the Destination Loveland Strategic Plan for the use of Lodging Tax Funds and marketing of Loveland
3. Adopt a motion to approve an Ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland budget for the Lodging Tax Fund
4. Adopt a motion directing staff to recruit and hire the Visitor Services Coordinator position
5. Adopt a motion approving reallocation and use of funds in the 2011 Lodging Tax budget

OPTIONS:

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

DESCRIPTION: These are administrative actions. On October 19th, 2011 the Community Marketing Commission made unanimous recommendations to City Council for approval of:

1. The Destination Loveland strategic plan
2. A public hearing and ordinance enacting a supplemental budget and appropriation to the 2012 City of Loveland Budget for the Lodging Tax Fund
3. The recruitment for a Visitor Services Coordinator position
4. A reallocation of the 2011 lodging tax funds for uses other than grants

This agenda item addresses the Council actions to be taken as recommended by the CMC.

BUDGET IMPACT:

- Positive
 Negative: Items 2 & 3
 Neutral or negligible: Items 1 & 4

Items 1 and 4 have no budget impact. The Destination Loveland strategic plan does not have a cost and the 2011 budget action is a reallocation of \$20,975.00 of previously appropriated funds. Items 2 & 3 have costs not previously budgeted. Item 2 is the 2012 lodging tax budget and is the first appropriation of funds. Item 3 is the direction to hire a staff person.

SUMMARIES:

ITEM 1: A Resolution adopting the Destination Loveland Strategic Plan.

In January 2010, the City began collecting lodging tax for the purpose of marketing Loveland as a destination. The Destination Loveland plan was developed after a 10 month period of stakeholder input and research on best practices in destination marketing. The plan lays out the goals and actions required to attract more visitors to Loveland and to increase visitor spending. This plan will guide the efforts of the City Council, the CMC and city staff as they relate to the use of the lodging tax funds for the purpose of marketing Loveland as a destination for visitors. At the October 19th, 2011 meeting, the CMC approved a motion recommending City Council adopt by resolution the Destination Loveland Strategic Plan.

ITEM 2: A public hearing and an ordinance on 1st reading enacting a supplemental budget and appropriation to the 2012 City of Loveland Budget for the Lodging Tax Fund.

At the October 18, 2011 meeting of the City Council, the 2012 City of Loveland budget was adopted. This budget did not include an appropriation of the lodging tax fund budget for 2012. The Loveland Municipal Code requires that the City Council receive a recommendation from the Community Marketing Commission before it can budget, appropriate or spend the lodging tax funds. The recommendation for the 2012 budget was made by the CMC on October 19, 2011. The total budget being recommended is \$500,000.00. Since the 2012 Lodging Tax Fund budget was not appropriated on October 18th, 2011, reserve funds are being appropriated with this ordinance. The revenue anticipated to come in 2012 was in the appropriation ordinance approved by Council on October 18th, 2011.

ITEM 3: A motion directing staff to recruit and hire a Visitor Services Coordinator.

On October 19th, 2011, the Community Marketing Commission unanimously recommended to City Council, that the City Council approve the hiring of a new position known as Visitor Services Coordinator to carry out the work of the Destination Loveland Strategic Plan. Support for this motion is consistent with the implementation plan included in the Destination Loveland Strategic Plan which was adopted by City Council in another action. This action is necessary as the City Council cannot budget, appropriate or spend lodging tax funds without the recommendation of the CMC and the 2nd reading of the 2012 Lodging Tax Budget Ordinance will not be completed until the December 6th, 2011 Council meeting. This process allows staff to begin the search now, for hiring after January 1, 2012.

ITEM 4: A motion approving reallocation and use of funds in the 2011 Lodging Tax budget.

On October 19th, 2011 The Community Marketing Commission recommended the City Council make a motion approving the reallocation of funds within the previously appropriated 2011 Lodging Tax budget to purchase advertising and for the operation and maintenance of the Loveland Visitors Center. The total to be reallocated is \$20,975.00. The Loveland Municipal Code requires the City Council receive a recommendation from the CMC to budget, appropriate or spend the lodging tax funds.

