

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION GRANTING MAYOR PRO TEM DON MAROSTICA AN EXCEPTION PURSUANT TO LOVELAND MUNICIPAL CODE SECTION 2.14.015 D. FOR NORTH BOISE, L.L.C., TO ENTER INTO A DEVELOPMENT AGREEMENT AND OVERSIZING REIMBURSEMENT AGREEMENTS WITH THE CITY OF LOVELAND**

**WHEREAS**, Loveland Municipal Code Section 2.14.015 A. prohibits members of Council from having a “substantial financial interest” in any “contract” with the City; and

**WHEREAS**, Code Section 2.14.015 C. defines a “contract” as any verbal or written agreement related to the provision of a service or of real or personal property to the City; and

**WHEREAS**, a “substantial financial interest” is defined in Code Section 2.14.015 B. as either an ownership interest of five percent (5%) or greater in an entity that enters into a contract with the City or a direct financial benefit of \$1,000.00 or more in value; and

**WHEREAS**, Code Section 2.14.015 D. nevertheless permits the City Council, by an affirmative vote of three-quarters (3/4) of the members of Council, to grant an exception to the contracting prohibitions of Section 2.14.015 A., provided such exception does not conflict with any other provision of State law or of the City Code; and

**WHEREAS**, Mayor Pro Tem Don Marostica has asked the City Council to consider granting him the exception provided in Code Section 2.14.015 D. related to any substantial financial interests Mayor Pro Tem Marostica may have in the "Development Agreement," a copy of which is attached hereto as Exhibit "A," between the City of Loveland, Art and Agnes Koldeway, and North Boise, LLC, a Colorado limited liability company (the “Development Agreement”); and

**WHEREAS**, Mayor Pro Tem Marostica has greater than a five percent (5%) ownership interest in North Boise, LLC; and

**WHEREAS**, the Development Agreement provides that North Boise, LLC, as the developer of the project described in the Development Agreement, will construct various public improvements needed by the development, which improvements will eventually be dedicated and conveyed to the City and its utilities; and

**WHEREAS**, in paragraphs A. and D. of Section IV of the Development Agreement, it is contemplated that the City will reimburse North Boise, LLC for certain oversized stormwater and street improvements; and

**WHEREAS**, for several years it has been the City's policy and practice to enter into oversizing agreements with developers obligating them to construct oversized stormwater and street improvements in return for the City agreeing to pay to the developer the developer's costs directly related to the oversizing portion of such facilities; and

**WHEREAS**, the oversized portions of these facilities are for the general benefit of the City and its utilities and are not otherwise required to meet the needs or address the impacts of developers' projects; and

**WHEREAS**, the oversizing amounts paid by the City to developers represent a reimbursement to the developers for the developers' additional costs directly related to the oversizing of such facilities and such oversizing payments do not include any profit to the developers; and

**WHEREAS**, the City Council finds that the clear intent of City Code Section 2.14.015 A. is to prohibit councilmembers from entering into contracts with the City from which councilmembers could receive an economic benefit; and

**WHEREAS**, since the City's oversizing agreements do not confer an economic benefit on developers, but rather benefit the City and its utilities, the Council finds that it is appropriate to except Mayor Pro Tem Marostica from the application of Section 2.14.015 A. with respect to the Agreement; and

**WHEREAS**, the Council further finds, on advice from the Loveland City Attorney, that granting this exception does not conflict with any other provision of State law or of the City Code.

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

**Section 1.** That Mayor Pro Tem Don Marostica shall be excepted, in accordance with Loveland Municipal Code Section 2.14.015 D., from the application of the contracting prohibition in Loveland Municipal Code Section 2.14.015 A. with respect to the Development Agreement.

**Section 2.** That Mayor Pro Tem Don Marostica shall be excepted, in accordance with Loveland Municipal Code Section 2.14.015 D., from the application of the contracting prohibition in Loveland Municipal Code Section 2.14.015 A. with respect to future reimbursement agreements entered into between the City and North Boise, LLC, related to the anticipated reimbursements in paragraphs A. and D. of Section IV. of the Development Agreement provided, however, that such reimbursement agreements shall be entered into in accordance with any then existing City policy, shall be upon such terms and conditions as are approved by the City Manager, and shall be in a form acceptable to the City Attorney.

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

Signed this \_\_\_\_\_ day of June, 2004.

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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