The 2011 lodging tax budget appropriated by City Council did not include funding for the operations of a visitor center or the purchase of advertising. The CMC recommends a reallocation of budgeted and appropriated funds in the amount of \$16,975 for the purpose of advertising in the State of Colorado Visitors Guide, and \$4,000 for the operations of the visitor center for the month of December 2011. After approval by Council, the funds will be reallocated administratively within the 2011 lodging tax budget to fund these activities.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Resolution adopting the Destination Loveland Strategic Plan with Exhibit A: "A Destination Loveland Strategic Plan"
2. Allocation of Lodging Tax Resources for 2012 Presentation
3. Ordinance appropriating to the 2012 City of Loveland budget for the Lodging Tax Fund
4. Lodging Tax Budget - comparison of original allocation to proposed

RESOLUTION #R-77-2011

A RESOLUTION APPROVING THE DESTINATION LOVELAND STRATEGIC PLAN FOR THE USE OF LODGING TAX FUNDS AND MARKETING OF LOVELAND

WHEREAS, the City began collecting lodging tax pursuant to Chapter 3.24 of the Loveland Municipal Code in January, 2010; and

WHEREAS, the purpose of the lodging tax is to promote tourism, conventions, and related activities within the City by marketing the City and sponsoring community events; and

WHEREAS, the Destination Loveland strategic plan was developed with the assistance of a third-party marketing consultant after a ten month period of stakeholder input and research in the tourism industry and is intended to guide the use of lodging tax funds to market the City as a destination for art, leisure and business visitors in order to attract more visitors to Loveland and increase visitor spending; and

WHEREAS, the Community Marketing Commission unanimously recommended the Destination Loveland strategic plan to City Council for approval.

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

Section 1. That the Destination Loveland strategic plan attached hereto as Exhibit A and incorporated herein by this reference, be, and is hereby, approved.

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

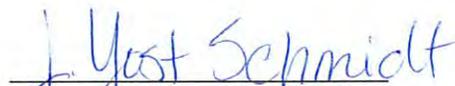
ADOPTED this 15th day of November, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

EXHIBIT A

LOVELAND COLORADO

Create Innovate Stay

Destination Loveland Strategic Plan 2011





Destination Loveland Strategic Plan 2011

On November 3, 2009, Loveland residents approved the following ballot measure by a vote of 58 percent to 42 percent:

Shall City of Loveland taxes be increased \$400,000 for the first full fiscal year (2010), and annually thereafter by such amounts as may be generated from the levy of a lodging tax of three percent (3%) on the lodging price paid for the leasing, rental or furnishing of any lodging services in the city, for the purpose of raising funds to promote tourism, conventions and related activities within the city by marketing the city and sponsoring community events, both in support of this purpose; and shall a community marketing commission appointed by city council be established to make recommendations to city council concerning the specific use of lodging tax revenues consistent with this purpose; and shall the City of Loveland be authorized to collect, retain and spend such lodging tax revenues each year, including any investment earnings and interest on such revenues, as a voter approved revenue change under Article X, Section 20 of the Colorado Constitution or any other law?

Loveland Comprehensive Plan Goal 13.7:

Formulate and implement a comprehensive tourism strategy for Loveland.



Destination Loveland Strategic Plan 2011

Table of Contents

- 1.Executive Summary**
- 2.Vision and Mission**
- 3.Goals and Action Items**
- 4.Implementation Strategy**
- 5.Acknowledgments**





Destination Loveland Strategic Plan 2011

On November 3, 2009, Loveland residents passed a ballot initiative that created a lodging tax of three percent, *“to promote tourism, conventions and related activities within the city by marketing the city and sponsoring community events.”* In addition, the City’s 2005 Comprehensive Plan calls for the City to create a strategic plan for tourism.

Following the approval by the voters, the Loveland City Council established the Community Marketing Commission to advise and make recommendations to the City Council on the use of the lodging tax revenue. The Commission is comprised of community members with backgrounds and expertise in economic development and tourism. Following the establishment of the Commission, the Council directed the Commission to draft a strategic plan that includes opportunities for community input.

This strategic plan includes action steps that serve to guide the efforts of the City over the next five to ten years. The plan was drafted with the support of the Commission and many stakeholders.

The City recognizes that “tourism” can mean everything from the family vacation to the business traveler. Either for recreation or business, when people come to Loveland or the region, our underlying goal and the goal that informs all of the action items, is to encourage more spending in Loveland. The City wants to encourage all visitors to eat, shop and do business in Loveland.



Destination Loveland Strategic Plan 2011

Vision and Mission

Vision

Establish and promote Loveland as a world-class destination for art, leisure and business visitors.

Mission

Promote visitation to increase visitor spending in the Loveland economy.

Goals and Actions

The Goals and Action Items that follow are intended to guide the actions City staff and to inform decision making by the City Council over next five to ten years.

Goal #1



Destination Loveland Strategic Plan 2011

Develop the organizational structure to achieve long term success and manage the lodging tax revenue

Action Items:

1. Hire a qualified full time employee whose responsibility is to implement the Destination Loveland Strategic Plan.
2. Contract and collaborate with local, regional and state partners for events, marketing and other services that include:
 - Community events
 - Operating the visitors center and other visitor destinations and services
 - Marketing for regional, state and national events and promotional campaigns
3. Create and implement the set of metrics to be used to gauge success of the marketing efforts, events and other attractions over time.
4. Complete annual reports and other documentation necessary to demonstrate to Loveland residents that the funds are being used appropriately.

Goal #2



Destination Loveland Strategic Plan 2011

Promote Loveland as a visitor destination

Action Items:

1. Develop and implement a targeted sales and marketing effort in partnership with the major event venues, primarily the Ranch and the Budweiser Events Center. This could include:
 - Events—recreation, sports, entertainment, agricultural, auto, art, etc.
 - Convention sales and marketing
 - Advertising including travel publications and websites
 - Visitor services
2. Partner with regional and state tourism organizations on marketing and promotional efforts and ensure an alignment of vision with the regional convention and visitors bureaus.
3. Maintain a visitor center, website, 800 number and information fulfillment process.
4. Offer tourism-related workshops and training for business owners (hotel concierges, retail, sports rental etc.) about the attractions and destination events held in Loveland.
5. Ensure that attractions, events and activities are included in tourism promotion, visitor guides and tourism websites.

Goal #3



Destination Loveland Strategic Plan 2011

Assist with visitor and recreation related business development in partnership with the Department of Economic Development

Action Items:

1. Assist in the expansion and creation of businesses which provide visitor services and activities such as breweries, wineries, galleries, dining, guided activities sculpture and sculpture related businesses, foundries and recreation rentals.
2. Encourage business development that benefits both local residents and visitors, such as air services/shuttles, family entertainment, trade shows, expositions, farmers market, etc.
3. Assist as appropriate in the development of the Aerospace and Clean Energy Park and possible business traveler services.
4. Assist local employers by providing client and customer travel information packets and on line resources.
5. Assist the Director of the Fort Collins-Loveland Airport with the development of both general and commercial aviation service.

Goal #4



Destination Loveland Strategic Plan 2011

Enhance the visual appeal of Loveland

Action Items:

1. Improve Gateways to Loveland including US 34 and US 287 that might create negative visitor impressions.
2. Develop incentives and volunteer programs to assist property owners with clean up.
3. Encourage redevelopment and façade improvement along transportation corridors.
4. Enhance way-finding in Loveland, including improved directional signs to the historic Downtown district and other Loveland attractions.
5. Identify and eliminate visual clutter along critical corridors.
6. Expand placement of public art, particularly along primary tourist corridors.

Goal #5



Destination Loveland Strategic Plan 2011

Encourage and support destination visitor programming, attractions and events

Action Items:

1. Encourage development of off-peak events/festivals by implementing the Activation Plan.
2. Assist the Office of Creative Sector Development (OCSD) in the creation of destination attractions and programming as recommended in the OCSD strategic plan.
3. Assist the Cultural Services and Economic Development Departments with the expansion of existing destination venues such as the museum/gallery expansion, Rialto Bridge and Pulliam Building, as identified in the City Capital Projects plan and the Downtown Revitalization Strategy.
4. Create new destination attractions and events as needed.



Destination Loveland Strategic Plan 2011

Implementation Strategy

To ensure success, the Strategic Plan provides recommendations on specific actions steps to occur within six months of adoption of this plan. The action steps are intended to provide initial prioritization and direction so as to achieve Mission and Vision articulated in this plan.

0—6 months:

1. Hire a qualified staff person to manage the strategic plan as outlined in Goal #1.
2. Develop an annual budget and business plan for the use of the lodging tax.
3. Establish contractual relationships with external partners as outlined in Goal #1 and #2.
4. Develop metrics as outlined in Goal #1

0—2 years:

1. Develop programing to promote improvements to gateways as outlined in Goal #4.
2. Develop and implement the business mode for a sustainable visitors center as outlined in Goal #2.

0—5 years:

1. Develop the destination attractions as outlined in Goal #5.
2. Assist with the formation and development of arts, culture and economic development as outlined in Goal #3.



Destination Loveland Strategic Plan 2011

The Loveland City Council would like to acknowledge the members of the Community Marketing Commission, Council Liaisons and Staff that have helped develop this effort:

Loveland City Council:

Cecil Gutierrez, Mayor

Larry Heckle, Mayor Pro-Tem

Daryle Klassen, Ward I

Donna Rice, Ward I

Carol Johnson, Ward II

Joan Shaffer, Ward II

Hugh McKean, Ward III

Kent Solt, Ward III

Cathleen McEwen, Ward IV

Community Marketing Commission:

Linda Hughey, Chair

Tom Dwyer

Judy Saffell

Justin Erion

Leslie White

Rosemary Prawdzik

City Staff:

Betsey Hale, Director,
Department of Economic Development

haleb@ci.loveland.co.us

(970)962-2304

Allocation of Lodging Tax Resources for 2012

Staff Recommendation for 2012 Budget

Reminders

- Just because you budget itdoesn't mean you have to spend it.
- If priorities change or opportunities arise the CMC can recommend to Council a reallocation of the resources.

Financial Oversight

- There are currently 5 hurdles that must be cleared for lodging tax funds to be spent
 - ✓ Destination Loveland Staff person
 - ✓ Economic Development Director
 - ✓ CMC
 - ✓ City Manager
 - ✓ City Council and then.....
 - ✓ An independent 3rd party annual audit

Staff and Operating

- ✓ Recommended Amount: \$95,000
- ✓ Meets the action items for Goal #1
- ✓ This must happen quickly so that other operations can commence
- ✓ Visitor Services Coordinator

Visitor Reception/Center

- ✓ Recommended Budget Amount:
\$125,000.00
- ✓ Meets Action item #3 of Goal #2
- ✓ Visitor Reception/Centers are a core function of visitor attraction

Website

- ✓ Recommended Budget Amount:
\$25,000.00
- ✓ Meets Action # 3 of Goal #2
- ✓ It is your virtual Visitor Center
- ✓ It is a core function of visitor attraction

Events (New and Annual)

- ✓ Recommended Budget Amount :
\$105,000.00 total
- ✓ \$65,000 for annual events
- ✓ \$40,000 for new events
- ✓ Meets Action # 2 of Goal #1
- ✓ Meets action #1 and #4 of Goal #5

Product Improvement

- ✓ Recommended Amount: \$50,000
- ✓ This is to support “infrastructure improvements”
- ✓ Signage/wayfinding would be top priority for 2012
- ✓ This addresses Goal #4

Marketing

- ✓ Recommended Amount:
\$100,000.00
- ✓ This could be an infinite amount of money
- ✓ Meets Actions #1,#2 and #5 of Goal #2

FIRST READING November 15, 2011

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2012 CITY OF LOVELAND BUDGET FOR THE LODGING TAX FUND

WHEREAS, the City has reserved funds from lodging tax receipts in Lodging Tax Fund 206 (the “Lodging Tax Fund”) that were not appropriated at the time of the adoption of the City budget for 2012; and

WHEREAS, pursuant to Loveland Municipal Code Section 3.24.105, lodging tax receipts from Lodging Tax Fund shall not be budgeted, appropriated, or spent without first receiving the recommendation of the Community Marketing Commission established by Code Section 2.60.075; and

WHEREAS, the Community Marketing Commission has recommended to City Council a budget for use of certain revenues from the Lodging Tax Fund for 2012, as described below; and

WHEREAS, the City Council, after receipt and consideration of the recommendation of the Community Marketing Commission, desires to appropriate and authorize the expenditure of certain revenues from the Lodging Tax Fund by enacting a supplemental budget and appropriation to the City budget for 2012, as authorized by Section 11-6(a) of the Loveland City Charter.

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

Section 1. That reserves in the amount of \$500,000 from lodging tax receipts in Lodging Tax Fund 206 are available for appropriation.

Section 2. That the Community Marketing Commission has recommended that reserves in the amount of \$500,000 from lodging tax receipts available in Lodging Tax Fund 206 be budgeted, appropriated, and spent for 2012 as follows:

Staff and Operating Expenses	\$ 95,000
Visitor Reception/Center	125,000
Website	25,000
Events	105,000
Product Improvement	50,000
Marketing	<u>100,000</u>

Total Recommended 2012 Budget \$500,000

Section 3. That reserves in the amount of \$500,000 from lodging tax receipts in the Lodging Tax Fund 206 are hereby appropriated for staff and operating expenses; operations of the visitor/reception center; creation and maintenance of a website; events; product improvements and marketing. For administrative budget purposes, the funds hereby appropriated and shall be allocated to the accounts hereinafter set forth, subject to administrative reallocation, and the spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

**2012 Supplemental Budget
Lodging Tax Fund**

Revenues		
Fund Balance		500,000
Total Revenue		500,000
Appropriations		
206-18-180-1504-41011	Salaries- Benefited Employees	50,000
206-18-180-1504-41543	Insurance Benefits	11,500
206-18-180-1504-41544	FICA	3,830
206-18-180-1504-41545	Retirement	2,500
206-18-180-1504-42011	Office Supplies	2,000
206-18-180-1504-42015	Computer Supplies	2,000
206-18-180-1504-42422	Food	1,500
206-18-180-1504-42899	Other Supplies	5,000
206-18-180-1504-43021	Printing	2,000
206-18-180-1504-43265	Mileage	500
206-18-180-1504-43270	Travel	5,000
206-18-180-1504-43435	Membership Fees	1,000
206-18-180-1504-43450	Professional Services	230,000
206-18-180-1504-43645	Telephone	1,000
206-18-180-1504-43737	Advertising	1,000
206-18-180-1504-43899	Other Services	181,170
Total Appropriations		500,000

Section 4. 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 December, 2011.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Deputy City Attorney

2011 Lodging Tax Budget

Appropriation February 2011	Approved Amount	Proposed to be Amended November 2011
Salaries	\$ 35,500.00	\$ 35,500.00
FICA	\$ 2,720.00	\$ 2,720.00
Retirement	\$ 1,780.00	\$ 1,780.00
Office Supplies	\$ 1,000.00	\$ 1,000.00
Postage	\$ 500.00	\$ 500.00
Printing	\$ 500.00	\$ 500.00
Subscriptions	\$ 100.00	\$ 100.00
Membership Fees	\$ 3,000.00	\$ 3,000.00
Advertising	\$ 1,500.00	\$ 18,475.00
Professional Services	\$ 115,230.00	\$ 115,230.00
Mileage Reimbursement	\$ 200.00	\$ 200.00
Travel	\$ 3,000.00	\$ 3,000.00
Other Purchased Services	\$ 3,000.00	\$ 7,000.00
Grants	\$ 300,000.00	\$ 279,025.00
Food	\$ 1,500.00	\$ 1,500.00
Total	\$ 469,530.00	\$ 469,530.00